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,

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,

Respondents,

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Elizabeth A. Brown
Clerk of Supreme Court

Supreme Court Case No. 81281

On Appeal from a Final Judgment of the District Court for Clark County, Nevada, Case No. A-19-800267-C, Hon. Rob Bare

Joint Appendix, Volume I

and

THE LEGISLATURE OF THE STATE OF NEVADA,

Respondent-Intervenors.

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JOINT APPENDIX INDEX

TAB 1

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

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

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.

COMPLAINT

Arbitration Exemption Claimed
Declaratory and Injunctive Relief Sought

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").

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

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

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

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

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

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

PARTIES

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

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

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

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

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

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

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

17. Defendant Nevada Department of Education is a state agency with offices in both Carson City and Las Vegas. The Department of Education is responsible for administering the Scholarship Program by adopting regulations necessary to carry out the Scholarship Program[2] and by enforcing violations of the relevant statutes and regulations.[3]

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

19. Defendant Nevada Department of Taxation is a state agency with offices in Carson City, Reno, Henderson, and Las Vegas. The Department of Taxation is responsible for administering and enforcing the excise tax imposed by NRS § 363B.110.[5] The Department of Taxation is responsible for approving or denying applications for tax credits for donations to scholarship organizations.[6] The Department of Taxation may bring an action to collect the nonpayment of taxes that it administers.[7]

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

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[2] NRS § 388D.270(7).
[3] NAC § 385.607(3).
[4] NRS § 385.010(3).
[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.

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[9] *Id.*

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

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

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

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

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

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

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

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

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

39. Defendant Department of Taxation therefore labeled the bill as a "revenue" item.

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

[10] 2015 Nev. Laws Ch. 22, § 4 (A.B. 165).
[11] Dep't of Tax'n, Fiscal Note on A.B. 458 (Nev. Apr. 4, 2019).

testified that each dollar of tax credits "is a dollar we deplete from the General Fund" and that "we still have an obligation to fund our budget responsibly."[12]

41. 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.

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

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

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

III. Injury to Plaintiffs

A. Parent Plaintiffs

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

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

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

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

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

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

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

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

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

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

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

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

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

57. Plaintiff Bonnie Ybarra resides in Las Vegas.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. The Scholarship Organization Plaintiff

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

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

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

96. As of December 31, 2018, AAA had awarded scholarships to 910 students.

97. As of December 31, 2018, AAA had paid out scholarships on behalf of 888 students.

98. As of December 31, 2018, AAA had awarded scholarships in the total amount of $6,086,250.

99. As of December 31, 2018, AAA had paid out $2,420,784.66 in scholarships.

100. As of December 31, 2018, AAA had paid scholarships on behalf of students attending 61 different private schools.

101. Of the families served by AAA last year, a majority were ethnic or racial minorities.

102. Of the families served by AAA last year, approximately 75 percent were at or below 185 percent of the federal poverty line, meaning they would qualify for the National School Lunch Program.

103. Most of AAA's donors in Nevada would not donate to AAA if the donors would not qualify for a tax credit.

104. On information and belief, each year since the Scholarship Program's enactment, all the allocated tax credits have been claimed by business donors.

105. But for A.B. 458, an additional $665,500 in tax credits would be available to business donors and AAA would be legally permitted to receive additional tax-credit-eligible donations to fund scholarships for the 2019-20 school year.

106. But for A.B. 458, an additional $1,397,550 in tax credits would be available to business donors and AAA would be legally permitted to receive additional tax-credit-eligible donations to fund scholarships for the 2020-21 school year.

107. Without additional tax-credit-eligible donations, AAA will be forced to cut families from the scholarship program because full-tuition scholarships increase each year with inflation and rising education costs.

108. But for A.B. 458, AAA could in the future provide millions of dollars in additional scholarships to families in need.

C. The Business Donor Plaintiffs

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

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

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

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

113. 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 Sklar Williams would qualify for a tax credit under the first-come, first-served distribution of tax credits.

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

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

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

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

118. Environmental Design Group wishes to donate more to scholarship organizations 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 2

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DISTRICT COURT CLARK COUNTY
CLARK COUNTY, STATE OF NEVADA

FLOR MORENCY; et al.,

Plaintiff(s)

v.

STATE OF NEVADA *ex rel.* the DEPARTMENT OF EDUCATION; et al.,

Defendant(s)

Case No.:A-19-800267-C
INSTITUTE FOR JUSTICE
Joshua A. House, Esq.,
Nevada Bar No. 12979
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Attorneys for the Plaintiffs

I, Tonya Malone, being sworn, states: That I am a licensed process server registered in Nevada. I received a copy of the Summons; Complaint; Plaintiffs' Initial Fee Disclosure; Plaintiffs' Rule 7.1 Disclosure; Civil Cover Sheet, from INSTITUTE FOR JUSTICE.

That on 8/22/2019 at 10:18 AM at 100 North Carson Street, Carson City, NV 89701 I served Ann Bersi in her Official Capacity as A Member of the Nevada Tax Commission - c/o Nevada Attorney General, by personally delivering and leaving a copy of the above-listed document(s) with Diana Herrera - Administrative Assistant, a person of suitable age and discretion authorized to accept service of process.

That the description of the person actually served is as follows:
Gender: Female, Race: Latino, Age: 20's, Height: 5'6", Weight: 260 lbs., Hair: Black, Eyes:N/A

I being duly sworn, states: that all times herein, Affiant was and is over 18 years of age, not a party to or interested in the proceedings in which this Affidavit is made. I declare under penalty of perjury that the foregoing is true and correct.

Date: August 27th, 2019

Tonya Malone
Registered Work Card# R-100246
State of Nevada

(No Notary Per NRS 53.045)

Service Provided for:
Nationwide Legal Nevada, LLC
626 S. 7th Street
Las Vegas, NV 89101
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Nevada Lic # 1656

Control #:NV195817F
Reference: COD

AFFIDAVIT OF SERVICE

DISTRICT COURT CLARK COUNTY
CLARK COUNTY, STATE OF NEVADA

FLOR MORENCY; et al.,

Plaintiff(s)

v.

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INSTITUTE FOR JUSTICE
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Attorneys for the Plaintiffs

I, Tonya Malone, being sworn, states: That I am a licensed process server registered in Nevada. I received a copy of the Summons; Complaint; Plaintiffs' Initial Fee Disclosure; Plaintiffs' Rule 7.1 Disclosure; Civil Cover Sheet, from INSTITUTE FOR JUSTICE.

That on 8/23/2019 at 2:59 PM at 100 North Carson Street, Carson City, NV 89701 I served Anthony Wren in his Official Capacity as A Member of the Nevada Tax Commission - c/o Nevada Attorney General, by personally delivering and leaving a copy of the above-listed document(s) with Michelle Fournier - Administrative Assistant, a person of suitable age and discretion authorized to accept service of process.

That the description of the person actually served is as follows:
Gender: Female, Race: Caucasian, Age: 60's, Height: 5'5", Weight: 150 lbs., Hair: Blonde, Eyes:N/A

I being duly sworn, states: that all times herein, Affiant was and is over 18 years of age, not a party to or interested in the proceedings in which this Affidavit is made. I declare under penalty of perjury that the foregoing is true and correct.

Date: August 27th, 2019

Tonya Malone
Registered Work Card# R-100246
State of Nevada

(No Notary Per NRS 53.045)

Service Provided for:
Nationwide Legal Nevada, LLC
626 S. 7th Street
Las Vegas, NV 89101
(702) 385-5444
Nevada Lic # 1656

Control #:NV195817I
Reference: COD

AFFIDAVIT OF SERVICE

DISTRICT COURT CLARK COUNTY
CLARK COUNTY, STATE OF NEVADA

FLOR MORENCY; et al.,

Plaintiff(s)

v.

STATE OF NEVADA *ex rel.* the DEPARTMENT OF EDUCATION; et al.,

Defendant(s)

Case No.:A-19-800267-C
INSTITUTE FOR JUSTICE
Joshua A. House, Esq.,
Nevada Bar No. 12979
901 N. Glebe Road, Suite 900
Arlington, VA 22203
Telephone (703) 682-9320
Attorneys for the Plaintiffs

I, Tonya Malone, being sworn, states: That I am a licensed process server registered in Nevada. I received a copy of the Summons; Complaint; Plaintiffs' Initial Fee Disclosure; Plaintiffs' Rule 7.1 Disclosure; Civil Cover Sheet, from INSTITUTE FOR JUSTICE.

That on 8/21/2019 at 3:02 PM at 100 North Carson Street, Carson City, NV 89701 I served Craig Witt in his Official Capacity as A Member of the Nevada Tax Commission - c/o Nevada Attorney General, by personally delivering and leaving a copy of the above-listed document(s) with Michelle Fournier - Administrative Assistant, a person of suitable age and discretion authorized to accept service of process.

That the description of the person actually served is as follows:
Gender: Female, Race: Caucasian, Age: 70's, Height: 5'6", Weight: 160 lbs., Hair: Blonde, Eyes:N/A

I being duly sworn, states: that all times herein, Affiant was and is over 18 years of age, not a party to or interested in the proceedings in which this Affidavit is made. I declare under penalty of perjury that the foregoing is true and correct.

Date: August 27th, 2019

Tonya Malone
Registered Work Card# R-100246
State of Nevada

(No Notary Per NRS 53.045)

Service Provided for:
Nationwide Legal Nevada, LLC
626 S. 7th Street
Las Vegas, NV 89101
(702) 385-5444
Nevada Lic # 1656

Control #:NV195817D
Reference: COD

AFFIDAVIT OF SERVICE

DISTRICT COURT CLARK COUNTY
CLARK COUNTY, STATE OF NEVADA

FLOR MORENCY; et al.,

Plaintiff(s)

v.

STATE OF NEVADA *ex rel.* the DEPARTMENT OF EDUCATION; et al.,

Defendant(s)

Case No.:A-19-800267-C
INSTITUTE FOR JUSTICE
Joshua A. House, Esq.,
Nevada Bar No. 12979
901 N. Glebe Road, Suite 900
Arlington, VA 22203
Telephone (703) 682-9320
Attorneys for the Plaintiffs

I, Tonya Malone, being sworn, states: That I am a licensed process server registered in Nevada. I received a copy of the Summons; Complaint; Plaintiffs' Initial Fee Disclosure; Plaintiffs' Rule 7.1 Disclosure; Civil Cover Sheet, from INSTITUTE FOR JUSTICE.

That on 8/21/2019 at 3:02 PM at 100 North Carson Street, Carson City, NV 89701 I served Department of Taxation, by personally delivering and leaving a copy of the above-listed document(s) with Michelle Fournier - Administrative Assistant, a person of suitable age and discretion authorized to accept service of process.

That the description of the person actually served is as follows:
Gender: Female, Race: Caucasian, Age: 70's, Height: 5'6", Weight: 160 lbs., Hair: Blonde, Eyes:N/A

I being duly sworn, states: that all times herein, Affiant was and is over 18 years of age, not a party to or interested in the proceedings in which this Affidavit is made. I declare under penalty of perjury that the foregoing is true and correct.

Date: August 27th, 2019

Tonya Malone
Registered Work Card# R-100246
State of Nevada

(No Notary Per NRS 53.045)

Service Provided for:
Nationwide Legal Nevada, LLC
626 S. 7th Street
Las Vegas, NV 89101
(702) 385-5444
Nevada Lic # 1656

Control #:NV195817A
Reference: COD

AFFIDAVIT OF SERVICE

DISTRICT COURT CLARK COUNTY
CLARK COUNTY, STATE OF NEVADA

FLOR MORENCY; et al.,

Plaintiff(s)

v.

STATE OF NEVADA *ex rel.* the DEPARTMENT OF EDUCATION; et al.,

Defendant(s)

Case No.:A-19-800267-C
INSTITUTE FOR JUSTICE
Joshua A. House, Esq.,
Nevada Bar No. 12979
901 N. Glebe Road, Suite 900
Arlington, VA 22203
Telephone (703) 682-9320
Attorneys for the Plaintiffs

I, Tonya Malone, being sworn, states: That I am a licensed process server registered in Nevada. I received a copy of the Summons; Complaint; Plaintiffs' Initial Fee Disclosure; Plaintiffs' Rule 7.1 Disclosure; Civil Cover Sheet, from INSTITUTE FOR JUSTICE.

That on 8/22/2019 at 10:18 AM at 100 North Carson Street, Carson City, NV 89701 I served Francine Lipman in her Official Capacity as A Member of the Nevada Tax Commission - c/o Nevada Attorney General, by personally delivering and leaving a copy of the above-listed document(s) with Diana Herrera - Administrative Assistant, a person of suitable age and discretion authorized to accept service of process.

That the description of the person actually served is as follows:
Gender: Female, Race: Latino, Age: 20's, Height: 5'6", Weight: 260 lbs., Hair: Black, Eyes:N/A

I being duly sworn, states: that all times herein, Affiant was and is over 18 years of age, not a party to or interested in the proceedings in which this Affidavit is made. I declare under penalty of perjury that the foregoing is true and correct.

Date: August 27th, 2019

Tonya Malone
Registered Work Card# R-100246
State of Nevada

(No Notary Per NRS 53.045)

Service Provided for:
Nationwide Legal Nevada, LLC
626 S. 7th Street
Las Vegas, NV 89101
(702) 385-5444
Nevada Lic # 1656

Control #:NV195817H
Reference: COD

AFFIDAVIT OF SERVICE

DISTRICT COURT CLARK COUNTY
CLARK COUNTY, STATE OF NEVADA

FLOR MORENCY; et al.,

Plaintiff(s)

v.

STATE OF NEVADA *ex rel.* the DEPARTMENT OF EDUCATION; et al.,

Defendant(s)

Case No.:A-19-800267-C
INSTITUTE FOR JUSTICE
Joshua A. House, Esq.,
Nevada Bar No. 12979
901 N. Glebe Road, Suite 900
Arlington, VA 22203
Telephone (703) 682-9320
Attorneys for the Plaintiffs

I, Tonya Malone, being sworn, states: That I am a licensed process server registered in Nevada. I received a copy of the Summons; Complaint; Plaintiffs' Initial Fee Disclosure; Plaintiffs' Rule 7.1 Disclosure; Civil Cover Sheet, from INSTITUTE FOR JUSTICE.

That on 8/22/2019 at 10:18 AM at 100 North Carson Street, Carson City, NV 89701 I served George Kelesis in his Offical Capacity as A Member of the Nevada Tax Commission - c/o Nevada Attorney General, by personally delivering and leaving a copy of the above-listed document(s) with Diana Herrera - Administrative Assistant, a person of suitable age and discretion authorized to accept service of process.

That the description of the person actually served is as follows:
Gender: Female, Race: Latino, Age: 20's, Height: 5'5", Weight: 260 lbs., Hair: Black, Eyes:N/A

I being duly sworn, states: that all times herein, Affiant was and is over 18 years of age, not a party to or interested in the proceedings in which this Affidavit is made. I declare under penalty of perjury that the foregoing is true and correct.

Date: August 27th, 2019

Tonya Malone
Registered Work Card# R-100246
State of Nevada

(No Notary Per NRS 53.045)

Service Provided for:
Nationwide Legal Nevada, LLC
626 S. 7th Street
Las Vegas, NV 89101
(702) 385-5444
Nevada Lic # 1656

Control #:NV195817E
Reference: COD

Electronically Filed
9/3/2019 10:55 AM
Steven D. Grierson
CLERK OF THE COURT

AFFIDAVIT OF SERVICE

DISTRICT COURT CLARK COUNTY
CLARK COUNTY, STATE OF NEVADA

FLOR MORENCY; et al.,

Plaintiff(s)

v.

STATE OF NEVADA *ex rel.* the DEPARTMENT OF EDUCATION; et al.,

Defendant(s)

Case No.:A-19-800267-C
INSTITUTE FOR JUSTICE
Joshua A. House, Esq.,
Nevada Bar No. 12979
901 N. Glebe Road, Suite 900
Arlington, VA 22203
Telephone (703) 682-9320
Attorneys for the Plaintiffs

I, Tonya Malone, being sworn, states: That I am a licensed process server registered in Nevada. I received a copy of the Summons; Complaint; Plaintiffs' Initial Fee Disclosure; Plaintiffs' Rule 7.1 Disclosure; Civil Cover Sheet, from INSTITUTE FOR JUSTICE.

That on 8/21/2019 at 3:02 PM at 100 North Carson Street, Carson City, NV 89701 I served James Devolld in his Official Capacity as A Member of the Nevada Tax Commission - c/o Nevada Attorney General, by personally delivering and leaving a copy of the above-listed document(s) with Michelle Fournier - Administrative Assistant, a person of suitable age and discretion authorized to accept service of process.

That the description of the person actually served is as follows:
Gender: Female, Race: Caucasian, Age: 70's, Height: 5'6", Weight: 160 lbs., Hair: Blonde, Eyes:N/A

I being duly sworn, states: that all times herein, Affiant was and is over 18 years of age, not a party to or interested in the proceedings in which this Affidavit is made. I declare under penalty of perjury that the foregoing is true and correct.

Date: August 27th, 2019

Tonya Malone
Registered Work Card# R-100246
State of Nevada

(No Notary Per NRS 53.045)

Service Provided for:
Nationwide Legal Nevada, LLC
626 S. 7th Street
Las Vegas, NV 89101
(702) 385-5444
Nevada Lic # 1656

Control #:NV195817B
Reference: COD

Electronically Filed
9/3/2019 10:55 AM
Steven D. Grierson
CLERK OF THE COURT

AFFIDAVIT OF SERVICE

DISTRICT COURT CLARK COUNTY CLARK COUNTY, STATE OF NEVADA

FLOR MORENCY; et al.,

Plaintiff(s)

v.

STATE OF NEVADA ex rel. the DEPARTMENT OF EDUCATION; et al.,

Defendant(s)

Case No.:A-19-800267-C

INSTITUTE FOR JUSTICE
Joshua A. House, Esq.
Nevada Bar No. 12979
901 N. Glebe Road, Suite 900
Arlington, Virginia 22203
(703) 682-9320
Attorneys for the Plaintiff

I, Judith Mae All, being sworn, states: That I am a licensed process server registered in Nevada. I received a copy of the Summons; Complaint; Plaintiffs' Rule 7.1 Disclosure; Plaintiffs' Initial Fee Disclosure; Civil Cover Sheet, from Institute For Justice.

That on 8/19/2019 at 2:28 PM at 2080 E. Flamingo Road, Suite 210, Las Vegas, NV 89119 I served Jhone Ebert - Nevada Department of Education, by personally delivering and leaving a copy of the above-listed document(s) with Kim Bennett - Administrative Assistant, a person of suitable age and discretion authorized to accept service of process.

That the description of the person actually served is as follows:
Gender: Female, Race: Caucasian, Age: 40's, Height: 5'4", Weight: 160 lbs., Hair: Brown, Eyes:Blue w/glasses

I being duly sworn, states: that all times herein, Affiant was and is over 18 years of age, not a party to or interested in the proceedings in which this Affidavit is made. I declare under penalty of perjury that the foregoing is true and correct.

Date: 8/22/19

Judith Mae All
Registered Work Card# R-040570
State of Nevada

(No Notary Per NRS 53.045)

Service Provided for:
Nationwide Legal Nevada, LLC
626 S. 7th Street
Las Vegas, NV 89101
(702) 385-5444
Nevada Lic # 1656

Control #:NV195620
Reference: COD

AFFIDAVIT OF SERVICE

DISTRICT COURT CLARK COUNTY
CLARK COUNTY, STATE OF NEVADA

FLOR MORENCY; et al.,

Plaintiff(s)

v.

STATE OF NEVADA *ex rel.* the DEPARTMENT OF EDUCATION; et al.,

Defendant(s)

Case No.:A-19-800267-C
INSTITUTE FOR JUSTICE
Joshua A. House, Esq.,
Nevada Bar No. 12979
901 N. Glebe Road, Suite 900
Arlington, VA 22203
Telephone (703) 682-9320
Attorneys for the Plaintiffs

I, Tonya Malone, being sworn, states: That I am a licensed process server registered in Nevada. I received a copy of Summons; Complaint; Plaintiffs' Initial Fee Disclosure; Plaintiffs' Rule 7.1 Disclosure; Civil Cover Sheet, from INSTITUTE FOR JUSTICE.

That on 8/22/2019 at 10:18 AM at 100 North Carson Street, Carson City, NV 89701 I served Melanie Young in her Official Capacity as Executive Director and Chief Administrative Officer of the Department of Taxation - c/o Nevada Attorney General, by personally delivering and leaving a copy of the above-listed document(s) with Diana Herrera - Administrative Assistant, a person of suitable age and discretion authorized to accept service of process.

That the description of the person actually served is as follows:
Gender: Female, Race: Latino, Age: 20's, Height: 5'6", Weight: 260 lbs., Hair: Black, Eyes:N/A

I being duly sworn, states: that all times herein, Affiant was and is over 18 years of age, not a party to or interested in the proceedings in which this Affidavit is made. I declare under penalty of perjury that the foregoing is true and correct.

Date: August 27th, 2019

Tonya Malone
Registered Work Card# R-100246
State of Nevada

(No Notary Per NRS 53.045)

Service Provided for:
Nationwide Legal Nevada, LLC
626 S. 7th Street
Las Vegas, NV 89101
(702) 385-5444
Nevada Lic # 1656

Control #:NV195817J
Reference: COD

AFFIDAVIT OF SERVICE

DISTRICT COURT CLARK COUNTY
CLARK COUNTY, STATE OF NEVADA

FLOR MORENCY; et al.,

Plaintiff(s)

v.

STATE OF NEVADA *ex rel.* the DEPARTMENT OF EDUCATION; et al.,

Defendant(s)

Case No.:A-19-800267-C
INSTITUTE FOR JUSTICE
Joshua A. House, Esq.,
Nevada Bar No. 12979
901 N. Glebe Road, Suite 900
Arlington, VA 22203
Telephone (703) 682-9320
Attorneys for the Plaintiffs

I, Tonya Malone, being sworn, states: That I am a licensed process server registered in Nevada. I received a copy of the Summons; Complaint; Plaintiffs' Initial Fee Disclosure; Plaintiffs' Rule 7.1 Disclosure; Civil Cover Sheet, from Institute for Justice.

That on 8/21/2019 at 3:02 PM at 100 North Carson Street, Carson City, NV 89701 I served Office of Attorney General, by personally delivering and leaving a copy of the above-listed document(s) with Michelle Fournier - Administrative Assistant, a person of suitable age and discretion authorized to accept service of process.

That the description of the person actually served is as follows:
Gender: Female, Race: Caucasian, Age: 70's, Height: 5'6", Weight: 160 lbs., Hair: Blonde, Eyes:N/A

I being duly sworn, states: that all times herein, Affiant was and is over 18 years of age, not a party to or interested in the proceedings in which this Affidavit is made. I declare under penalty of perjury that the foregoing is true and correct.

Date: August 27th, 2019

Tonya Malone
Registered Work Card# R-100246
State of Nevada

(No Notary Per NRS 53.045)

Service Provided for:
Nationwide Legal Nevada, LLC
626 S. 7th Street
Las Vegas, NV 89101
(702) 385-5444
Nevada Lic # 1656

Control #:NV195817NA
Reference: COD

AFFIDAVIT OF SERVICE

DISTRICT COURT CLARK COUNTY
CLARK COUNTY, STATE OF NEVADA

FLOR MORENCY; et al.,

Plaintiff(s)

v.

STATE OF NEVADA *ex rel.* the DEPARTMENT OF EDUCATION; et al.,

Defendant(s)

Case No.:A-19-800267-C
INSTITUTE FOR JUSTICE
Joshua A. House, Esq.,
Nevada Bar No. 12979
901 N. Glebe Road, Suite 900
Arlington, VA 22203
Telephone (703) 682-9320
Attorneys for the Plaintiffs

I, Tonya Malone, being sworn, states: That I am a licensed process server registered in Nevada. I received a copy of the Summons; Complaint; Plaintiffs' Initial Fee Disclosure; Plaintiffs' Rule 7.1 Disclosure; Civil Cover Sheet, from INSTITUTE FOR JUSTICE.

That on 8/21/2019 at 10:18 AM at 100 North Carson Street, Carson City, NV 89701 I served Randy Brown in his Official Capacity as A Member of the Nevada Tax Commission - c/o Nevada Attorney General, by personally delivering and leaving a copy of the above-listed document(s) with Diana Herrera - Administrative Assistant, a person of suitable age and discretion authorized to accept service of process.

That the description of the person actually served is as follows:
Gender: Female, Race: Latino, Age: 20's, Height: 5'6", Weight: 260 lbs., Hair: Black, Eyes:N/A

I being duly sworn, states: that all times herein, Affiant was and is over 18 years of age, not a party to or interested in the proceedings in which this Affidavit is made. I declare under penalty of perjury that the foregoing is true and correct.

Date: August 27th, 2019

Tonya Malone
Registered Work Card# R-100246
State of Nevada

(No Notary Per NRS 53.045)

Service Provided for:
Nationwide Legal Nevada, LLC
626 S. 7th Street
Las Vegas, NV 89101
(702) 385-5444
Nevada Lic # 1656

Control #:NV195817G
Reference: COD

AFFIDAVIT OF SERVICE

DISTRICT COURT CLARK COUNTY
CLARK COUNTY, STATE OF NEVADA

FLOR MORENCY; et al.,

Plaintiff(s)

v.

STATE OF NEVADA *ex rel.* the DEPARTMENT OF EDUCATION; et al.,

Defendant(s)

Case No.:A-19-800267-C
INSTITUTE FOR JUSTICE
Joshua A. House, Esq.,
Nevada Bar No. 12979
901 N. Glebe Road, Suite 900
Arlington, VA 22203
Telephone (703) 682-9320
Attorneys for the Plaintiffs

I, Tonya Malone, being sworn, states: That I am a licensed process server registered in Nevada. I received a copy of the Summons; Complaint; Plaintiffs' Initial Fee Disclosure; Plaintiffs' Rule 7.1 Disclosure; Civil Cover Sheet, from INSTITUTE FOR JUSTICE.

That on 8/21/2019 at 3:02 PM at 100 North Carson Street, Carson City, NV 89701 I served Sharon Rigby in her Official Capacity as A Member of the Nevada Tax Commission - c/o Nevada Attorney General, by personally delivering and leaving a copy of the above-listed document(s) with Michelle Fournier - Administrative Assistant, a person of suitable age and discretion authorized to accept service of process.

That the description of the person actually served is as follows:
Gender: Female, Race: Caucasian, Age: 70's, Height: 5'6", Weight: 160 lbs., Hair: Blonde, Eyes:N/A

I being duly sworn, states: that all times herein, Affiant was and is over 18 years of age, not a party to or interested in the proceedings in which this Affidavit is made. I declare under penalty of perjury that the foregoing is true and correct.

Date: August 27th, 2019

Tonya Malone
Registered Work Card# R-100246
State of Nevada

(No Notary Per NRS 53.045)

Service Provided for:
Nationwide Legal Nevada, LLC
626 S. 7th Street
Las Vegas, NV 89101
(702) 385-5444
Nevada Lic # 1656

Control #:NV195817C
Reference: COD

Electronically Filed
9/3/2019 10:55 AM
Steven D. Grierson
CLERK OF THE COURT

AFFIDAVIT OF SERVICE

DISTRICT COURT CLARK COUNTY CLARK COUNTY, STATE OF NEVADA

FLOR MORENCY; et al.,

Plaintiff(s)

v.

STATE OF NEVADA ex rel. the DEPARTMENT OF EDUCATION; et al.,

Defendant(s)

Case No.:A-19-800267-C
INSTITUTE FOR JUSTICE
Joshua A. House, Esq. Nevada Bar No. 12979
901 N. Glebe Road, Suite 900
Arlington, Virginia 22203
(703) 682-9320
Attorneys for the Plaintiff

I, Judith Mae All, being sworn, states: That I am a licensed process server registered in Nevada. I received a copy of the Summons; Complaint; Plaintiffs' Rule 7.1 Disclosure; Plaintiffs' Initial Fee Disclosure; Civil Cover Sheet, from Institute For Justice.

That on 8/19/2019 at 2:28 PM at 2080 E. Flamingo Road, Suite 210, Las Vegas, NV 89119 I served State of Nevada ex rel. the Department of Education, by personally delivering and leaving a copy of the above-listed document(s) with Kim Bennett - Administrative Assistant, a person of suitable age and discretion authorized to accept service of process.

That the description of the person actually served is as follows:
Gender: Female, Race: Caucasian, Age: 40's, Height: 5'4", Weight: 160 lbs., Hair: Brown, Eyes:Blue w/glasses

I being duly sworn, states: that all times herein, Affiant was and is over 18 years of age, not a party to or interested in the proceedings in which this Affidavit is made. I declare under penalty of perjury that the foregoing is true and correct.

Date: 8/22/19

Judith Mae All
Registered Work Card# R-040570
State of Nevada

(No Notary Per NRS 53.045)

Service Provided for:
Nationwide Legal Nevada, LLC
626 S. 7th Street
Las Vegas, NV 89101
(702) 385-5444
Nevada Lic # 1656

Control #:NV195612
Reference: COD

TAB 3

OGM
BRENDA J. ERDOES, Legislative Counsel
Nevada Bar No. 3644
KEVIN C. POWERS, Chief Litigation Counsel
Nevada Bar No. 6781
LEGISLATIVE COUNSEL BUREAU, LEGAL DIVISION
401 S. Carson St.
Carson City, NV 89701
Tel: (775) 684-6830; Fax: (775) 684-6761
E-mail: kpowers@lcb.state.nv.us
Attorneys for the Legislature of the State of Nevada

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. DEPARTMENT OF EDUCATION; et al.,

Defendants.

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

ORDER GRANTING NEVADA LEGISLATURE'S MOTION TO INTERVENE AS DEFENDANT

In this action, Plaintiffs are challenging the constitutionality of Assembly Bill No. 458 (AB 458) of the 2019 Legislative Session, 2019 Nev. Stat., ch. 366, at 2295. (Compl. at 1.) Plaintiffs allege that AB 458 was subject to the two-thirds requirement in Article 4, Section 18(2) of the Nevada Constitution and that, as a result, AB 458 is unconstitutional because the Senate passed AB 458 by a majority of all the members elected to the Senate, instead of a two-thirds majority of all the members elected to the Senate. (Compl. at 1, 5-6, 13.) Plaintiffs ask for a declaration that AB 458 is unconstitutional in

violation of Article 4, Section 18(2), and Plaintiffs also ask for an injunction against its future enforcement. (Compl. at 13-14.)

On September 23, 2019, the Legislature of the State of Nevada (Legislature) filed a Motion to Intervene as Defendant to defend the constitutionality of AB 458. Among other grounds, the Legislature asserts that it qualifies for intervention as of right under NRCP 24 and NRS 218F.720 because the statute confers an unconditional right to intervene when a party alleges that the Legislature has violated the Nevada Constitution or alleges that any law is invalid, unenforceable or unconstitutional.

All parties have filed Notices of Non-Opposition to the Legislature's Motion to Intervene. Specifically, Plaintiffs filed their Notice of Non-Opposition on September 26, 2019, and Defendants filed their Notice of Non-Opposition on October 7, 2019.

Having considered the Legislature's motion, which is unopposed by the parties, the Court concludes that the Legislature qualifies for intervention as of right under NRCP 24 and NRS 218F.720. Therefore, good cause appearing, IT IS HEREBY ORDERED THAT the Legislature's Motion to Intervene as Defendant is GRANTED.

DATED: This 9 day of Oct, 2019.

ROB BARE
DISTRICT JUDGE

ROB BARE
JUDGE, DISTRICT COURT, DEPARTMENT

Submitted by:
KEVIN C. POWERS
Chief Litigation Counsel
Nevada Bar No. 6781
LEGISLATIVE COUNSEL BUREAU, LEGAL DIVISION
401 S. Carson St.
Carson City, NV 89701
Tel: (775) 684-6830; Fax: (775) 684-6761
E-mail: kpowers@lcb.state.nv.us
Attorneys for the Legislature of the State of Nevada

TAB 4

ANSC
BRENDA J. ERDOES, Legislative Counsel
Nevada Bar No. 3644
KEVIN C. POWERS, Chief Litigation Counsel
Nevada Bar No. 6781
LEGISLATIVE COUNSEL BUREAU, LEGAL DIVISION
401 S. Carson St.
Carson City, NV 89701
Tel: (775) 684-6830; Fax: (775) 684-6761
E-mail: kpowers@lcb.state.nv.us
Attorneys for Defendant Legislature of the State of Nevada

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. DEPARTMENT OF EDUCATION, et al.; and THE LEGISLATURE OF THE STATE OF NEVADA,

Defendants.

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

DEFENDANT NEVADA LEGISLATURE'S ANSWER TO PLAINTIFFS' COMPLAINT

ANSWER TO PLAINTIFFS' COMPLAINT

Defendant Legislature of the State of Nevada (Legislature), by and through its counsel the Legal Division of the Legislative Counsel Bureau under NRS 218F.720, hereby submits its Answer to Plaintiffs' Complaint, which was filed on August 15, 2019.

ADMISSIONS AND DENIALS OF THE ALLEGATIONS

INTRODUCTION

¶ 1. The Legislature admits that Assembly Bill No. 458 (AB 458), 2019 Nev. Stat., ch. 366, at 2295, was enacted during the 2019 Legislative Session. The Legislature lacks knowledge or information sufficient to form a belief about the truth of all other allegations in paragraph 1 of the Complaint and denies them.

¶ 2. The Legislature admits that the Nevada Educational Choice Scholarship Program is governed by NRS 363A.139, 363B.119 and 388D.250 to 388D.280, inclusive. The Legislature lacks knowledge or information sufficient to form a belief about the truth of all other allegations in paragraph 2 of the Complaint and denies them.

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

¶ 4. The Legislature admits that a constitutional majority of all the members elected to the Nevada Senate voted to pass AB 458. The Legislature denies all other allegations in paragraph 4 of the Complaint.

JURISDICTION AND VENUE

¶ 5. The Legislature admits that AB 458 became effective on passage and approval (June 3, 2019) for the purpose of adopting regulations and performing any other administrative tasks necessary to carry out the provisions of the act, and on July 1, 2019, for all other purposes. The Legislature denies all other allegations in paragraph 5 of the Complaint.

¶ 6. The Legislature admits that sections 1 and 2 of AB 458 amended NRS 363A.139 and 363B.119, respectively.

¶ 7. The Legislature admits that Defendants are public agencies and officers of the State of Nevada. The Legislature lacks knowledge or information sufficient to form a belief about the truth of all other allegations in paragraph 7 of the Complaint and denies them.

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

¶ 9. The Legislature denies the allegations in paragraph 9 of the Complaint.

¶ 10. The Legislature admits that Defendants Department of Education and Department of Taxation maintain offices in Clark County. The Legislature lacks knowledge or information sufficient to form a belief about the truth of all other allegations in paragraph 10 of the Complaint and denies them.

PARTIES

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

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

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

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

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

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

¶ 17. The Legislature admits the allegations in paragraph 17 of the Complaint.

¶ 18. The Legislature admits the allegations in paragraph 18 of the Complaint.

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

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

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

ALLEGATIONS OF FACT

I. The Nevada Educational Choice Scholarship Program

¶ 22. The Legislature admits that Assembly Bill No. 165 (AB 165), 2015 Nev. Stat., ch. 22, at 85, was enacted during the 2015 Legislative Session; and that the Nevada Educational Choice Scholarship Program is governed by NRS 363A.139, 363B.119 and 388D.250 to 388D.280, inclusive. The Legislature lacks knowledge or information sufficient to form a belief about the truth of all other allegations in paragraph 22 of the Complaint and denies them.

¶ 23. The Legislature admits that the Nevada Educational Choice Scholarship Program is governed by NRS 363A.139, 363B.119 and 388D.250 to 388D.280, inclusive. The Legislature lacks knowledge or information sufficient to form a belief about the truth of all other allegations in paragraph 23 of the Complaint and denies them.

¶ 24. The Legislature admits that the Nevada Educational Choice Scholarship Program is governed by NRS 363A.139, 363B.119 and 388D.250 to 388D.280, inclusive. The Legislature lacks knowledge or information sufficient to form a belief about the truth of all other allegations in paragraph 24 of the Complaint and denies them.

¶ 25. The Legislature admits that the Nevada Educational Choice Scholarship Program is governed by NRS 363A.139, 363B.119 and 388D.250 to 388D.280, inclusive. The Legislature lacks

knowledge or information sufficient to form a belief about the truth of all other allegations in paragraph 25 of the Complaint and denies them.

¶ 26. The Legislature admits that the Nevada Educational Choice Scholarship Program is governed by NRS 363A.139, 363B.119 and 388D.250 to 388D.280, inclusive. The Legislature lacks knowledge or information sufficient to form a belief about the truth of all other allegations in paragraph 26 of the Complaint and denies them.

¶ 27. The Legislature admits that the Nevada Educational Choice Scholarship Program is governed by NRS 363A.139, 363B.119 and 388D.250 to 388D.280, inclusive. The Legislature lacks knowledge or information sufficient to form a belief about the truth of all other allegations in paragraph 27 of the Complaint and denies them.

¶ 28. The Legislature admits that the Nevada Educational Choice Scholarship Program is governed by NRS 363A.139, 363B.119 and 388D.250 to 388D.280, inclusive. The Legislature lacks knowledge or information sufficient to form a belief about the truth of all other allegations in paragraph 28 of the Complaint and denies them.

¶ 29. The Legislature admits that the Nevada Educational Choice Scholarship Program is governed by NRS 363A.139, 363B.119 and 388D.250 to 388D.280, inclusive. The Legislature lacks knowledge or information sufficient to form a belief about the truth of all other allegations in paragraph 29 of the Complaint and denies them.

¶ 30. The Legislature admits that the Nevada Educational Choice Scholarship Program is governed by NRS 363A.139, 363B.119 and 388D.250 to 388D.280, inclusive. The Legislature lacks knowledge or information sufficient to form a belief about the truth of all other allegations in paragraph 30 of the Complaint and denies them.

¶ 31. The Legislature admits that the Nevada Educational Choice Scholarship Program is governed by NRS 363A.139, 363B.119 and 388D.250 to 388D.280, inclusive. The Legislature lacks

knowledge or information sufficient to form a belief about the truth of all other allegations in paragraph 31 of the Complaint and denies them.

¶ 32. The Legislature admits that the Nevada Educational Choice Scholarship Program is governed by NRS 363A.139, 363B.119 and 388D.250 to 388D.280, inclusive. The Legislature lacks knowledge or information sufficient to form a belief about the truth of all other allegations in paragraph 32 of the Complaint and denies them.

¶ 33. The Legislature admits that, when the Nevada Educational Choice Scholarship Program was enacted in 2015, section 4 of AB 165, 2015 Nev. Stat., ch. 22, at 86, included provisions which stated that: "For Fiscal Year 2015-2016, $5,000,000[.]" The Legislature denies all other allegations in paragraph 33 of the Complaint.

¶ 34. The Legislature admits that, before NRS 363A.139 and 363B.119 were amended by sections 1 and 2 of AB 458, respectively, those statutes included provisions which stated that: "For each succeeding fiscal year, an amount equal to 110 percent of the amount authorized for the immediately preceding fiscal year." The Legislature denies all other allegations in paragraph 34 of the Complaint.

¶ 35. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 35 of the Complaint and denies them.

¶ 36. The Legislature admits that sections 1 and 2 of AB 458 amended NRS 363A.139 and 363B.119, respectively, by removing provisions which stated that: "For each succeeding fiscal year, an amount equal to 110 percent of the amount authorized for the immediately preceding fiscal year." The Legislature denies all other allegations in paragraph 36 of the Complaint.

II. AB 458 Passed Without the Required Two-Thirds Supermajority

¶ 37. The Legislature denies the allegations in paragraph 37 of the Complaint.

¶ 38. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 38 of the Complaint and denies them.

¶ 39. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 39 of the Complaint and denies them.

¶ 40. The Legislature admits that, after AB 458 was read the first time in the Nevada Senate, it was referred to the Senate Committee on Revenue and Economic Development; and that Assemblyman Jason Frierson, Speaker of the Nevada Assembly, testified in support of AB 458 before the Senate Committee on Revenue and Economic Development. The Legislature denies all other allegations in paragraph 40 of the Complaint.

¶ 41. The Legislature admits the allegations in paragraph 41 of the Complaint only to the extent the allegations accurately state the text of Article 4, Section 18 of the Nevada Constitution. The Legislature denies all other allegations in paragraph 41 of the Complaint.

¶ 42. The Legislature admits that a constitutional majority of all the members elected to the Nevada Senate voted to pass AB 458. The Legislature denies all other allegations in paragraph 42 of the Complaint.

¶ 43. The Legislature admits the allegations in paragraph 43 of the Complaint.

¶ 44. The Legislature denies the allegations in paragraph 44 of the Complaint.

III. Injury to Plaintiffs

A. Parent Plaintiffs

¶ 45. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 45 of the Complaint and denies them.

¶ 46. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 46 of the Complaint and denies them.

¶ 47. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 47 of the Complaint and denies them.

¶ 48. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 48 of the Complaint and denies them.

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

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

¶ 51. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 51 of the Complaint and denies them.

¶ 52. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 52 of the Complaint and denies them.

¶ 53. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 53 of the Complaint and denies them.

¶ 54. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 54 of the Complaint and denies them.

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

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

¶ 57. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 57 of the Complaint and denies them.

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

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

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

¶ 61. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 61 of the Complaint and denies them.

¶ 62. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 62 of the Complaint and denies them.

¶ 63. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 63 of the Complaint and denies them.

¶ 64. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 64 of the Complaint and denies them.

¶ 65. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 65 of the Complaint and denies them.

¶ 66. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 66 of the Complaint and denies them.

¶ 67. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 67 of the Complaint and denies them.

¶ 68. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 68 of the Complaint and denies them.

¶ 69. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 69 of the Complaint and denies them.

¶ 70. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 70 of the Complaint and denies them.

¶ 71. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 71 of the Complaint and denies them.

¶ 72. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 72 of the Complaint and denies them.

¶ 73. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 73 of the Complaint and denies them.

¶ 74. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 74 of the Complaint and denies them.

¶ 75. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 75 of the Complaint and denies them.

¶ 76. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 76 of the Complaint and denies them.

¶ 77. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 77 of the Complaint and denies them.

¶ 78. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 78 of the Complaint and denies them.

¶ 79. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 79 of the Complaint and denies them.

¶ 80. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 80 of the Complaint and denies them.

¶ 81. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 81 of the Complaint and denies them.

¶ 82. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 82 of the Complaint and denies them.

¶ 83. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 83 of the Complaint and denies them.

¶ 84. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 84 of the Complaint and denies them.

¶ 85. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 85 of the Complaint and denies them.

¶ 86. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 86 of the Complaint and denies them.

¶ 87. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 87 of the Complaint and denies them.

¶ 88. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 88 of the Complaint and denies them.

¶ 89. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 89 of the Complaint and denies them.

¶ 90. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 90 of the Complaint and denies them.

¶ 91. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 91 of the Complaint and denies them.

¶ 92. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 92 of the Complaint and denies them.

B. The Scholarship Organization Plaintiff

¶ 93. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 93 of the Complaint and denies them.

¶ 94. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 94 of the Complaint and denies them.

¶ 95. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 95 of the Complaint and denies them.

¶ 96. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 96 of the Complaint and denies them.

¶ 97. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 97 of the Complaint and denies them.

¶ 98. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 98 of the Complaint and denies them.

¶ 99. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 99 of the Complaint and denies them.

¶ 100. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 100 of the Complaint and denies them.

¶ 101. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 101 of the Complaint and denies them.

¶ 102. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 102 of the Complaint and denies them.

¶ 103. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 103 of the Complaint and denies them.

¶ 104. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 104 of the Complaint and denies them.

¶ 105. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 105 of the Complaint and denies them.

¶ 106. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 106 of the Complaint and denies them.

¶ 107. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 107 of the Complaint and denies them.

¶ 108. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 108 of the Complaint and denies them.

C. The Business Donor Plaintiffs

¶ 109. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 109 of the Complaint and denies them.

¶ 110. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 110 of the Complaint and denies them.

¶ 111. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 111 of the Complaint and denies them.

¶ 112. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 112 of the Complaint and denies them.

¶ 113. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 113 of the Complaint and denies them.

¶ 114. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 114 of the Complaint and denies them.

¶ 115. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 115 of the Complaint and denies them.

¶ 116. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 116 of the Complaint and denies them.

¶ 117. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 117 of the Complaint and denies them.

¶ 118. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 118 of the Complaint and denies them.

¶ 119. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 119 of the Complaint and denies them.

¶ 120. The Legislature lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 120 of the Complaint and denies them.

CAUSE OF ACTION

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

¶ 121. The Legislature admits and denies the allegations incorporated by reference in paragraph 121 of the Complaint in the same manner expressly stated by the Legislature in paragraphs 1 to 120, inclusive, of this Answer.

¶ 122. The Legislature admits the allegations in paragraph 122 of the Complaint only to the extent the allegations accurately state the text of Article 4, Section 18 of the Nevada Constitution. The Legislature denies all other allegations in paragraph 122 of the Complaint.

¶ 123. The Legislature denies the allegations in paragraph 123 of the Complaint.

¶ 124. The Legislature admits that a constitutional majority of all the members elected to the Nevada Senate voted to pass AB 458. The Legislature denies all other allegations in paragraph 124 of the Complaint.

¶ 125. The Legislature admits the allegations in paragraph 125 of the Complaint.

¶ 126. The Legislature denies the allegations in paragraph 126 of the Complaint.

¶ 127. The Legislature denies the allegations in paragraph 127 of the Complaint.

¶ 128. The Legislature denies the allegations in paragraph 128 of the Complaint.

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AFFIRMATIVE DEFENSES

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

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

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

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

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

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

PRAYER FOR RELIEF

The Legislature prays for the following relief:

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

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

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

AFFIRMATION

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

DATED: This **10th** day of October, 2019.

Respectfully submitted,

BRENDA J. ERDOES
Legislative Counsel

By: /s/ Kevin C. Powers
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Attorneys for Defendant Legislature of the State of Nevada

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Nevada Legislative Counsel Bureau, Legal Division, and that on the **10th** day of October, 2019, pursuant to NRCP 5(b) and NEFCR 9, I served a true and correct copy of Defendant Nevada Legislature's Answer to Plaintiffs' Complaint, by means of the Eighth Judicial District Court's electronic filing system, directed to the following:

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/s/ Kevin C. Powers
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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,	Case No. A-19-800267-C Dept. No. 32 **ORDER DENYING DEFENDANTS' MOTION TO DISMISS**

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,

and

THE LEGISLATURE OF THE STATE OF NEVADA,

Intervenor-Defendant.

Defendants' Motion to Dismiss having come before the Court for hearing on December 5, 2019; Plaintiffs having appeared through their attorneys, Joshua A. House and Timothy D. Keller of the law firm Institute for Justice; Defendants Nevada Department of Education *et al.* having appeared through their attorney, Craig A. Newby, Deputy Attorney General of Nevada; and Intervenor-Defendant Nevada Legislature having appeared through its attorney Kevin C. Powers, Chief Litigation Counsel of the Nevada Legislative Counsel Bureau, Legal Division; the Court having reviewed the papers and pleadings and having carefully considered the same; the Court having heard the oral arguments of counsel; the Court being fully advised in the premises, and good cause appearing therefore, this Court makes the following findings of fact and conclusions of law:

This case is a constitutional challenge to Assembly Bill 458, 80th Leg. (Nev. 2019), under Article 4, Section 18 of the Nevada Constitution, which requires a two-thirds supermajority vote in both houses of the Legislature to pass certain legislative measures as follows:

> [A]n 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.

Plaintiffs claim that the Legislature passed A.B. 458 in violation of the two-thirds supermajority vote requirement.

A.B. 458 amends the statutes governing the amount of tax credits available to certain taxpayers under Nevada's Educational Choice Scholarship Program, which is administered by the Department of Education and Department of Taxation. Under this Program, private taxpayers may donate to private scholarship organizations, which are registered with the Department of Education, and which

distribute scholarships for children of qualifying low-income families to attend Nevada schools chosen by their parents or legal guardians, including, without limitation, private schools. NRS 388D.250-388D.280; NAC 388D.010-388D.130. In return, the taxpayers making the donations may receive tax credits against certain taxes if their application for those tax credits is approved by the Department of Taxation pursuant to NRS 363A.139 or 363B.119.

Plaintiffs allege that A.B. 458 raises public revenue by repealing annual increases in the amount of tax credits that may be approved by the Department of Taxation pursuant to NRS 363A.139(4) or 363B.119(4). Plaintiffs therefore argue that A.B. 458 should have received a two-thirds supermajority vote in both houses of the Legislature. Because A.B. 458 did not receive a supermajority in the Senate, Plaintiffs claim that A.B. 458 is unconstitutional.

Defendants moved to dismiss this case, arguing that Plaintiffs (1) lack standing, (2) do not have ripe claims, and (3) failed to state a cognizable claim premised on the 2019 Legislature's acts to collectively increase the tax credit amounts above the amount allegedly required by the 2015 Legislature. For the reasons below, the Court denies Defendants' Motion.

All six Plaintiffs have alleged standing to bring this case because they have been directly affected by A.B. 458. Plaintiffs Morency, Ybarra, and Newell have adequately alleged that A.B. 458 has, or will have, the effect of reducing the scholarships available to their children. In particular, Plaintiff Ybarra has adequately alleged that, as a direct result of A.B. 458, her family lost scholarships and she now has a $16,000 shortfall in tuition payments to her children's private school. (The complaint alleges her children still attend the same school only in exchange for her volunteering at the school.) Plaintiff AAA Scholarship Foundation has adequately alleged that A.B. 458 has harmed its ability to distribute scholarships. And Plaintiffs Sklar Williams, PLLC, and Environmental Design

Group, LLC, adequately alleged that A.B. 458's repeal of the annual increases in the amount of tax credits that may be approved by the Department of Taxation pursuant to NRS 363A.139(4) or 363B.119(4) reduced the amount of tax credits available to them as taxpayers.

Further, the Court finds that all six Plaintiffs also have standing under the public-importance exception set forth in *Schwartz v. Lopez*, 132 Nev. 732, 743, 382 P.3d 886, 894 (2016). The Court finds that (1) this case involves "an issue of significant public importance," (2) this case involves "a challenge to a legislative expenditure or appropriation on the basis that it violates a specific provision of the Nevada Constitution," and (3) the Plaintiffs here are "appropriate" parties to bring this action. *Id.* The Court stresses that this State's educational system is a priority and of utmost public importance.

Plaintiffs' claims are ripe because they alleged that they have already been harmed by A.B. 458. Again, Plaintiff Ybarra alleges her family currently has a $16,000 shortfall in tuition to her children's school. To the extent that Plaintiffs' harms have not yet occurred, the "harm need not already have been suffered," but "it must be probable." *Herbst Gaming, Inc. v. Heller*, 122 Nev. 877, 887, 141 P.3d 1224, 1231 (2006); *see also Resnick v. Nevada Gaming Comm'n*, 104 Nev. 60, 66, 752 P.2d 229, 233 (1988). The Court finds that the complaint alleges it is probable that Plaintiffs will be adversely affected by A.B. 458's repeal of the annual increases in the amount of tax credits that may be approved by the Department of Taxation pursuant to NRS 363A.139(4) or 363B.119(4). Thus, the Court finds that the harm Plaintiffs have alleged is likely to occur and is concrete, not hypothetical.

Finally, the Court finds that additional briefing will be useful before ruling on Defendants' argument that Plaintiffs failed to state a claim as a matter of law. The Court will therefore reserve decision on this issue until dispositive motion briefing is complete. **NOW THEREFORE:**

IT IS HEREBY ORDERED that Defendants' Motion to Dismiss Plaintiffs' Complaint is DENIED; Plaintiffs have alleged standing to bring this action, their claims as alleged are ripe, and the Court will postpone ruling on the legal merits of Plaintiffs' cause of action until after dispositive motion briefing.

IT IS FURTHER ORDERED that the parties will submit to the Court a summary judgment briefing schedule.

DATED this 23rd day of December, 2019.

DISTRICT COURT JUDGE

NOEL BARE
JUDGE, 8TH DISTRICT COURT, DEPARTMENT

Submitted by:

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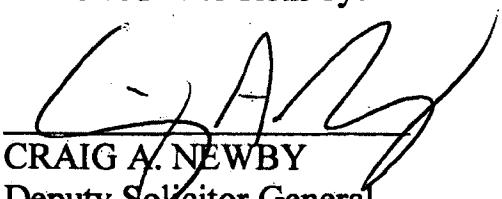
Reviewed as to form by:



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DISTRICT COURT

CLARK COUNTY, NEVADA

FLOR MORENCY; EKYSHA NEWELL; BONNIE YBARRA; AAA SCHOLARSHIP FOUNDATION, INC.; SKLAR WILLIAMS PLLC; ENVIRONMENTAL DESIGN GROUP, LLC, Plaintiffs, vs. STATE OF NEVADA, *ex rel*, DEPARTMENT OF EDUCATION; *et al.* Defendants.	Case No. A-19-800267-C Dept. No. XXXII **EXECUTIVE DEFENDANTS' ANSWER TO PLAINTIFFS' COMPLAINT**

The State of Nevada, *ex rel*, Department of Education; Jhone Ebert, in her official capacity as executive head of the Department of Education; 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, 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, and Melanie Young, in her official capacity as the Executive Director and Chief Administrative Officer of the Department of Taxation

(collectively "Executive Defendants"), hereby answer and otherwise respond to Plaintiffs' Complaint as follows:

1. Responding to paragraphs 1, 5, and 36, the Executive Defendants admit that Assembly Bill No. 458 ("AB 458") was enacted during the 2019 Legislature, but lack sufficient information to form a belief as to the truth of all other allegations set forth in said paragraphs and on that basis deny them.

2. Responding to paragraph 2, the Executive Defendants admit that the Nevada Educational Choice Scholarship Program exists, as defined by Nevada statute, but deny each allegation within paragraph 2 that is inconsistent with Nevada law.

3. Responding to paragraphs 3, 9, 11, 37, 38, 39, 40, 44, 53, 54, 78, 79, 89, 105, 106, 107, 108, 113, 119, 123, 126, 127, and 128, the Executive Defendants deny these allegations.

4. Responding to paragraphs 4, 42, and 124, the Executive Defendants admit that a majority of votes in the Nevada Senate voted to pass AB 458, but deny each other allegation set forth in paragraph 4.

5. Responding to paragraph 6, the Executive Defendants admit that AB 458 amends, and is codified at, NRS §§ 363A.139 and 363B.119.

6. Responding to paragraph 7, the Executive Defendants admit that they are political subdivisions or agents of the State of Nevada, but deny all other allegations set forth in paragraph 7.

7. Responding to paragraph 8, the Executive Defendants admit they are Nevada political subdivisions or agents whom reside within Nevada, but deny all other allegations set forth in paragraph 8.

8. Responding to paragraph 10, the Executive Defendants admit that the Department of Education and the Department of Taxation maintain offices in Clark County, but deny all other allegations set forth in paragraph 10.

9. Responding to paragraphs 12, 13, 14, 15, 16, 18, 20, 21, 35, 45, 46, 47, 48, 49, 50, 51, 52, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76,

77, 80, 81, 82, 83, 84, 85, 86. 87. 88, 90, 91, 92, 101, 102, 103, 109, 110, 111, 112, 114, 115, 116, 117, 118, and 120, the Executive Defendants are without sufficient information to form a belief as to said paragraphs and on that basis deny them.

10. Responding to paragraph 17, the Executive Defendants admit that the Department of Education is a state agency with offices both in Carson City and Las Vegas that is responsible for administering the Scholarship Program in accordance with Nevada law.

11. Responding to paragraph 19, the Executive Defendants admit that the Department of Taxation is a state agency with offices in Carson City, Reno, Henderson, and Las Vegas that is responsible for administering various taxes in accordance with Nevada law.

12. Responding to paragraph 22, the Executive Defendants admit that the 2015 Legislature passed Assembly Bill No. 165, but lack sufficient information to form a belief as to the truth of all other allegations set forth in said paragraphs and on that basis deny them.

13. Responding to paragraphs 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, and 34, the Executive Defendants admit that the Scholarship Program exists under Nevada law, but deny each allegation to the extent they are contrary to Nevada law in said paragraphs.

14. Responding to paragraphs 33, 41, 43, 104, 122, 125, the Executive Defendants admit said paragraphs.

15. Responding to paragraphs 93, 94, 95, 96, 97, 98, 99, and 100, the Executive Defendants admit that AAA Scholarship Foundation, Inc. submitted a December 31, 2018 report, but deny each and every allegation inconsistent with said report.

16. Responding to paragraph 121, the Executive Defendants incorporate by reference each response contained in response to paragraphs 1 through 120 as if fully set forth in this section.

17. To the extent any further allegation requires a response, the Executive Defendants deny said allegation.

18. The Executive Defendants have been forced to retain the services of attorneys to protect their rights in this matter, and seek to recover all attorneys' fees and costs incurred in this matter to the extent applicable law allows.

19. The Executive Defendants' Affirmative Defenses are listed below. The Executive Defendants reserve the right to raise additional defenses or delete previously raised defenses as may be appropriate upon discovery or otherwise.

AFFIRMATIVE DEFENSES

1. Plaintiffs' Complaint fails to allege facts sufficient to state a claim against the Executive Defendants upon which relief can be granted.

2. The 2019 Legislature increased tax credit funding for the Scholarship Program, resulting in decreased revenue for Nevada.

3. Plaintiffs lack standing to pursue their Complaint as a matter of law.

4. Plaintiffs' claims are not ripe for adjudication.

5. Plaintiffs' assertions of liability or responsibility against the Executive Defendants was in fact caused by the intervening and/or superseding acts of third parties over whom the Executive Defendants have or had no control.

6. The named individual Executive Defendants are not proper parties as a matter of Nevada law.

7. Plaintiffs' claims are barred by the doctrine of immunity against the Executive Defendants, including, without limitation, sovereign immunity, official immunity, executive immunity, discretionary-function immunity, absolute immunity, and qualified immunity.

PRAYER FOR RELIEF

The Executive Defendants pray for the following relief:

1. A declaration that Assembly Bill 458 is constitutional and enforceable;

2. Judgment against Plaintiffs and in favor of the Executive Defendants;

3. Dismissal of the Complaint with prejudice;

4. Award of reasonable attorneys' fees and costs to the extent allowed under applicable law; and

5. For such other and further relief as the Court deems just and proper.

AFFIRMATION

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

DATED this 14th day of January, 2020.

AARON D. FORD
Attorney General

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CERTIFICATE OF SERVICE

I hereby certify that I filed & served the **EXECUTIVE DEFENDANTS' ANSWER TO COMPLAINT** by this Court's electronic filing system and United States Mail on the 14th day of January, 2020, upon the following counsel of record:

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By: /s/ *Sandra Geyer*
SANDRA GEYER, Employee of the Office of the Attorney General

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Institute for Justice, and that on the 10th day of July, 2020, I caused to be served, via the Court's electronic filing service, a true and correct copy of the foregoing **JOINT APPENDIX, VOLUME I** to the following parties:

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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,

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,

Respondents,

Supreme Court Case No. 81281

On Appeal from a Final Judgment of the District Court for Clark County, Nevada, Case No. A-19-800267-C, Hon. Rob Bare

Joint Appendix, Volume II

and

THE LEGISLATURE OF THE STATE OF NEVADA,

Respondent-Intervenors.

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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, 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

CASE NO. A-19-800267-C

DEPT NO. XXXII

PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

HEARING REQUESTED

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.

PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Plaintiffs hereby move this Honorable Court for summary judgment. This motion is brought pursuant to NRCP 56, the attached points and puthorities, and any argument presented at the hearing on this matter.

DATED this 14th day of February, 2020.

By /s/ Joshua A. House

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NATURE OF MOTION

This case is a constitutional challenge under article 4, section 18 of the Nevada Constitution, which requires that a bill "that creates, generates, or increases any public revenue in any form" must receive a two-thirds supermajority in both houses of the Legislature. Assembly Bill 458 (80th Leg. 2019) generates public revenue by removing tax credits but did not receive a two-thirds supermajority vote. Plaintiffs thus move for summary judgment and seek an injunction against A.B. 458's continued enforcement.

STATEMENT OF ISSUES

Whether A.B. 458, which removes tax credits from the Educational Choice Scholarship Program, violates article 4, section 18 of the Nevada Constitution because it did not receive a two-thirds supermajority in the Senate.

STATEMENT OF FACTS

The following facts are undisputed:

I. A.B. 458 Raises Revenue By Removing Tax Credits But Did Not Pass With A Two-Thirds Supermajority In The Senate.

In 2019 the Legislature passed, and the Governor signed, A.B. 458, which eliminated tax credits that would have otherwise been available to Nevada businesses. Compl. ¶¶ 1–2, 36; Nev. Leg.'s Mot. to Intervene as Def., Ex. A, Proposed Answer to Pls.' Compl. (Leg. Answer) ¶¶ 1–2, 36; Exec. Defs.' Answer to Pls.' Comp. (Exec. Answer) ¶¶ 1–2.[1] Businesses that must pay Nevada's excise tax may qualify for a tax credit against their tax obligations if they donate money for scholarships under Nevada's Educational Choice Scholarship Program ("Scholarship Program").[2] Under the Scholarship Program, there is a limited number of tax credits available each year.[3] The number of tax credits was set to increase each year by 10 percent.[4] A.B. 458

[1] For readability, subsequent citations to the undisputed facts will appear in footnotes.

[2] Compl. ¶ 28; Leg. Answer ¶ 28; Exec. Answer ¶ 13.

[3] Compl. ¶ 31; Leg. Answer ¶ 31; Exec. Answer ¶ 13.

eliminated the 10 percent escalator, capping the number of tax credits available.[5] A.B. 458 removes $665,500 of tax credits for the current 2019–20 school year, removes $1,397,550 of tax credits for the 2020–21 school year, and removes many millions more of tax credits in the years following.[6]

The Legislature eliminated these tax credits to boost revenue. The bill's sponsor cited budgetary concerns, explaining that, without the tax credits, the money donated under the Scholarship Program would "otherwise be in the General Fund" and that the Legislature has "an obligation to fund our budget responsibly."[7] In the Senate, A.B. 458 was referred to the "revenue and economic development" committee.[8] And Defendant Department of Taxation, in its fiscal note on A.B. 458, labeled the bill a "revenue" item.[9]

Once in the Senate, however, the bill did not reach the requisite number of votes. The Nevada Constitution requires a two-thirds supermajority vote in each legislative chamber for a bill that "creates, generates, or increases any public revenue in any form." Nev. Const. art. 4, § 18. Yet A.B. 458 received only 13 of 21 votes.[10] The bill was nevertheless signed by the governor and became effective on July 1, 2019.[11]

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[4] Compl. ¶ 34; Leg. Answer ¶ 34; Exec. Answer ¶ 13.

[5] Compl. ¶ 36; Leg. Answer ¶ 36; Exec. Answer ¶ 1.

[6] *See id.*; Dep't of Tax'n, Fiscal Note on A.B. 458 (Nev. Apr. 4, 2019), https://www.leg.state.nv.us/Session/80th2019/FiscalNotes/9327.pdf (Fiscal Note). Pursuant to EJDC R. 2.27(e), legislative history has not been attached as an exhibit to this motion, but Plaintiffs' counsel has paper copies available at the Court's request.

[7] Compl. ¶ 40; Leg. Answer ¶ 40; *see also* Minutes of S. Comm. on Revenue & Econ. Dev. at 4, 80th Leg. (Nev. May 2, 2019).

[8] *Id.*

[9] Fiscal Note, https://www.leg.state.nv.us/Session/80th2019/FiscalNotes/9327.pdf.

[10] Compl. ¶ 42; Leg. Answer ¶ 42; Exec. Answer ¶ 4.

[11] *See* A.B. 458—Overview—Bill History, https://www.leg.state.nv.us/App/NELIS/REL/80th2019/Bill/6878/Overview.

II. A.B. 458 Requires Businesses to Pay More in Taxes and Reduces Scholarships Available to Low-Income Families.

Nevada's Educational Choice Scholarship Program was passed in 2015.[12] The Scholarship Program provides tax credits for businesses that donate to registered scholarship organizations.[13] These scholarship organizations then distribute the scholarship funds to qualifying Nevada families.[14] To qualify, a family must have a household income of not more than 300 percent of the federally designated poverty level.[15]

Most business donors would not donate to a scholarship organization without the tax credits provided by the Scholarship Program.[16] Businesses wishing to receive a tax credit apply for one with the scholarship organization of their choice.[17] The scholarship organization then sends the tax-credit application to the Department of Taxation.[18] Tax credits are distributed on a first-come, first-served basis.[19] If tax credits are available, the Department of Taxation issues a credit to the business donor, contingent on the business fulfilling its pledged donation.[20] However, if tax credits are not available, the donor must pay in taxes what it otherwise would have donated.[21]

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[12] Compl. ¶ 22; Leg. Answer ¶ 22; Exec. Answer ¶ 12; *see* 2015 Nev. Laws Ch. 22 (A.B. 165) (effective April 13, 2015).

[13] Compl. ¶ 28; Leg. Answer ¶ 28; Exec. Answer ¶ 13; NRS § 363A.139(1).

[14] Compl. ¶¶ 26–27; Leg. Answer ¶¶ 26–27; Exec. Answer ¶ 13; *see* NRS § 388D.270.

[15] Compl. ¶ 24; Leg. Answer ¶ 24; Exec. Answer ¶ 13; NRS § 388D.270(1)(e).

[16] *See* Affidavit of Kimberly Dyson (Dyson Aff.) ¶ 25 attached hereto.

[17] Compl. ¶ 29; Leg. Answer ¶ 29; Exec. Answer ¶ 13; NRS § 363A.139(2).

[18] Compl. ¶ 30; Leg. Answer ¶ 30; Exec. Answer ¶ 13; NRS § 363A.139(2)–(3).

[19] Compl. ¶ 31; Leg. Answer ¶ 31; Exec. Answer ¶ 13; NRS § 363A.139(3).

[20] Compl. ¶ 32; Leg. Answer ¶ 32; Exec. Answer ¶ 13; NRS § 363A.139(6).

[21] *See* Aff. of Alan Sklar (Sklar Aff.) ¶¶ 7, 11; Aff. of Howard Perlman (Perlman Aff.) ¶¶ 7, 11 attached hereto.

Plaintiffs Sklar Williams PLLC and Environmental Design Group ("Business Plaintiffs") have donated to scholarship organizations and received tax credits.[22] The Business Plaintiffs have made donations for the 2019–2020 school year and plan to donate again in the next school year if there are credits available.[23] The Business Plaintiffs acknowledge, however, that because A.B. 458 reduced the tax credits available their chances of receiving a tax credit are lower.[24] Without the tax credits, the Business Plaintiffs will pay more in taxes.[25]

Donations by business donors allow scholarship organizations to fulfill their mission of distributing scholarships to families in need. Plaintiff AAA Scholarship Foundation, Inc. is one such scholarship organization.[26] Since the Program's enactment, AAA has distributed scholarships to nearly a thousand low-income Nevada families.[27] Most of those families were racial or ethnic minorities and over 50 percent were at or below 185 percent of the federal poverty line.[28] Those families currently choose to send their children to 58 different schools.[29]

But without tax credits, most of AAA's business donors would not donate.[30] The tax credits are a significant incentive and, each year, all the tax credits are claimed.[31] By removing millions of tax credits, A.B. 458 has removed millions of scholarship funds from organizations

[22] Sklar Aff. ¶ 8; Perlman Aff. ¶ 8.

[23] Sklar ¶¶ 9–10; Perlman Aff. 9–10.

[24] Sklar Aff. ¶ 10; Perlman Aff. ¶ 10.

[25] Sklar Aff. ¶ 11; Perlman Aff. ¶ 11.

[26] Compl. ¶ 93; Exec. Answer ¶ 15; Dyson Aff. ¶¶ 8–10.

[27] Compl. ¶ 96; Exec. Answer ¶ 15; Dyson Aff. ¶ 11.

[28] Dyson Aff. ¶¶ 12–13.

[29] *Id.* ¶ 19.

[30] *See Id.* ¶ 25.

[31] *Id.* ¶ 26.

like AAA.[32] AAA will not, without additional donations incentivized by future tax-credits, be able to fully fund scholarships for all of the students it currently serves.[33]

Some Nevada families have already lost their scholarships, others are in danger of losing them, and still others may never receive scholarships. Among those families are Plaintiffs Flor Morency, Bonnie Ybarra, and Keysha Newell ("Parent Plaintiffs"), three Nevada mothers whose children have benefited from the Scholarship Program.[34] Their access to scholarships has been directly affected by A.B. 458.

Parent Plaintiff Morency is the mother of twin children who lost scholarships following A.B. 458's passage.[35] In public school, her son was bullied because of his small size.[36] As a result, he often suffered stress and headaches—a situation not made easier by overcrowded public school classrooms.[37] Morency, a Salvadoran immigrant, applied to a scholarship organization and was granted two scholarships under the Scholarship Program, allowing her to send her children to a private school.[38] Morency has seen a marked improvement in her son's grades since enrolling him in a private school.[39] But this summer, after A.B. 458 went into effect, she received a letter from her scholarship organization stating that A.B. 458 made it a "statistical impossibility" to award her children a scholarship for the 2019–20 school year.[40] After the complaint was filed in this case, Morency's children were granted scholarships from a different scholarship organization, Plaintiff AAA.[41] But she is concerned that there will not be enough

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[32] *Id.* ¶ 27.

[33] *Id.*

[34] *See* Affidavit of Flor Morency (Morency Aff.) ¶¶ 7–8, 16; Affidavit of Bonnie Ybarra (Ybarra Aff.) ¶¶ 5–6, 11–12; Affidavit of Keysha Newell (Newell Aff.) ¶¶ 4, 6, 11–12 attached hereto.

[35] Morency Aff. ¶¶ 8, 19.

[36] *Id.* ¶ 10.

[37] *Id.* ¶¶ 12–13.

[38] *Id.* ¶¶ 6, 16.

[39] *Id.* ¶ 18.

[40] *Id.* ¶¶ 19–20.

[41] *Id.* ¶ 22.

long-term funding to provide for her children's private school education.[42] And she is worried that her youngest child, not yet of school age, will never be able to participate in the program.[43]

Parent Plaintiff Ybarra is the mother of three young children, ages 10, 8, and 5.[44] One of her children, E.Y., did not do well in public school, receiving mostly D's and F's.[45] Another of Ybarra's children, T.Y., was bullied and physically assaulted in public school and was described by her teachers as "working at the speed of a snail."[46] Ybarra first tried to work with the public school staff to identify appropriate supports for her children's learning, but to no avail.[47] Ybarra then applied for scholarships under the Scholarship Program.[48] She received partial scholarships for both children covering most of the tuition cost.[49] Since starting in private school, E.Y. has developed much better study habits, earning mostly A's and B's.[50] T.Y. has transformed into a straight-A student.[51] But this July, Ybarra received a notice that A.B. 458 has made it "statistically impossible" to renew her children's scholarships.[52] Ybarra was able to receive small scholarships from Plaintiff AAA, but a $16,000 tuition gap remains.[53] She cannot afford to pay the remaining $16,000.[54] The private school agreed to reduce rates for Ybarra for this year, on the condition that she work at the school.[55] But the school cannot offer this generous

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[42] *Id.* ¶ 23.

[43] *Id.* ¶ 24.

[44] Ybarra Aff. ¶ 6.

[45] *Id.* ¶ 8.

[46] *Id.* ¶ 9.

[47] *Id.* ¶ 10.

[48] *Id.* ¶ 11.

[49] *Id.* ¶¶ 12–13.

[50] *Id.* ¶ 14.

[51] *Id.* ¶ 16.

[52] *Id.* ¶ 18.

[53] *Id.* ¶ 19.

[54] *Id.* ¶ 20.

[55] *Id.* ¶ 22.

arrangement in the future.[56] And, as of now, that school will not remain open after this school year, in part because so many students lost their scholarship funding.[57]

Parent Plaintiff Keysha Newell is the mother of two children, ages 7 and 3.[58] Her older daughter struggled in public school and has been diagnosed with a learning disability.[59] Although her daughter received special education services in preschool, in kindergarten she was mainstreamed by the public school.[60] Newell's requests for additional learning assistance went unheeded.[61] Newell then applied and received a scholarship under the Scholarship Program.[62] Once enrolled in a private Montessori school, her daughter excelled both academically and socially.[63] A.B. 458 has jeopardized Newell's future access to scholarships: If tuition goes up, and her daughter's scholarship remains the same, Newell will be unable to afford the Montessori school.[64] Newell cannot afford to spend any additional income on private school tuition.[65] In addition, given Newell's experience with her daughter, she wishes to apply for a scholarship for her younger son.[66] But without additional funding, additional scholarships will not be available.[67]

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[56] *Id.* ¶ 24.

[57] *Id.* ¶¶ 25–27.

[58] Newell Aff. ¶¶ 4, 6.

[59] *Id.* ¶¶ 7–8

[60] *Id.* ¶ 9.

[61] *Id.* ¶ 10.

[62] *Id.* ¶¶ 11–12.

[63] *Id.* ¶¶ 11, 13.

[64] *Id.* ¶ 22.

[65] *Id.* ¶ 21.

[66] *Id.* ¶¶ 17–19.

[67] *Id.* ¶¶ 20, 23.

III. Procedural History

Plaintiffs filed their Complaint on August 15, 2019. The Legislature moved to intervene as a defendant on September 23, 2019, and it filed an answer along with its motion. Plaintiffs did not oppose the motion to intervene, and this Court granted it.

Executive Defendants Department of Education *et al.* filed a motion to dismiss the complaint on October 7, 2019, arguing that Plaintiffs lacked standing, did not have ripe claims, and failed to state a legal claim. This Court denied the motion on December 23, finding that each of the Plaintiffs has standing and that Plaintiffs' claims are ripe. However, the Court reserved judgment on whether Plaintiffs stated a claim until completion of summary judgment briefing. Executive Defendants filed their answer on January 14, 2020.

The parties stipulated to a summary judgment briefing schedule, which this Court approved on January 14, 2020. A seven-day extension to the briefing schedule's deadlines was granted on February 5, 2020.

LEGAL STANDARD

"Summary judgment is appropriate under NRCP 56 when the pleadings, depositions, answers to interrogatories, admissions, and affidavits, if any, that are properly before the court demonstrate that no genuine issue of material fact exists, and the moving party is entitled to judgment as a matter of law." *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005).

Furthermore, "[t]axing statutes when of doubtful validity or effect must be construed in favor of the taxpayers." *Dep't of Taxation v. Visual Commc'ns, Inc.*, 108 Nev. 721, 725, 836 P.2d 1245, 1247 (1992) (internal quotation marks omitted); *see also Harrah's Operating Co. v. Dep't of Taxation*, 130 Nev. 129, 132, 321 P.3d 850, 852 (2014) ("[T]ax statutes are to be construed in favor of the taxpayer.").

ARGUMENT

A.B. 458 removed scholarship funding from low-income families and increased taxes for certain Nevada taxpayers. But article 4, section 18 of the Nevada Constitution requires that bills

raising revenue, like A.B. 458, receive a two-thirds supermajority vote in each legislative house. A.B. 458 raised revenue by eliminating tax credits but did not receive a two-thirds supermajority in the Senate. Therefore, A.B. 458 is unconstitutional.

The text and history of article 4, section 18 show that removing tax credits, as A.B. 458 does, requires a two-thirds supermajority in each house of the Legislature. First, by including bills that "create[], generate[], or increase[] . . . any public revenue in ***any*** form," the plain text of article 4, section 18 requires that tax-credit repeals receive a two-thirds supermajority. Second, the history of article 4, section 18 shows that it was originally understood to apply to tax-credit repeals, and applying it here would serve the requirement's original purposes. Finally, even if removing tax credits is not categorically revenue-raising, A.B. 458 in particular is, and was understood from its inception to be, a revenue-raising bill. Because A.B. 458 should have, but did not, receive a two-thirds supermajority in the Nevada Senate, it is unconstitutional, and its enforcement should be enjoined.

I. Under the Plain Text of Nevada's Constitution, a Bill Repealing Tax Credits Is a Bill That Raises Revenue.

The Nevada Constitution requires that a bill that "creates, generates, or increases any public revenue in any form" must pass by "two-thirds of the members elected to each House." Nev. Const. art. 4, § 18(2). This covers not just "taxes, fees, assessments and rates" but also "changes in the computation bases for taxes, fees, assessments and rates." *Id.* It also explicitly states it is "not limited to" these categories of revenue-generating bills. *Id*. The plain text therefore establishes that, because removing tax credits generates revenue, a bill removing tax credits, like A.B. 458, requires a supermajority.

It is undisputed that A.B. 458 raises revenue. As both the sponsor of A.B. 458 and the Defendant Department of Revenue in its fiscal note recognized, eliminating tax credits raises revenue. By removing tax credits, A.B. 458 requires that private money, which would otherwise have been donated by private business to private scholarship organizations, will instead be paid

to Nevada's general fund in the form of taxes.[68] Taxpayers who cannot qualify for tax credits must pay additional monies to the state. A.B. 458 therefore is a bill that "creates, generates, or increases any public revenue in any form." Nev. Const. art. IV, § 18.

Use of the word "any"—"***any*** public revenue in ***any*** form"—further suggests that the supermajority provision applies to bills removing tax credits. "Any" means "one or some indiscriminately of whatever kind" or "whatever quantity." "Any," *Merriam-Webster.com Dictionary*, https://www.merriam-webster.com/dictionary/any. As the Delaware Supreme Court recognized when considering "a plain reading of" its own supermajority provision, "use of the word[] 'any' . . . evidences an inclusive intent." *In re Opinion of the Justices*, 575 A.2d 1186, 1189 (Del. 1990). Here, the supermajority requirement applies not only to bills that generate "any public revenue," but also that create those revenues "in any form." Nev. Const. art. 4, § 18(2). A.B. 458 happens to take the form of a repeal of tax credits, but it nevertheless generates public revenue.

[68] When considering Arizona's tax credit scholarship system, the U.S. Supreme Court held that tax-credit-eligible donations are private funds, not public. *Ariz. Christian Sch. Tuition Org. v. Winn*, 563 U.S. 125, 144 (2011). State courts have held the same. *See, e.g.*, *Kotterman v. Killian*, 972 P.2d 606, 618 (Ariz. 1999) (en banc) ("For us to agree that a tax credit constitutes public money would require a finding that state ownership springs into existence at the point where taxable income is first determined, if not before."); *Magee v. Boyd*, 175 So. 3d 79, 136 (Ala. 2015) (finding that a school choice tax-credit program was constitutional in part because "a tax credit cannot be equated to a government expenditure"); *McCall v. Scott*, 199 So. 3d 359, 370–71 (Fla. Dist. Ct. App. 2016) (concluding that tax-credit-eligible donations to private scholarship organizations are not public appropriations); *Gaddy v. Dep't of Rev.*, 802 S.E.2d 225, 230 (Ga. 2017) ("The statutes that govern the Program demonstrate that only private funds, and not public revenue, are used."); *Toney v. Bower*, 744 N.E.2d 351, 357 (Ill. App. Ct. 2001) (finding that the terms "public fund" and "appropriation" were not broad enough to encompass a tax credit and concluding that to find otherwise would "endanger the legislative scheme of taxation"); *Griffith v. Bower*, 747 N.E.2d 423, 426 (Ill. App. Ct. 2001) (same). *See also State Bldg. & Constr. Trades Council v. Duncan*, 162 Cal. App. 4th 289, 294, 299 (2008) (holding that "[t]ax credits are, at best, intangible inducements offered from government, but they are not actual or de facto expenditures by government" and thus "tax credits do not constitute payment out of public funds" under a state statute); *Olson v. State*, 742 N.W.2d 681, 683 (Minn. Ct. App. 2007) (concluding that tax credits and tax exemptions are not public expenditures); *Manzara v. State*, 343 S.W.3d 656, 661 (Mo. 2011) (en banc) ("The tax exemptions in [another case] and the tax credits here are similar in that they both result in a reduction of tax liability. The government collects no money when the taxpayer has a reduction of liability, and no direct expenditure of funds generated through taxation can be found.").

Nevada's supermajority provision should also be construed to include tax-credit repeals because it applies whenever a bill has the ***effect*** of raising revenue. Nev. Const. art. IV, § 18(2); *see* Max Minzner, *Entrenching Interests: State Supermajority Requirements to Raise Taxes*, 14 Akron Tax J. 43, 62, 74 (1999). In other words, in Nevada the inquiry ends as soon as the bill is found to have the effect of raising revenue—as Defendant Department of Taxation found A.B. 458 does. Fiscal Note, https://www.leg.state.nv.us/Session/80th2019/FiscalNotes/9327.pdf. In Nevada, there is no additional inquiry into whether the Legislature intended the bill to be a tax[69] or to raise revenue (although, as shown below in part III, the Legislature did intend A.B. 458 to be revenue-generating). Because A.B. 458 is a tax-credit repeal, it has the effect of raising revenue and should therefore have received a supermajority vote in the Senate.

II. The History of Nevada's Supermajority Requirement Suggests That Removing Tax Credits Requires a Supermajority.

As shown in part I, a straightforward application of article 4, section 18 would require A.B. 458 to pass by supermajority. The history of article 4, section 18 reinforces that interpretation in two ways: First, Nevada's supermajority requirement was intended to apply to both new taxes and changes in existing taxes, like A.B. 458's tax-credit repeal. And second, the specific purpose of the supermajority requirement was to make it more difficult to boost state revenues at the expense of taxpayers—a purpose that will be served by applying the supermajority provision to A.B. 458.

A. Nevada's supermajority requirement applies both to new taxes and to changes in existing taxes, like tax-credit repeals.

The history of Nevada's supermajority provision shows that it is not limited to new taxes but includes changes to existing taxes, such as repeals of tax credits.

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[69] Nevada's supermajority provision thus differs from Oklahoma's and Oregon's supermajority provisions, which apply only to bills that are "a tax in the strict sense of the word." *Okla. Auto. Dealers Ass'n v. Okla. Tax Comm'n*, 401 P.3d 1152 (Okla. 2017); *City of Seattle v. Dep't of Revenue*, 357 P.3d 979, 987 (Or. 2015) (en banc) (examining under origination clause "whether SB 495 possesses the essential features of a bill levying a tax"); *Boquist v. Dep't of Revenue*, No. TC 5332, 2019 WL 1314840, at *9 (Or. T.C. Mar. 21, 2019) ("Applying *City of Seattle*" to Oregon's supermajority clause).

Nevada's supermajority requirement was ratified by Nevada voters in the 1994 and 1996 general elections. Assembly Joint Resolution (AJR) 21, which referred the question to voters, passed in 1993. *See* Leg. History of AJR 21, 67th Leg. (Nev. LCB Research Library 1993), https://www.leg.state.nv.us/Division/Research/Library/LegHistory/LHs/1993/AJR21,1993.pdf (AJR 21 Leg. History). The "bill explanation" of AJR 21 states that it "[p]roposes to amend Nevada constitution to require two-thirds majority of each house of legislature to ***increase certain existing taxes*** or impose certain new taxes." *Id.* at *15 (emphasis added). In other words, modifications to existing taxes are included—if those modifications increase revenues, they must pass the supermajority requirement, even if they are not new taxes. Here, A.B. 458 modifies the existing tax structure to increase state revenues. It must therefore satisfy Nevada's supermajority requirement.

B. Applying the supermajority requirement here would serve its purpose, which was to make it more difficult to raise revenue.

The supermajority requirement's prime sponsor, then-Assemblyman and future-Governor Jim Gibbons, argued in support of AJR 21 that "taxes always reduce[] the amount of money that would have been used by the private sector" and that "[g]overnments waste[] money." AJR 21 Leg. History, at *6. He therefore proposed AJR 21 as a fix to this "structural problem." *Id.* Governor Gibbons' testimony shows that the supermajority requirement's purpose was to make it more difficult for the state to take money from taxpayers.

By repealing tax credits, A.B. 458 increased the amount of money going to state coffers. It follows that A.B. 458 ought to be subject to the supermajority requirement, which "requi[es] an extraordinary majority . . . to hedge or protect certain laws which . . . should not be lightly changed." *Id.* at *8; *see also State v. City of Oak Creek*, 182 N.W.2d 481, 494 (Wis. 1971) ("[U]ndoubtedly the purpose of the section is to require an additional measure of consideration and deliberation on attempts to exercise th[e] [taxing] power."). A.B. 458 therefore should have received a supermajority in the Legislature, or should not have become law, in accord with the provision's stated purpose of making it more difficult to increase taxpayers' burdens.

III. Even if Removing Tax Credits Is Not Categorically Revenue-Raising, A.B. 458 in Particular Is a Revenue Bill.

As shown above, any repeal of a tax credit generates revenue and therefore requires a supermajority vote under article 4, section 18. But even if repealing tax credits were not considered categorically revenue-generating, A.B. 458 was intended to and does generate revenue.

A.B. 458 was, from the time of its proposal, considered a revenue bill. Defendant Nevada Department of Taxation labeled A.B. 458 as a "revenue" item and "reviewed the bill and determined it would increase general fund revenue." Fiscal Note, https://www.leg.state.nv.us/Session/80th2019/FiscalNotes/9327.pdf. The bill's sponsor cited budgetary concerns in the bill's defense, stating that, without the tax credits, more money would "otherwise be in the General Fund" and that the Legislature has "an obligation to fund our budget responsibly." Minutes of S. Comm. on Revenue & Econ. Dev. (May 2, 2019), https://www.leg.state.nv.us/Session/80th2019/Minutes/Senate/RED/Final/1120.pdf. In the Senate, A.B. 458 was referred to the "revenue and economic development" committee. *Id.* These facts show the bill was and is intended to "create[], generate[], or increase[] . . . public revenue." Nev. Const. article 4, § 18(2).

Defendants argued at the motion-to-dismiss stage that A.B. 458 does not raise revenue because another bill, S.B. 551, provides additional scholarship tax credits (albeit only for the current biennium). However, the Constitution considers only one bill at a time. Article 4, section 18 asks whether "***a bill***" received a two-thirds majority (emphasis added). If a bill does not receive the necessary votes, it does not ever become law. "[I]t 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, 686, 765 P.2d 1162, 1163–64 (1988). A bill that never becomes law cannot be combined with other laws after the fact.

Finally, to the extent that this Court still doubts whether A.B. 458 raises revenue, this Court should construe it in favor of the Plaintiffs, who are taxpayers. "Taxing statutes when of doubtful validity or effect must be construed in favor of the taxpayers." *Dep't of Taxation,* 108

Nev. at 725, 836 P.2d at 1247 (internal quotation marks omitted); *see also Harrah's Operating Co.,* 130 Nev. at 132, 321 P.3d at 852 ("[T]ax statutes are to be construed in favor of the taxpayer."). Here, construing A.B. 458 in favor of the taxpayer means construing it as a revenue-generating bill, enjoining its application under art. 4, section 18, and thereby leaving taxpayers' credits in place.

CONCLUSION

For the above reasons, Plaintiffs respectfully request that this Court grant Plaintiffs' Motion for Summary Judgment and enjoin the enforcement of A.B. 458.

DATED this 14th day of February, 2020.

By /s/ Joshua A. House

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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Institute for Justice, and that on the 14th day of February, 2020, I caused to be served a true and correct copy of foregoing **PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT** in the following manner:

(ELECTRONIC SERVICE) Pursuant to Administrative Order 14-2, the above-referenced document was electronically filed on the date hereof and served through the Notice of Electronic Filing automatically generated by that Court's facilities to those parties listed on the Court's Master Service List.

/s/ Claire Purple
An Employee of INSTITUTE FOR JUSTICE

AFFIDAVIT OF FLOR MORENCY

STATE OF NEVADA)

) ss.

COUNTY OF CLARK)

Flor Morency, being first duly sworn, deposes and says:

1. I am Flor Morency. If called as a witness, I could competently testify to the following from personal knowledge.

2. I have personal knowledge of the facts set forth herein, unless otherwise noted.

3. The representations herein are true and correct to the best of my knowledge.

4. I am a Plaintiff in this case.

5. I provide this Affidavit in support of Plaintiffs' Motion for Summary Judgment.

6. I am an immigrant from El Salvador and have become a U.S. Citizen.

7. I currently reside in Las Vegas.

8. I am the mother of twin children, a boy, S.M., and a girl, J.M., and I recently had a new baby daughter, G.M.

9. S.M. and J.M. are both 11 years old and in the 6th grade.

10. S.M. was bullied by his public-school classmates and other students because he was small compared to other boys at the school.

11. My son suffered from bullying-induced stress while he was enrolled in public school.

12. My son often came home from public school with stress headaches.

13. My children were in crowded classes of around 36 students per classroom.

14. My son's grades were also getting progressively worse in the public school. He had always been an A-student, but now he was getting more and more Bs.

15. My daughter J.M. also faced some bullying issues, and the crowded classrooms simply did not allow her to learn to the best of her ability.

16. For the 2018–19 school year, I applied to the Education Fund of Northern Nevada (EFNN) and was granted a partial scholarship under the Scholarship Program, allowing me to send both my children to a private school.

17. I enrolled both of my children in a private Catholic school, St. Anne's, using the scholarship funds from EFNN.

18. My son has shown marked improvement in his grades since enrolling him in a private school: Having become a B-student, he is once again receiving more As.

19. But on July 10, 2019, after A.B. 458 went into effect, I received a letter from EFNN stating that A.B. 458 made it a "statistical impossibility" to award my children a scholarship for the 2019–20 school year.

20. When I got the letter, I panicked, and thought, "What am I going to do?" It came so suddenly before the school year that I did not have a backup plan.

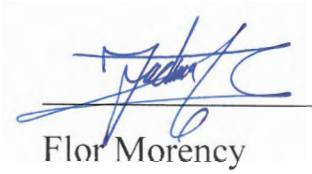
21. I applied for admission to a charter school, but we were waitlisted and I worried my children would not be selected in the charter school lottery.

22. After the complaint was filed, my children were granted full scholarships from a different scholarship organization, Plaintiff AAA.

23. But even though S.M. and J.M. once again have scholarships, I am concerned about the lack of funding in the long-term future. I cannot afford to pay for their private school education without a scholarship.

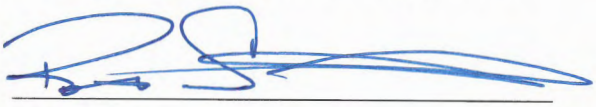
24. Also, because of A.B. 458, I am worried that my baby daughter, G.M., will not be able to receive a scholarship when she is old enough to attend school.

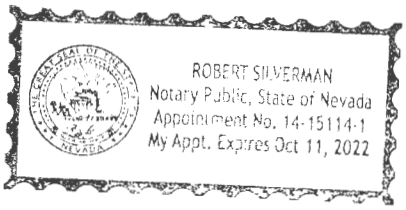
DATED this 11 day of February, 2020.



Flor Morency

SUBSCRIBED and SWORN to before me on this 11th day of February, 2020.





NOTARY PUBLIC in and for said County and State

AFFIDAVIT OF BONNIE YBARRA

STATE OF NEVADA)

) ss.

COUNTY OF CLARK)

Bonnie Ybarra, being first duly sworn, deposes and says:

1. I am Bonnie Ybarra. If called as a witness, I could competently testify to the following from personal knowledge.

2. I have personal knowledge of the facts set forth herein, unless otherwise noted.

3. I provide this Affidavit in support of Plaintiffs' Motion for Summary Judgment.

4. The representations herein are true and correct to the best of my knowledge.

5. I am a Plaintiff in this case and I currently reside in Las Vegas.

6. I am the mother of three young children, ages 10, 8, and 5 who are currently enrolled, respectively, in fifth grade, third grade, and kindergarten at Mountain View Christian School.

7. I have two older children who are adults and who no longer live under my roof.

8. One of my children, E.Y., age 9, did not do well in public school, receiving mostly D's and F's.

9. Another of my children, T.Y., age 7, was bullied and physically assaulted in public school and was accused by one of her teachers of "working at the speed of a snail."

10.I tried to work with the public school staff, including the classroom teacher, the school principal, and other members of the school's administration, to

identify appropriate supports both inside and outside of the classroom for my children's learning needs, but to no avail.

11. Because I did not receive help from my daughters' public school, I applied to the Education Fund of Northern Nevada for scholarships under the Scholarship Program.

12. I received partial scholarships for both E.Y. and T.Y. to attend Mountain View Christian School.

13. For two years I received partial scholarships from EFNN, which covered most of the tuition cost at Mountain View Christian School.

14. Since starting in private school, E.Y. has developed much better study habits and her grades have improved significantly, and she now earns mostly A's and B's.

15. E.Y. still faces learning challenges, but I am confident she will continue to improve as a student as long as she is able to continue attending Mountain View Christian School.

16. T.Y. has responded very well to Mountain View Christian School's academic rigor and has transformed herself into a straight-A student.

17. My youngest daughter, N.Y., age 4, is entering kindergarten for the first time at Mountain View Christian School and has never attended a public school.

18. In July 2019, I received a letter from EFNN that A.B. 458's elimination of the Scholarship Program's automatic annual increase in the amount of tax credits available to businesses for donations to scholarship organizations "has made it statistically impossible" to renew my two older daughters' scholarships.

19. Thankfully, I was able to receive small, partial scholarships from Plaintiff AAA for each of my three daughters, but a tuition gap of approximately $16,000 remains.

20. I do not possess the financial ability to pay the remaining $16,000 tuition bill.

21. Because I did not expect to be able to maintain enrollment for my girls at Mountain View Christian School, I visited the public school that my daughters are currently zoned to attend, which is not the same public school they previously attended. I was informed that 96 percent of the students at their zoned public school are not at grade level. Upon learning this information, I asked the school about the possibility of obtaining a boundary exception in order to enroll my girls at a better performing public school. I was informed that no boundary exceptions would be granted.

22. Thankfully, the administration at Mountain View Christian School agreed to accept partial scholarships from AAA for this one year, on the condition that I occasionally work at the school and pay $240, out-of-pocket, each month.

23. I typically fulfill my obligation by going to Mountain View Christian School two-to-three days a week, during lunchtime, and assisting in the lunchroom. After lunch, I walk the Kindergarten class to the playground and supervise that class during recess. I have also chaperoned one field trip so far this year.

24. Sadly, Mountain View Christian School will not be able to offer the current, generous financial arrangement that I and my girls have next year. This is due in part to the loss of scholarships that families like me have suffered.

25. I recently sat down with Mark Maddox, who is the Executive Director of Operations at Mountain View Christian School. Mr. Maddox explained to me that, due to the amount of scholarships that families lost when EFNN determined it could no longer continue funding those scholarships, Mountain View Christian School would no longer be able to afford its current facility. In fact, Mountain View Christian School has since sold its building, though it will operate in its current location until the end of this school year.

26. Mr. Maddox explained that Mountain View Christian school serves a predominantly low-income neighborhood and told me most families attending the school had relied on scholarships.

27. Mr. Maddox also told me that Mountain View Christian School is in the process of trying to find a smaller, more affordable location that can accommodate their students.

28. As part of Mountain View Christian School's on-going search for a new location, they asked parents whether their children planned to enroll in the school next year. Because I do not believe that I will be able to obtain full, or near-full, scholarships for my daughters next year, I had to tell Mountain View that my girls will not be returning next year.

29. My girls are devastated by this decision. We have been a part of the Mountain View Christian School community for nearly three years now. That community has become our family. My girls are very upset that they will, absent a miracle, have to go to a public school next year.

30. Because I do not want my girls to attend the public school they are currently zoned to attend, we plan to move in July, when our current lease expires. I hope to find a new home in an area that will allow my daughters to attend a better public school.

31. If I could obtain a full scholarship, I would re-enroll them at Mountain View Christian School in a heartbeat. We do not want to lose the community and the educational opportunity we have been given at Mountain View Christian School.

DATED this 1 day of February, 2020.

Bonnie Ybarra

SUBSCRIBED and SWORN to before me
on this 1 day of February, 2020.

NOTARY PUBLIC in and for said
County and State

JOB VERGARA
Notary Public, State of Nevada
No. 19-1918-1
My Appt. Exp. March 5, 2023

AFFIDAVIT OF KEYSHA NEWELL

STATE OF NEVADA)

) ss.

COUNTY OF CLARK)

Keysha Newell, being first duly sworn, deposes and says:

1. I am Keysha Newell. If called as a witness, I could competently testify to the following from personal knowledge.

2. I have personal knowledge of the facts set forth herein, unless otherwise noted.

3. The representations herein are true and correct to the best of my knowledge.

4. I am a Plaintiff in this case and a resident of North Las Vegas.

5. I provide this Affidavit in support of Plaintiffs' Motion for Summary Judgment.

6. I am the mother of two young children. My daughter T.N. is currently seven years old and in second grade. My younger son, whose initials are also T.N., is three years old.

7. My daughter, who did not talk until she was three years old, struggled to develop her social and interpersonal skills in public school.

8. She has been diagnosed with a learning disability for which I receive supplemental Social Security income.

9. Although my daughter received special education and related services in preschool, in kindergarten she was mainstreamed by the public school. By "mainstreamed" I mean she was placed in a general education classroom without an Individualized Education Program.

10. I believed that she needed additional learning help from her public school, but my requests for additional learning assistance went unheeded.

11. I originally applied to the Education Fund of Northern Nevada (EFNN) and received a partial scholarship that allowed me, with financial hardship, to enroll my daughter in a private Montessori school named Innovation Academy. I no longer receive scholarship funds from EFNN.

12. My daughter now receives a scholarship from AAA Scholarship Organization. This year the scholarship amount is $7500, which covers most of the $8800 in tuition.

13. Since enrolling my daughter at Innovation Academy, she has begun to excel both academically and socially.

14. The school embraces and celebrates my daughter for who she is and has thus given her a genuine sense of belonging. She is no longer afraid to go to school. Instead, she is happy and excited to go to school.

15. I feel very blessed to have the opportunity afforded by the Nevada Educational Choice Scholarship Program. Like my daughter, I too was socially awkward in school. As a result, it was hard for me to make the transition into the real world. I had difficulty interviewing for jobs and finding work. I was afraid that my daughter was on the same path. But the Scholarship Program has allowed me to put her on a path to success. I got lost in the public school shuffle. I did not want that for my daughter.

16. Given my experience with my daughter, I want to apply for a scholarship for my younger son so that he can also attend Innovation Academy.

17. I have seen the benefits of Innovation Academy's approach to learning. I've seen my daughter's confidence grow. I want the same for my son.

18. I don't want him to miss out on the opportunity my daughter has had, thanks to the Scholarship Program.

19. In fact, Innovation Academy has a sibling program that has allowed him to occasionally attend school with his sister. By participating in this program, he is beginning to get used to the school's environment.

20. But without the additional funding that was eliminated by A.B. 458, additional scholarships will not be available when my son is ready to go to school.

21. I cannot afford to spend any additional income on private school tuition.

22. And if tuition at Innovation Academy goes up, and if T.N.'s scholarship amount remains the same, I will be unable to continue enrolling T.N. at the school.

23. As such, A.B. 458 has jeopardized my children's future access to scholarships.

DATED this 6 day of February, 2020.

Keysha Newell

Keysha Newell

SUBSCRIBED and SWORN to before me
on this 6th day of February, 2020.

NICHOLAS LINTON
Notary Public - State of Nevada
County of Clark
APPT. NO. 14-13287-1
My App. Expires March 10, 2022

NOTARY PUBLIC in and for said
County and State

AFFIDAVIT OF KIMBERLY DYSON

STATE OF FLORIDA)

) ss.

COUNTY OF HILLSBOROUGH)

Kimberly Dyson, being first duly sworn, deposes and says:

1. I am Kimberly Dyson. If called as a witness, I could competently testify to the following from personal knowledge.

2. I have personal knowledge of the facts set forth herein, unless otherwise noted.

3. The representations herein are true and correct to the best of my knowledge.

4. I am the President and CEO of Plaintiff AAA Scholarship Foundation, Inc. (AAA Scholarship).

5. AAA Scholarship is a Plaintiff in this lawsuit.

6. AAA Scholarship is a non-profit corporation headquartered in Tampa, Florida and incorporated in Georgia.

7. AAA Scholarship's mission is to provide economic and other assistance to economically disadvantaged families and families of disabled students to enable them to select the best schools for their children.

8. AAA Scholarship is a registered scholarship organization in the State of Nevada.

9. As a registered scholarship organization, AAA Scholarship is eligible to accept donations under the Nevada Educational Choice Scholarship Program and to award scholarships to eligible students to attend the private schools of their parents' choice.

10. As a registered scholarship organization, AAA Scholarship solicits and accepts donations from Nevada business donors in order to fulfill its mission of distributing private school scholarships to families in need.

11. Since the Scholarship Program's enactment, AAA Scholarship has distributed scholarships to over a thousand low-income Nevada students.

12. The majority of Nevada families served by AAA Scholarship have been racial or ethnic minorities.

13. Over 50 percent of the families served by AAA Scholarship were at or below 185 percent of the federal poverty line.

14. A true and correct copy of AAA Scholarship's mid-year report to the Department of Education for the 2019-2020 school year, filed on January 24, 2020, is attached as Exhibit A.

15. As reported in the above-referenced mid-year report, in the 2019-2020 school year, AAA Scholarship received 11 total donations, gifts, and grants.

16. As reported in the above-referenced mid-year report, in the 2019-2020 school year, AAA Scholarship received, in total, $4,640,263.90 in donations, gifts, and grants.

17. As reported in the above-referenced mid-year report, in the 2019-2020 school year, AAA Scholarship awarded scholarships (or grants, as they are called in the mid-year report) to 973 students.

18. As reported in the above-referenced mid-year report, in the 2019-2020 school year, AAA Scholarship paid out scholarships (or grants) to 883 students.

19. As reported in the above-referenced mid-year report, in the 2019-2020 school year, AAA Scholarship paid scholarships (or grants) on behalf of students attending 58 different private schools.

20. As reported in the above-referenced mid-year report, in the 2019-2020 school year, AAA Scholarship awarded scholarships (or grants) in the total dollar amount of $6,202,500.00.

21. As reported in the above-referenced mid-year report, in the 2019-2020 school year, AAA Scholarship paid out $2,655,932.31 in scholarships (or grants).

22. For the 2019-2020 school year, AAA Scholarship was approved to receive $2,215,800 in tax-credit-eligible donations under the $6,655,000 cap put in place by A.B. 458.

23. All of the available tax credits under the $6,655,000 cap have been reserved, according to information provided to me by the Nevada Department of Taxation, for the 2019-2020 school year.

24. AAA Scholarship currently has a waitlist of 131 students who have applied for a minimum of $684,375 in scholarships (or grants).

25. AAA Scholarship is 100% reliant upon Nevada business donations to fund scholarships. Those donations are incentivized by the tax credits offered by the Scholarship Program. Without the tax credits, nearly all of AAA Scholarship's donors would not donate.

26. The tax credits are a significant incentive, and, based on information provided to AAA Scholarship by the Department of Taxation, each year all the available tax credits are reserved.

27. By removing millions of future tax credits, A.B. 458 removed millions of scholarship funds from organizations like AAA Scholarship.

28. AAA Scholarship endeavors to be a prudent steward of the donations it receives. As such, AAA Scholarship is confident it can fund its existing scholarship (or grant) recipients for the next three years.

29. However, in the 2019-2020 school year AAA Scholarship awarded $6,202,500.00 in scholarships (or grants). If, in future years, AAA Scholarship is

approved to accept approximately the same amount, namely $2.2 million in donations under the now-static cap of $6,655,000, then AAA Scholarship will not have enough money to fully fund scholarships (or grants) for all of the students it currently supports under the Scholarship Program.

DATED this 3rd day of February, 2020.

Kimberly Dyson

SUBSCRIBED and SWORN to before me
on this 3rd day of February, 2020.

NANCY A MURPHY
Notary Public-State of Florida
Commission # GG 281551
My Commission Expires
December 04, 2022

Nancy A. Murphy
NOTARY PUBLIC in and for said
County and State Hillsborough, Florida

EXHIBIT A

Nevada Department of Education
Nevada Ready!

2019-2020 NRS 388D.280

Mid-year Scholarship Organization Information

Scholarship Organization: AAA Scholarship Foundation, Inc.

Address: 1452 W. Horizon Ridge, #541, Henderson, NV 89012

Primary Contact: Kim Dyson

Email: kim@aaascholarships.org

Phone: 888-707-2465

2019-2020 Scholarship Information, **as of December 31, 2019**

Total number of donations, gifts, grants received during 2019: 11

Total dollar amount of donations, gifts, grants received: $4,640,263.90

Total number of pupils for whom this SO awarded grants: 973

Total number of pupils for whom this SO paid grants: 883

Total dollar amount of grants awarded: $6,202,500.00

Total dollar amount of grants paid: $2,655,932.31,

Total number of schools to which grants were actually paid: 58

School Names, Addresses, Number of Student Recipients, $ Amount Awarded, $ Amount Paid

Make a 5 column table that lists alphabetically the schools in which students who were awarded scholarships were enrolled. In the second column provide the physical address of the school, including the city. The third column is for the number of students for whom a scholarship was awarded and payments have been made. Columns 4 and 5 are to show the amount of scholarship awarded and the amount of payments made to the school as of December 31.

This report was completed by: Lupe Baergen and Kim Dyson

Date: January 24, 2020

School Name	Address	# OF STUDENTS	AMOUNT AWARDED	AMOUNT PAID
Abundant Life Christian Academy	1720 J Street, Las Vegas, 89106	2	$15,000.00	$6,400.00
Adelson Educational Campus	9700 W. Hillpointe Road, Las Vegas, 89134	1	$7,500.00	$3,750.00
American Heritage Academy	2100 Olympic Ave., Henderson, 89014	19	$118,125.00	$60,315.00
Applied Scholastic Academy LV	1018 Sahara Ave., Suite D, Las Vegas, 89104	3	$17,626.65	$10,886.65
Ateres Bnos Ita	9484 W. Lake Mead Blvd., Las Vegas, 89143	3	$18,750.00	$9,212.00
Bethlehem Lutheran School	1837 Mountain Street, Carson City, 89701	13	$75,000.00	$34,129.17
Bishop Gorman High School	5959 S. Hualapai Way, Las Vegas, 89148	17	$112,500.00	$42,667.00
Bishop Manogue Catholic High School	110 Bishop Manogue Drive, Reno, 89511	8	$46,875.00	$21,662.00
Brilliant Child Christian Academy	7885 W. Rochelle Avenue, Las Vegas, 89147	4	$30,000.00	$9,855.00
Calvary Chapel Christian School	7175 W. Oquendo Rd., Las Vegas, 89113	91	$598,125.00	$300,767.50
Calvary Chapel Green Valley Christian Academy	2615 W. Horizon Ridge Parkway, Henderson, 89052	7	$48,750.00	$16,575.00
Candil Hall Academy	5348 N. Rainbow Blvd., Las Vegas, 89130	3	$9,375.00	$3,693.75
Challenger School - Desert Hills	8175 W. Badura Avenue	1	$7,500.00	$0.00
Christian Montessori Academy	5580 S. Pecos Road, Las Vegas, 89120	2	$15,000.00	$7,885.00
Community Christian Academy	1061 E. Wilson, Pahrump, 89048	4	$28,125.00	$4,900.00
Cornerstone Christian Academy	5825 Eldora Ave., Las Vegas, 89146	24	$159,375.00	$82,104.62
Cristo Rey St. Viator College Preparatory High School	2880 N. Van Der Meer St, Las Vegas, 89030	6	$31,875.00	$10,012.50
Desert Torah Academy	1312 Vista Drive, Las Vegas, 89102	4	$30,000.00	$16,000.00
Excel Christian School	850 Baring Blvd., Sparks, 89434	6	$31,875.00	$16,540.00
Faith Christian Academy	1004 Dresslerville Rd., Gardnerville, 89460	2	$15,000.00	$4,756.00
Faith Lutheran Academy	2700 Town Center Dr., Las Vegas, 89135	5	$35,625.00	$19,862.50
Faith Lutheran Middle & High School	2015 South Hualapai, Las Vegas, 89117	40	$245,625.00	$86,327.67
Far West Academy	4660 N. Rancho Drive, Las Vegas, 89130	7	$39,006.75	$16,620.90
Green Valley Christian School	711 Valle Verde Ct., Henderson, 89014	33	$217,500.00	$103,256.09
Innovation Academy	5705 North Rainbow Blvd., Las Vegas, 89130	7	$46,875.00	$24,487.50
International Christian Academy	8100 Westcliff Drive, Las Vegas, 89145	38	$219,736.79	$117,761.14
Journey Education	2710 S. Rainbow Blvd., Las Vegas, 89146	2	$10,888.21	$3,982.50
King's Academy, The	3195 Everett Drive, Reno, 89503	3	$22,500.00	$2,710.00
Lake Mead Christian Academy	540 E. Lake Mead Pkwy, Henderson, 89105	61	$410,625.00	$182,822.34
Lamb of God Lutheran School	6232 N. Jones Blvd., Las Vegas, 89130	2	$9,375.00	$5,437.50
Las Vegas Jr Academy	6059 W. Oakey Blvd., Las Vegas, 89146	13	$93,750.00	$39,519.46
Liberty Baptist Academy	6501 W. Lake Mead, Las Vegas, 89108	26	$165,000.00	$48,357.50
Little Flower School	1300 Casazza Dr., Reno, 89502	10	$60,000.00	$22,662.50
Lone Mountain Academy	4295 N. Rancho Dr., Las Vegas, 89130	17	$112,500.00	$60,091.67
Mesivta of Las Vegas	1940 Pasco Verde Pkwy, Henderson, 89012	5	$18,750.00	$7,541.00
Montessori Visions Academy	1905 E. Warm Springs Rd., Las Vegas, 89119	4	$18,750.00	$8,893.74
Mountain View Christian School	3900 E. Bonanza Rd., Las Vegas, 89110	76	$497,325.00	$259,867.12
Mountain View Lutheran School	9550 West Cheyenne, Las Vegas, 89129	2	$15,000.00	$8,150.00
Nasri Academy for Gifted Children	5300 El Camino Rd., Las Vegas, 89118	1	$7,500.00	$4,000.00
New Horizons Academy	6701 W. Charleston Blvd., Las Vegas, 89146	4	$30,000.00	$10,962.48
Our Lady of Las Vegas School	3046 Alta Drive, Las Vegas, 89107	20	$136,875.00	$51,617.55
Our Lady of the Snows	1125 Lander Street, Reno, 89509	3	$9,375.00	$5,222.50
Saint Albert the Great	1255 St. Albert Drive, Reno, 89503	9	$52,500.00	$15,050.00
Saint Anne Catholic School	1813 S. Maryland Pkwy, Las Vegas, 89104	38	$249,375.00	$90,432.46

School Name	Address	# OF STUDENTS	AMOUNT AWARDED	AMOUNT PAID
Saint Christopher Catholic School	1840 N. Bryce Street, North Las Vegas, 89030	11	$60,000.00	$25,732.50
Saint Elizabeth Ann Seton Catholic School	1807 Pueblo Vista Drive, Las Vegas, 89128	11	$75,000.00	$38,957.50
Saint Francis de Sales School	1111 Michael Way, Las Vegas, 89108	23	$123,750.00	$48,227.50
Saint Gabriel Catholic School	2170 E. Maule Ave., Las Vegas, 89119	4	$24,375.00	$9,362.50
Saint Teresa of Avila Catholic School	567 S. Richmond Avenue, Carson City, 89703	12	$71,250.00	$33,839.40
Saint Viator School	4246 S. Eastern Avenue, Las Vegas, 89119	13	$80,625.00	$33,518.70
Sierra Lutheran High School	3601 Romans Rd., Carson City, 89705	8	$54,375.00	$27,123.00
Spring Creek Christian Academy	285 Spring Creek Parkway, Spring Creek, 89815	3	$5,625.00	$1,275.00
Spring Valley Christian Academy	7570 Peace Way, Las Vegas, 89147	18	$108,750.00	$51,375.00
The Islamic Foundation of Nevada, DBA OHIA	485 E. Eldorado Lane, Las Vegas, 89123	71	$495,000.00	$244,807.50
Trinity International School	4141 Meadows Lane, Las Vegas, 89107	4	$30,000.00	$15,950.00
West Charleston Enrichment Academy	3216 W. Charleston Blvd., Ste B, Las Vegas, 89102	2	$11,250.00	$5,900.00
Word of Life Christian Academy	3520 N. Buffalo Dr., Las Vegas, 89129	40	$229,791.60	$108,416.40
Yeshiva Day School of Las Vegas	55 N. Valle Verde Dr., Henderson, 89074	44	$270,000.00	$153,700.00
Forfeits		***11***	***$60,000.00***	***$0.00***
58 SCHOOLS		**921***	**$5,840,625.00**	**$2,655,932.31**

*** The total number of students reported (917) is different than the total above because four students transferred schools during this period. A student is only counted once regardless of the number of schools they attend that year.**

**** *Students awarded, but decided not to use the scholarship***

AFFIDAVIT OF ALAN C. SKLAR

STATE OF NEVADA)

) ss.

COUNTY OF CLARK)

Alan C. Sklar, being first duly sworn, deposes and says:

1. I am Alan C. Sklar. If called as a witness, I could competently testify to the following from personal knowledge.

2. I have personal knowledge of the facts set forth herein, unless otherwise noted.

3. The representations herein are true and correct to the best of my knowledge.

4. I provide this Affidavit in support of Plaintiffs' Motion for Summary Judgment.

5. I am a Member of Sklar Williams PLLC, where I direct the firm's transactional practice.

6. Sklar Williams is a Plaintiff in this lawsuit.

7. Sklar Williams qualifies as an "employer" under NRS section 363B.030 and must pay the excise tax imposed by NRS section 363B.110.

8. Sklar Williams has, in the past, donated to registered scholarship organizations participating in the Scholarship Program and has received tax credits for those donations.

9. Sklar Williams' most recent donation, made for the 2019 tax year, was for $18,000.

10. Sklar Williams plans to donate this year but, because A.B. 458 reduced the tax credits available, its chances of receiving a tax credit are lower.

11. Without the tax credits, Sklar Williams will pay more in taxes.

DATED this 30th day of January, 2020.

Alan C. Sklar

SUBSCRIBED and SWORN to before me
on this 30th day of January, 2020.

Bertha Katz

NOTARY PUBLIC in and for said
County and State

BERTHA KATZ
Notary Public State of Nevada
No. 00-61630-1
My Appt. Exp. March 16, 2020

AFFIDAVIT OF HOWARD A. PERLMAN

STATE OF NEVADA)

) ss.

COUNTY OF CLARK)

Howard A. Perlman, being first duly sworn, deposes and says:

1. I am Howard A. Perlman. If called as a witness, I could competently testify to the following from personal knowledge.

2. I have personal knowledge of the facts set forth herein, unless otherwise noted.

3. The representations herein are true and correct to the best of my knowledge.

4. I provide this Affidavit in support of Plaintiffs' Motion for Summary Judgment.

5. I am the President of Environmental Design Group, LLC (EDG).

6. EDG is a Plaintiff in this lawsuit.

7. EDG qualifies as an "employer" under NRS section 363B.030 and must pay the excise tax imposed by NRS section 363B.110.

8. EDG has previously donated to registered scholarship organizations and received tax credits for those donations.

9. Its most recent donation, for the 2019 tax year, was for $10,000.

10. EDG plans to donate this year but, because A.B. 458 reduced the tax credits available, its chances of receiving a tax credit are lower.

11. Without the tax credits, EDG will pay more in taxes.

DATED this 5th day of February, 2020.

Howard A. Perlman

SUBSCRIBED and SWORN to before me on this 5 day of February, 2020.

NOTARY PUBLIC in and for said County and State

CLARK

STATE NEVADA

RAMON BONILLA
NOTARY PUBLIC
STATE OF NEVADA
APPT. No. 18-3129-1
MY APPT. EXPIRES APR. 27, 2022

TAB 8

MSJD
AARON D. FORD
Attorney General
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Attorneys for Executive Defendants

DISTRICT COURT

CLARK COUNTY, NEVADA

FLOR MORENCY; EKYSHA NEWELL; BONNIE YBARRA; AAA SCHOLARSHIP FOUNDATION, INC.; SKLAR WILLIAMS PLLC; ENVIRONMENTAL DESIGN GROUP, LLC, Plaintiffs, vs. STATE OF NEVADA, *ex rel*, DEPARTMENT OF EDUCATION; *et al.* Defendants.	Case No. A-19-800267-C Dept. No. XXXII

EXECUTIVE DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

(Hearing Requested)

Pursuant to Rule 56, Defendants State of Nevada, *ex rel*, DEPARTMENT OF EDUCATION; JHONE EBERT, in her official capacity as executive head of the DEPARTMENT OF EDUCATION; 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, 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, and MELANIE YOUNG, in her official capacity as the Executive Director and Chief Administrative Officer of the DEPARTMENT OF TAXATION (collectively the "Executive Defendants") seek summary judgment against Plaintiffs' lawsuit.

This Motion is made and based upon the following Memorandum of Points and Authorities, all the papers and pleadings on file herein, and any such argument that the Court chooses to entertain.

DATED this 14th day of February, 2020.

AARON D. FORD
Attorney General

By: */s/ Craig A. Newby*
CRAIG A. NEWBY(Bar No. 8591)
Deputy Solicitor General
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Attorneys for State of Nevada

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

At the end of the 2019 session, the Legislature passed bills that collectively increased the amount of tax expenditures for the Nevada Educational Choice Scholarship Program, a private school voucher program (hereinafter the "Voucher Program"), by seven million four hundred twenty-six thousand nine hundred fifty ***($7,426,950)***. Because the Legislature's increased tax expenditures neither "creates, generates, or increases" "taxes, fees, assessments and rates," its actions are constitutional.

To the extent there is any ambiguity requiring interpretation, this Court should interpret the supermajority provision narrowly with the intent that it apply only to new or increased taxes, not to a reduction of tax expenditures.

This interpretation is consistent with the history, public policy, and reason for the supermajority provision, which arose from the following, infamous political promise:

> **Read my lips: no new taxes!**
> Vice President George H.W. Bush, at his August 18, 1988 speech accepting the Republican nomination for President.

When President Bush broke this promise, it provoked backlash throughout the United States. In response, governments attempted amending constitutions to require supermajority votes for new taxes. Nevada's supermajority provision for new taxes that arose from this backlash is the subject of this lawsuit.

Former Governor (then-Assemblyman) Jim Gibbons spearheaded the effort to adopt the supermajority provision, modeling it on similar provisions from other states, including Oklahoma. The former Governor first tried to add a supermajority provision to the Nevada Constitution as an Assemblyman in the 1993 Legislature, but failed. At that time, he conveyed that it "would not impair any existing revenues." *See AJR 21 Legislative History* (1993) at 747, attached hereto as **Exhibit A**. As part of the bill explanation, the provision was limited to efforts "to impose or increase" certain taxes. *Id.* at 760.

/ / /

Subsequently, the former Governor successfully led the effort to pass the supermajority provision by initiative in the 1994 election (when he first ran unsuccessfully for Governor) and the 1996 election (when he successfully ran for Congress). The initiative materials provided to Nevada voters show that the provision was intended for "raising" or "increasing taxes," particularly from "new sources of revenue." *See Nevada Ballot Questions 1994* at Question No. 11; *State of Nevada Ballot Questions 1996* at Question No. 11, collectively attached hereto as **Exhibit B**.

As passed, the supermajority provision added to the Nevada Constitution reads as follows:

> 2. Except as otherwise provided in subsection 3, an affirmative vote of not fewer than two-thirds of the members elected to each House is necessary to pass a bill or joint resolution which creates, generates, or increases any public revenue in any form, including but not limited to taxes, fees, assessments and rates, or changes in the computation bases for taxes, fees, assessments and rates.
>
> NEV. CONST. art. IV, § 18(1).

Under significantly different circumstances, the Nevada Supreme Court had the opportunity to review the supermajority provision. There, the Nevada Supreme Court recognized that the supermajority provision "was intended to make it more difficult for the Legislature to pass new taxes" or to turn "to new sources of revenue."[1] *Guinn v. Legislature*, 119 Nev. 460, 471 (2003) (emphasis added); *see* **Exhibit B**.

Here, this Court does not face new or increased taxes, much less a constitutional crisis threatening the education of Nevada's children. Instead, the Legislature increased the Voucher Program tax expenditures, which, under Plaintiffs' logic, decreased revenue.

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[1] The Nevada Supreme Court previously considered the supermajority provision in the 2003 *Guinn v. Legislature* cases, specifically its relationship to constitutional provisions prioritizing public education where the executive and legislative branches were gridlocked as they related to funding almost immediately prior to the start of the school year. *Guinn v. Legislature*, 119 Nev. 277 (2003) (overturned as to "procedural" and "substantive" requirements analysis by *Nevadans for Nevada v. Beers*, 122 Nev. 930, 944 (2006)); *Guinn v. Legislature*, 119 Nev. 460 (2003). This case is not the expedited one faced by the Supreme Court in *Guinn*, both as to emergency timing or as a constitutional conflict between co-equal branches of government.

Under these circumstances, the Legislature's actions are plainly constitutional as to this program. Even if this Court were to ignore the Legislature's intent by examining each bill individually, the plain language of the supermajority provision applies to taxes, not tax expenditures. Nevada taxpayers will pay existing taxes at existing rates, with the sole difference being whether the taxes will be expended on private school vouchers or other state programs.

To the extent there is any ambiguity requiring interpretation, this Court should interpret the supermajority provision narrowly in conjunction with the intent that it apply only to new or increased taxes relative to the prior fiscal year. This is consistent with how other states, including Oregon and Oklahoma, interpret their equivalent supermajority provisions. The Legislature's interpretation under these circumstances, upon the advice of its counsel, is reasonable and entitled to deference from this Court as the most responsive branch to the People.[2]

Under such circumstances, Defendants seek summary judgment.

II. FACTUAL BACKGROUND

Plaintiffs are participants and proponents of the Voucher Program. To avoid constitutional questions on Nevada directly funding private sectarian schools, the Voucher Program relies on tax expenditures (rather than collected taxes) to fund the vouchers. Businesses who would otherwise owe Nevada Modified Business Tax ("MBT") payments apply on a first-come, first-serve basis to transfer the tax amount they otherwise owe to Nevada to the Voucher Program. NRS 363A.139.

However, businesses do not apply directly with the Nevada Department of Taxation to divert tax money to school vouchers. Instead, the Voucher Program utilizes private scholarship organizations to serve as the middleman for transferring school voucher payments to private schools. Specifically, the private scholarship organizations apply on behalf of businesses for tax expenditures from the Nevada Department of Taxation and

[2] A true and correct copy of the Legislative Counsel Bureau's May 8, 2019 memorandum is attached hereto as **Exhibit C**.

notify the businesses whether the Nevada Department of Taxation approved the tax expenditure. NRS 363A.139(2); Comp. at ¶¶ 29-30. The private scholarship organizations provide reporting information on the Voucher Program to the Nevada Department of Education. NRS 388D.280. The private scholarship organizations manage the process of applying for and awarding school vouchers for students to use at a private school, not the Nevada Department of Education. NAC 385.6043; Comp. at ¶ 26.

In this case, AAA Scholarship Foundation, Inc. ("AAA") is a private scholarship organization. Comp. at ¶ 14. Flor Morency, Keysha Newell, and Bonnie Ybarra (collectively the "Parent Plaintiffs") are parents of children who receive scholarships through the Voucher Program. Comp. at ¶¶ 11-13. The Parent Plaintiffs alleged that the 2019 Legislature "caused a loss of funding" from the prior school year. *Id.* Sklar Williams PLLC and Environmental Design Group, LLC (collectively the "Business Plaintiffs") are Nevada businesses who have previously made tax expenditures through the Voucher Program. Comp. at ¶¶ 15-16.

NRS 363B.119(4) established the Voucher Program's initial tax expenditure limit for Fiscal Year 2015-2016, with subsequent 10% annual increases. The 2017 Legislature provided the Voucher Program an additional <u>one-time</u> tax expenditure of twenty million ($20,000,000). NRS 363B.119(5). The 2019 Legislature similarly provided the Voucher Program an additional <u>one-time</u> tax expenditure of nine million four hundred ninety thousand ($9,490,000). *See* Senate Bill 551 (2019), a true and correct copy of the enrolled bill is attached hereto as **Exhibit D**. While the 2019 Legislature chose to set the base amount of Voucher Program tax expenditures at six million six hundred fifty-five thousand ($6,655,000) without future 10% increases, it <u>increased</u> the tax expenditure amount by seven million four hundred twenty-six thousand nine hundred fifty **($7,426,95)** for the Voucher Program over what NRS 363B.119(4) contemplated. *See* Assembly Bill 458 (2019), a true and correct copy of the enrolled bill is attached hereto as **Exhibit E**. The 2019 Legislature prioritized existing students, such as those of the Parent Plaintiffs, rather than new students. *See* **Exhibit D**.

In total, the Voucher Program's appropriations significantly exceed what the 2015 Legislature contemplated for this biennium when originally passing NRS 363B.119(4):

Fiscal Year	**NRS 363B.119(4) Amount**	**Appropriated Amount**	**Difference**
2015-2016	$5,000,000	$5,000,000	$0
2016-2017	$5,500,000	$5,500,000	$0
2017-2018	$6,050,000	$26,050,000	$20,000,000
2018-2019	$6,655,000	$6,655,000	$0
2019-2020	$7,320,500	$11,400,000	**$4,079,500**
2020-2021	$8,052,550	$11,400,000	**$3,347,450**
TOTAL	$38,578,050	$66,005,000	**$27,426,950**

As a matter of public record, Plaintiffs' Complaint makes no sense. Plaintiffs argue that revenue was increased "[b]y eliminating tax credits," such that the Legislature was required to obtain a supermajority vote for said reduction pursuant to the Nevada Constitution. *Id.* at ¶ 4; NEV. CONST. art. IV, § 18(1). However, Plaintiffs fail to disclose n their Complaint that the Legislature passed a net increase, not decrease, of available tax credits for the Voucher Program. This does not square with Plaintiffs' legal theory that the Legislature violated the Nevada Constitution by increasing revenue without a supermajority vote by eliminating tax credits. Stated differently, it is clear that the 2019 Legislature intended to increase tax expenditures for the Voucher Program, meaning there is no generation of "public revenue" under Plaintiffs' theory.

Further, Assembly Bill 458 does not create new revenue from the Modified Business Tax; it merely redirects Nevada tax revenue previously expended for private school vouchers to other general expenditures. Stated differently, the same employer business who pays the same amount in employee compensation will owe the identical MBT amount to Nevada. Many MBT taxpayers would have been unable to receive tax credits in the prior biennium by not being first-come,

first-served; nothing has changed in this biennium. This is not a new tax relative to the Voucher Program.

Under these undisputed facts, summary judgment is warranted in favor of the Executive Defendants.

III. LEGAL ANALYSIS

A. Standard of Review

Rule 56 allows this Court to grant summary judgment upon showing "that there is no genuine dispute as to any material fact as a matter of law." Here, this Court is faced with the constitutionality of a statute, which is a question of law. *Cornella v. Justice Court*, 132 Nev. ——, 377 P.3d 97, 100 (2016) (internal quotation marks omitted).

Plaintiffs, as the party contending unconstitutionality, bear the burden of persuasion. "Statutes are presumed to be valid, and the burden is on the challenging party to demonstrate that a statute is unconstitutional." *Id.* (internal quotation marks omitted). In interpreting an amendment to our Constitution, courts look to rules of statutory interpretation to determine the intent of both the drafters and the electorate that approved it. *Landreth v. Malik,* 127 Nev. 175, 180, 251 P.3d 163, 166 (2011); *Halverson v. Sec'y of State,* 124 Nev. 484, 488, 186 P.3d 893, 897 (2008). Nevada courts first examine the provision's language. *Landreth,* 127 Nev. at 180, 251 P.3d at 166. If plain, a Nevada court looks no further, but if not, "we look to the history, public policy, and reason for the provision." *Id.*

Moreover, Nevada courts construe statutes, if reasonably possible, so asto be in harmony with the constitution." *Cornella*, 377 P.3d at 100 (2016) (internal quotation marks omitted). Stated differently, Nevada courts "adhere to the precedent that every reasonable construction must be resorted to, in order to save a statute from unconstitutionality." *State v. Castaneda*, 126 Nev. 478, 481, 245 P.3d 550, 552 (2010) (internal quotation marks omitted). "[W]hen a statute is derived from a sister state, it is presumably adopted with the construction given it by the highest court of the sister state."

/ / /

Clark v. Lubritz, 113 Nev. 1089, 1096–97 n. 6, 944 P.2d 861, 865 n. 6 (1997) (citing *Craigo v. Circus–Circus Enterprises,* 106 Nev. 1, 3, 786 P.2d 22, 23 (1990)).

Here, the Legislature's actions comply with the plain terms of the supermajority provision because neither "creates, generates, or increases" revenue from the public from one fiscal year to the next. Instead, the statutes maintain existing public revenue at the same level for taxpayers and Nevada state government between fiscal years, only changing the relative distribution to the Voucher Program versus other programs. In short, the statutes comply with the supermajority provision.

To the extent Plaintiffs have a different interpretation, this Court should look to "the history, public policy, and reason" for the supermajority provision. When reviewing this, back to its origins from former President Bush's lips, there is no reasonable doubt that the supermajority provision is intended to apply to new taxes relative to prior years, rather than continuing existing taxes at existing rates as the 2019 Legislature did. Other states with similar supermajority provisions have interpreted them the exact same way, rather than applying them to alleged reductions to tax expenditures.

Under such circumstances, this Court should defer to the Legislature's interpretation, which is consistent with the general legislative power and with how other states have similarly interpreted these provisions. Ultimately, the Legislature is accountable for its interpretation to the true sovereign, the People of Nevada, who will decide whether this interpretation is best for future Legislatures.

B. The Supermajority Provision is Not Applicable to the 2019 Legislature's Increased Tax Expenditures.

Plaintiffs' claim ignores the 2019 Legislature's overall treatment of the Voucher Program, which significantly increased tax expenditures for the voucher program, significantly decreasing Modified Business Tax revenues. Related statutes should be interpreted together, as though they were one law. *See* ANTONIN SCALIA & BRYAN A. GARNER, READING LAW: THE INTERPRETATION OF LEGAL TEXTS 252-55 (2012). Had the 2019 Legislature passed Senate Bill 551 and Assembly Bill 458 as one bill, rather than two,

Plaintiffs would have no constitutional argument premised on the increase of revenue from reducing Voucher Program tax credits. Simply put, there would be no "increase" as alleged. *See* Comp. at ¶¶ 4, 41, 123. Interpreting the two statutes separately makes no sense and is not required.

When the Legislature's intent is clear from the plain language, a court will give effect to such intention and construe the statute's language to effectuate, rather than nullify its manifest purpose. *Sheriff v. Luqman,* 101 Nev. 149, 155, 697 P.2d 107, 111 (1985). Nevada courts "construe statutes, if reasonably possible, so as to be in harmony with the constitution." *Thomas v. Nev. Yellow Cab Corp.,* 327 P.3d 518, 521 (Nev. 2014) (internal quotations omitted). Stated differently, Nevada courts "adhere to the precedent that every reasonable construction must be resorted to, in order to save a statute from unconstitutionality." *State v. Castaneda*, 126 Nev. 478, 481, 245 P.3d 550, 552 (2010) (internal quotation marks omitted).

Here, it is clear what the 2019 Legislature intended for Voucher Program tax credits. It increased their amount by more than $7 million as a matter of public record. But for the Legislature choosing to do in two contemporaneous bills what it undoubtedly could have done in one bill, there is no claim as asserted by Plaintiffs in this case. On this basis, this Court should grant summary judgment.

C. The Legislature's Tax Expenditures Comply with the Plain Language of the Nevada Constitution[3]

Here, the Legislature's actions comply with the plain terms of the supermajority provision because neither "creates, generates, or increases" revenue from the public from one fiscal year to the next. From a taxpayer's perspective, they pay the same amount as a result of the MBT, no matter its relative distribution to the Voucher Program versus other tax-funded programs. The MBT and its rate structure are unaltered by the Legislature's

[3] Nevada courts may not consider post-enactment statements, affidavits or testimony from sponsors regarding their intent. *See A-NLV Cab Co. v. State Taxicab Auth.*, 108 Nev. 92-95-96 (1992).

actions; only the amount of tax credits. In short, the statutes comply with the supermajority provision. Under such circumstances, the plain language of the supermajority provision warrants summary judgment in favor of Defendants.

D. To the Extent Plaintiffs Argue Differently, the Supermajority Provision should be Interpreted Narrowly to Apply to "New Taxes" Relative to Prior Fiscal Years, Consistent with its History, Public Policy, and Reason for Adoption

1. The History, Public Policy and Reason behind the Supermajority Provision is No New Taxes

As set forth above, the supermajority provision arose from anti-tax fervor associated with President Bush's broken promise of "no new taxes." Former Governor Gibbons led the Nevada charge for the supermajority provision, emphasizing its effect on new or additional taxes, noting it did not apply to existing taxes. *See* **Exhibit A** at 747, 760. The initiative information provided to Nevada voters similarly made it clear that they intended the provision for "raising" or "increasing taxes," particularly from "new sources of revenue." **Exhibit B**. The clear purpose and public policy behind the supermajority provision was to prevent "new taxes," not to prevent reductions in tax expenditures on private school education vouchers.

Under such circumstances, the interpretations most consistent with the Legislature's intent is a narrow one against "new taxes."

2. Other States Interpret Similar Supermajority Provisions Narrowly for No New Taxes

Nevada is not alone when attempting to interpret similar supermajority provisions.

For instance, in South Dakota, the supermajority provision applies to the passage of certain appropriations. S.D. CONST. art. XII, § 2. However, the South Dakota Supreme Court rejected challenges arguing that reappropriations require a supermajority vote, noting that the constitutional provision only governs passage of the appropriation, not repeal or amendment of an existing appropriation. *Apa v. Butler*, 638 N.W. 2d 57, 69-70 (S.D. 2001). Nevada's supermajority provision similarly applies only to passage of a bill,

with no reference to repeal or amendment of a previously approved revenue generator. Nev. Const. art. IV, § 18(2).

In Oregon, the supermajority provision applies to the passage of bills for raising revenue by a three-fifths vote. OR. CONST. art. IV, § 25(2). However, the Oregon Supreme Court rejected the applicability of eliminating a tax exemption for out-of-state electric utility facilities was not subject to its constitutional supermajority provision. *City of Seattle v. Or. Dep't of Revenue*, 357 P.3d 979, 980 (Or. 2015).

In Oklahoma, the supermajority provision applies to the passage of revenue bills by a three-fourths vote. OKLA. CONST. art. V, § 33. However, the Oklahoma Supreme Court rejected the applicability of its supermajority provision to a bill including provisions deleting the "expiration date of specified tax rate levy." *Fent v. Fallin*, 345 P.3d 1113, 1114-17 n.6 (Okla. 2014). This is consistent with that Court's limitation of the Oklahoma supermajority provision to bills whose principal object is to raise new revenue and which levy a new tax in the strict sense of the word. *Okla. Auto Dealers Ass'n*, 401 P.3d 1152, 1153 (Okla. 2017).

None of these other states would apply supermajority provision onto the continuation of existing taxes and fees at existing rates, but the reduction in tax expenditures. This Court should similarly interpret Nevada's provision as being inapplicable to these statutes.

3. The Legislature is Entitled to Deference as the Branch Most Accountable to the People

Nevada courts construe statutes, if reasonably possible, so as to be in harmony with the constitution." *Cornella v. Justice Court*, 132 Nev. ——, 377 P.3d 97, 100 (2016) (internal quotation marks omitted). Stated differently, Nevada courts "adhere to the precedent that every reasonable construction must be resorted to, in order to save a statute from unconstitutionality." *State v. Castaneda*, 126 Nev. 478, 481, 245 P.3d 550, 552 (2010) (internal quotation marks omitted). The Nevada Constitution "must be strictly construed in favor of the power of the legislature to enact the legislation under it." *In re Platz*, 60

Nev. 296, 308 (1940). This is particularly true where the Legislature acts upon the opinion of its Legislative Counsel. *Nev. Mining Ass'n v. Erdoes*, 117 Nev. 531, 540 (2001).

Nevada courts do this because of the significant power vested in the Legislature under the Nevada Constitution, consistent with constitutional requirements for republican forms of government and majoritarian rule. Specifically, the United States Constitution guarantees that each State shall have "a Republican Form of Government." U.S. CONST. art. IV, § 4. Nevada generally requires that "a majority of all of the members elected to each house is necessary to pass every bill or joint resolution." NEV. CONST. art. 4, § 18(1). Prior to the 1990s, all bills required majority support.

Here, the People's elected representatives in the State Senate disagree on how to interpret Nevada's Constitution. Where both interpretations are reasonable and the majority Legislature relied upon the specific advice of its counsel, this Court should defer to the Legislature's interpretation. Even if it would not necessarily be this Court's preferred interpretation, deferring to the Legislature will allow Nevada's true sovereign, the People, to ultimately decide the wisdom of the 2019 Legislature's decisions.

IV. CONCLUSION

This Court should grant summary judgment in favor of Defendants because the Legislature's acts comply with Article IV, Section 18(2) of the Nevada Constitution.

DATED this 14th day of February, 2020.

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CERTIFICATE OF SERVICE

I hereby certify that I served the **EXECUTIVE DEFENDANTS' MOTION FOR SUMMARY JUDGMENT** by United States Mail, First Class, and this Court's electronic filing system on the 14th day of February, 2020, upon the following counsel of record:

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INDEX OF EXHIBITS

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EXHIBIT A

1993

AJR 21 By Gibbons TAXATION

Proposes to amend Nevada constitution to require two-thirds majority of each house of legislature to increase certain existing taxes or impose certain new taxes. (BDR C-166)

Fiscal Note: Effect on Local Government: No. Effect on the State or on Industrial Insurance: No.

03/05 25 Read first time. Referred to Committee on Taxation. To printer.
03/08 26 From printer. To committee.
03/08 26 Dates discussed in committee: 5/4, 5/20 (DP)
(* = instrument from prior session)

ASSEMBLY JOINT RESOLUTION NO. 21—ASSEMBLYMEN GIBBONS, MARVEL, ERNAUT, SCHERER, GREGORY, HUMKE, HELLER, REGAN, HETTRICK, AUGUSTINE, CARPENTER, TIFFANY, LAMBERT, MCGAUGHEY, SCHNEIDER, BONAVENTURA, PETRAK, COLLINS, HALLER, SEGERBLOM AND WENDELL WILLIAMS

MARCH 5, 1993

Referred to Committee on Taxation

SUMMARY—Proposes to amend Nevada constitution to require two-thirds majority of each house of legislature to increase certain existing taxes or impose certain new taxes. (BDR C-166)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

EXPLANATION—Matter in italics is new; matter in brackets [ ] is material to be omitted

ASSEMBLY JOINT RESOLUTION—Proposing to amend the constitution of the State of Nevada to require an affirmative vote of not fewer than two-thirds of the members of each house of the legislature to increase certain existing taxes or impose certain new taxes.

RESOLVED BY THE ASSEMBLY AND SENATE OF THE STATE OF NEVADA, JOINTLY, That section 18 of article 4 of the constitution of the State of Nevada be amended to read as follows:

[Sec:] *Sec. 18. 1. Every bill, except a bill placed on a consent calendar* adopted as provided in [this section, shall] *subsection 3, must* be read by sections on three several days, in each House, unless in case of emergency, two thirds of the House where such bill [may be] *is* pending shall deem it expedient to dispense with this rule [; but the] *The* reading of a bill by sections, on its final passage, shall in no case be dispensed with, and the vote on the final passage of every bill or joint resolution shall be taken by yeas and nays to be entered on the journals of each House. [; and] *Except as otherwise provided in subsection 2,* a majority of all the members elected to each house [, shall be] *is* necessary to pass every bill or joint resolution, and all bills or joint resolutions so passed, shall be signed by the presiding officers of the respective Houses and by the Secretary of the Senate and clerk of the Assembly.

2. Except as otherwise provided in this subsection, 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 increases or imposes any tax, in any form, based upon:

(a) The value of real property;

(b) The retail sale or use in this state of tangible personal property,

(c) The receipts, income, assets, capital stock or number of employees of a business, including a business engaged in gaming;

(d) The net proceeds of minerals extracted or any other net proceeds of mining;

(e) The volume, weight or alcoholic content of liquor imported, possessed, stored or sold in this state; or

(f) The number or weight of cigarettes or any other tobacco product purchased, possessed or sold in this state.

The requirement of this subsection does not apply to a fee which is imposed on the right to use or dispose of property, to pursue a business or occupation or to exercise a privilege if the primary purpose of the fee is to reimburse the state for the cost of regulating an activity and not to raise the public revenue.

3. Each House may provide by rule for the creation of a consent calendar and establish the procedure for the passage of uncontested bills.

MINUTES OF MEETING
ASSEMBLY COMMITTEE ON TAXATION

Sixty-seventh Session
May 4, 1993

The Assembly Committee on Taxation was called to order by Chairman Robert E. Price at 1:25 p.m., Tuesday, May 4, 1993, in Room 332 of the Legislative Building, Carson City, Nevada. Exhibit A is the Meeting Agenda, Exhibit B is the Attendance Roster.

COMMITTEE MEMBERS PRESENT:

Mr. Robert E. Price, Chairman
Mrs. Myrna T. Williams, Vice Chairman
Mr. Rick C. Bennett
Mr. Peter G. Ernaut
Mr. Ken L. Haller
Mrs. Joan A. Lambert
Mr. John W. Marvel
Mr. Roy Neighbors
Mr. John B. Regan
Mr. Michael A. Schneider
Mr. Larry L. Spitler

COMMITTEE MEMBERS ABSENT:

Mr. Peter G. Ernaut (Excused)
Mr. John B. Regan (Excused)
Mr. Michael A. Schneider (Excused)

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Mr. Ted Zuend, Deputy Fiscal Analyst, Legislative Counsel Bureau

OTHERS PRESENT:

Brian C. Harris, Governor Miller's Office
Michael J. Griffin, CPA, Deputy Commissioner, Nevada Department of Insurance
Marie H. Soldo, representing Sierra Health Services
Robert R. Barengo, representing Humana Insurance of Nevada

James L. Wadhams, representing the American Insurance Association and Nevada Independent Insurance Agents Association
Carole Vilardo, Nevada Taxpayers Association
Steve Stucker, Laughlin Associates, Inc.
Lewis Laughlin, testifying on behalf of the Nevada Association of Independent Businesses
Don Merritt, a Nevada citizen
Jim Fontano, a Carson City resident
Bonnie James, representing the Las Vegas Chamber of Commerce
Ned Air, a Nevada citizen

Chairman Price opened the hearing on AB 331 continuing testimony from the Thursday, April 29, 1993, meeting.

ASSEMBLY BILL 331 - Requires annual prepayment of tax on insurance premiums. (BDR 57-1714)

Brian C. Harris, Governor Miller's Office, spoke in support of AB 331. Mr. Harris indicated he had been working with representatives of the industry hopefully to clear up some of the problems with AB 331. Mr. Harris provided committee members with a copy of a proposed amendment to AB 331 attached hereto marked Exhibit C.

Mr. Harris pointed out Commissioner Rankin informed him on page 1 of the proposed amendment (Exhibit C) subsection 2, which had been deleted, needed to be included.

Mr. Harris iterated the new subsection 2 listed in italics provided for the prepayment of the tax to be paid in two portions on March 1st and June 15th of each year. Mr. Harris walk the committee through the amendment section by section.

Michael J. Griffin, CPA, Deputy Commissioner, Nevada Department of Insurance, responded to a question explaining subsection 6 of the proposed amendment (Exhibit C). He conveyed if an insurer was one day late, the interest would be one-thirtieth of the 1.5 percent.

Mr. Spitler asked for clarification with regard to an overpayment. Mr. Griffin articulated if an insurer made an overpayment, the overpayment would be a direct credit against the estimated tax liability the next calendar year. Mr. Griffin responded to another question stating the business did not have the option of having the overpayment returned, it had to be applied against future tax liability. He expanded stating if

Vice Chairman Williams closed the hearing on AB 331.

Vice Chairman Williams opened the hearing on AJR 21.

ASSEMBLY JOINT RESOLUTION 21 - Proposes to amend Nevada constitution to require two-thirds majority of each house of legislature to increase certain existing taxes or impose certain new taxes. (BDR C-166)

Ted Zuend, Deputy Fiscal Analyst, Legislative Counsel Bureau, provided committee members with a Bill Explanation for AJR 21 attached hereto marked Exhibit D.

James A. Gibbons, Assembly District 25, spoke as the prime sponsor of AJR 21 which proposed to amend the Nevada Constitution to require a two-thirds majority vote in each house of the legislature to increase certain existing taxes or to impose certain new taxes.

Mr. Gibbons commented AJR 21 was introduced with the idea of public confidence in mind. He stated the public confidence in the legislature and the legislative process was at an all-time low. Elected officials were at the bottom of the wrung on the ladder of public confidence. Mr. Gibbons believed the answer to the problem of public confidence was that the legislature needed to focus on the actual needs of the public rather than the wants of the public. That would require a transformation of the thought process and a transformation that would make the legislature focus more on the responsible utilization of the taxpayer's money.

Mr. Gibbons said it was clear to him that the government did not have a funding problem, but a spending problem. Nevadans wanted public service but did not want to pay for wasteful government. The issue was one of perception and confidence, perception the legislators wastefully spend the public's money. The public lacked the confidence and believed the legislators would raise taxes to cover the sins.

Mr. Gibbons iterated the concepts of economics said taxes always reduced the amount of money that would have been used by the private sector to increase production and thus employment, consequently yielding or fueling the gross national product and increasing overall standards of living. Governments wasted money through inefficiency. The problem would not be solved by better people, by better management, by better systems or by more money because the problem was a structural problem in

government and the incentives in government were skewed against the public interest.

Mr. Gibbons asserted there were two alternative approaches to balancing government budgets when spending exceeded taxation. The conventional wisdom was first to reduce services or increase taxes; however, Mr. Gibbons suggested there was a third way and that was use government money more wisely and more efficiently. It was a simple household and business concept and strategy; when the income was not there, the expenses should be decreased.

Mr. Gibbons stressed AJR 21 amended the Nevada Constitution to require bills providing for a general tax increase be passed by a two-thirds majority of both houses of the legislature. The resolution would apply to property taxes, sales and use taxes, business taxes based on income, receipts, assets, capital stock or number of employees, taxes on the net proceeds of mines and taxes on liquor and cigarettes.

Mr. Gibbons explained AJR 21 was modelled on constitutional provisions which were in effect in a number of other states. Some of the provisions were adopted recently in response to a growing concern among voters about increasing tax burdens and some of the other provisions dated back to earlier times.

Mr. Gibbons described the provisions in the other states. In Arizona any bill that provided for a net increase in revenues had to be passed by a two-third majority vote of each house. A veto of a tax bill could be overridden by three-fourths majority. In Arkansas any bill to increase property, excise privilege or personal income taxes had to be passed by a three-fourths majority vote. Mr. Gibbons continued illustrating an amendment had recently been enacted to the California Constitution requiring a two-thirds majority vote in each house for new taxes and tax increases and prohibited new taxes on property, sales or transactions involving real property. Mr. Gibbons iterated in Colorado the legislature could, in an emergency, increase taxes by a two-thirds vote in each house. The tax increases had to be submitted to the people for approval at the next election. The same provisions also imposed strict spending limits on state government. Mr. Gibbons revealed in Delaware an increase in a tax or fee had to be approved by a three-fifths majority of each house. Mr. Gibbons said the Florida Constitution required bills that increased the income tax to more than 5 percent of net income had to be approved by a three-fifths majority of each house. In Louisiana a two-thirds majority was required. In Mississippi bills for the assessment of real property had to receive a three-fifths

majority in each house. In Oklahoma the constitution required revenue bills had to be approved by three-fourths of the members of each house. South Dakota required a two-thirds majority for bills increasing income sales and property taxes. Mr. Gibbons said in Delaware in order to secure the confidence of many companies residing there, a two-thirds majority was required in each house to amend its incorporation law. Illinois required a three-fifths majority to pass a law affecting cities with home-rule.

Mr. Gibbons believed a provision requiring an extraordinary majority was a device used to hedge or protect certain laws which he believed should not be lightly changed. AJR 21 would ensure greater stability and preserve certain statutes from the constant tinkering of transient majorities.

Mr. Gibbons addressed some of the anticipated objections. Some will claim AJR 21 would deprive the state of revenues necessary to provide essential state services. Mr. Gibbons conveyed that was not the case. AJR 21 would not impair any existing revenues. It was not a tax rollback and did not impose rigid caps on taxes or spending. Mr. Gibbons thought it would not be difficult to obtain a two-thirds majority if the need for new revenues was clear and convincing. AJR 21 would not hamstring state government or prevent state government from responding to legitimate fiscal emergencies.

Mr. Gibbons examined the voting record for every new tax and increase which would have been affected by AJR 21 for the last three decades. Mr. Gibbons found in most instances the bills obtained a two-thirds majority vote even though a simple majority was required. He referred to an example of research performed, illustrating the voting record on bills, a copy of which is attached hereto marked Exhibit E. Exhibit E illustrated in all but a few instances the tax increases were passed with more than the two-thirds requirement.

Mr. Gibbons concluded by saying the measure did not propose government do less, but actually AJR 21 could permit government to do more. AJR 21 was a simple moderate measure that would bring greater stability to Nevada's tax systems, while still allowing the flexibility to meet real fiscal needs. Mr. Gibbons urged the committee's approval of AJR 21.

Mr. Spitler asked Mr. Gibbons in his research if the other states required similar legislation for approval of a state budget, or if the state remained with a simple majority to approve a budget and the two-thirds or three-fourths majority to

approve the funding mechanism. Mr. Gibbons said his research did not focus on the approval process of the budget. Mr. Gibbons said he would have it researched and produce the information for Mr. Spitler.

Mr. Spitler articulated if one looked at empowerment and on one hand a simple majority declared what the budget should be and on the other hand a super majority declared the funding mechanism, it was actually empowering a smaller group of people not to fund the budget. Mr. Gibbons communicated he would have to do some more research before he could give an informed answer. Mr. Gibbons believed the two should go hand in hand.

Mr. Spitler asked if the other states actually spent less since the imposed legislation. Mr. Gibbons articulated with the depth of research required to answer the question, Mr. Gibbons did not possess that sort of detail.

Mrs. Williams asked Mr. Gibbons if the states he cited had an income tax. Mr. Gibbons said South Dakota and Florida did not have an income tax. Mrs. Williams conveyed when there was an income tax it changed the considerations considerably.

Mrs. Williams was compelled to point out the Ways and Means Committee constantly heard about the waste in government. She suggested the Ways and Means Committee was not looking at waste or wants, but looking at the needs driven by extraordinary growth that far exceeded any other place in the country. There were structural problems other states were not faced with. She pointed out many of the other states mentioned had decreasing populations and did not have the same demands. Mrs. Williams would like to see the waste identified. Mrs. Williams said it was incumbent upon people who thought there was waste to sit in the hearings, listen to the testimony, understand the budgets and what the numbers meant and then make a determination on whether it was waste or want and not need. Mrs. Williams agreed with Mr. Gibbons in that Nevada needed major structural and policy changes.

Mrs. Williams asked Mr. Gibbons if he thought AJR 21 could possibly inhibit structural change by requiring a super majority. Mr. Gibbons respectfully disagreed and said structural change to him meant incentives built into the government structure. AJR 21 did just the opposite and forced the legislature in the decision process to make the structural changes in government itself. Mrs. Williams pointed out the flip side of the coin revealed a minority of people could make sure progress would not occur and change would not occur. Mrs.

Williams said there were always people who were resistent to change. The fact needed to be considered a small minority of people could blockade the ability to move forward and change policy. Mr. Gibbons surmised that was the one avenue that raised a flag in the issue, whether or not one addressed it from the minority standpoint of being able to say no versus the super majority required to say yes on a tax bill.

Mr. Neighbors only had a problem with the concept that the minority might be able to tell the majority exactly what to do. He added none of the other states Mr. Gibbons listed had the growth problems Nevada had. Mr. Neighbors saw one of the problems as telling everyone "we need to diversify" and invite people into the state and then turn around to local government and say "now you provide the service."

Mr. Gibbons again addressed the issue a two-thirds majority allowed for a minority. Mr. Gibbons stressed the purpose of AJR 21 was to identify true tax needs. He referred to Exhibit E stating it was a very rare instance that only less than two-thirds majority vote in both houses was accomplished. That required the legislators to find the broad support by identifying the need for the tax. The vote in Exhibit E showed 90 to 100 percent of the legislators, in a majority of the times, felt compelled to raise taxes. Mr. Gibbons stressed to Mr. Neighbors Florida was indeed a growing state. The demands in Florida, in terms of growth in senior citizens which drove Florida's budget, probably exceeded the state of Nevada in terms of dollar requirements.

Mrs. Williams pointed out Florida probably collected more in taxes to start with. Florida's tax rates were higher, the property taxes were higher generating more revenue. Mr. Gibbons said Florida also did not have 87 percent of the state owned by the federal government, so Florida's property taxes brought in a lot more revenue. Mr. Gibbons said Nevada based its property tax on 13 percent of the state and expected that to run the whole state.

Mr. Marvel referred to Exhibit E stating last session was the only time the two-thirds majority would have made a difference, and it was somewhat fictitious because of the fair share issue. Mr. Gibbons said that was exactly right, and additionally there was one measure that would have required only one more vote to make it two-thirds in the Assembly. Mr. Marvel said in speaking in terms of reality many of the Washoe County people voted against any tax because of the fair share issue.

Steve Stucker, Laughlin Associates, Inc., spoke in favor of AJR 21. He iterated Laughlin Associates, Inc., was resident agent for some 5,000 corporations in Nevada. Part of Laughlin Associates' business involved the selling of Nevada to businesses in other states. He said many of the businesses did contribute to the tax base in Nevada, many of which did not impact the infrastructure or services provided by Nevada.

Mr. Stucker said many of the businessmen he spoke with were concerned about the stability of the tax structure in Nevada and the appeasement of special interests. He realized some taxes were necessary to provide governmental services, but those which were good for Nevada as a whole ought to be the ones that were considered and not those benefitting the larger special interests.

Mr. Stucker felt the passage of AJR 21 would ensure that a tax was not only necessary, but also would benefit what was perceived to be the vast majority of Nevadans if a two-thirds majority was required. It would also minimize fluctuations in the tax structure.

Mr. Stucker expressed the concern of the businesses was the stability to the tax picture in Nevada. It would allow the businesses to make a little more informed judgments as to whether to move to Nevada as opposed to somewhere else. It had been mentioned the general perception among citizens, as well as those businesses, bureaucracy did not live within its means and the easiest thing to do was to increase taxes rather than to curb spending. He thought AJR 21 would give that message. Laughlin Associates urged the committee's support of AJR 21.

In response to a question from Mr. Spitler, Mr. Stucker said it was not just perception that drew the businesses to Nevada, but whether the tax base was stable without constant fluctuations. Mr. Stucker iterated for Mr. Spitler that Laughlin had a board of directors and was incorporated. Mr. Stucker did not know if Laughlin required a two-thirds vote on authorizing expenditures. Mr. Stucker advised Mr. Spitler when Laughlin's board voted it was spending Laughlin's own money. Mr. Spitler countered stating when he voted he did not believe he was spending someone else's money, but indeed his own as well. Mrs. Williams clarified all of the legislators were taxpayers as well and were subject to the same unhappy circumstances as everyone else.

Lewis Laughlin testified on behalf of the Nevada Association of Independent Businesses (NAIB) in support of AJR 21. NAIB was 765 small independent businesses employing in excess of 10,000

employees in Nevada. Those businesses and the people that worked for the businesses overwhelmingly supported the proposition that taking money out of their pockets through increased taxes or new taxes should not be easy and only done when it was absolutely clearly and convincingly necessary for the good of all of the people of Nevada and not just some particular powerful special interest or bureaucracy.

Mr. Laughlin conveyed the perception existed on the part of independent business people and on the part of the taxpayers at large that sometimes their money was not taken seriously enough by the government. By passing AJR 21, whether or not it was a perceived problem or the real problem, government would be responding to the needs and the desires of the people to take their money seriously. NAIB supported the proposition there should be some form of tax stability. There had been many changes in Nevada's tax policy. Nevada had not had a tax policy and hopefully passing AJR 21 before new taxes were implemented might force the issue of implementing something stable for tax policy.

Mr. Laughlin said if AJR 21 was passed the prospect of taking more money out of Nevadans' pockets would be less easy and less tempting to those who would benefit by doing so. He stated Nevada would actually need "need" for the money as opposed to "greed" that was contained in certain budgets. Mrs. Williams interjected since there were so many members of the money committee that served on the Taxation Committee, she asked Mr. Laughlin to provide a list of the budgets that contained "greed" and not "need." Mr. Laughlin said he would be happy to send a list as well as suggestions on how to save money in the state budget process. Mr. Laughlin suggested common sense indicated there was some waste in government.

Mr. Laughlin iterated in a ten year period from 1980 to 1990 tax revenues in Nevada increased by 190 percent while revenue increased by only 50.1 percent. Tax revenue exceeded Nevada's growth by 397 percent. Mr. Laughlin urged the committee's support for AJR 21.

Mr. Zuend responded to Vice Chairman Williams stating a study was performed for the Nevada Resort Association by Grant Thornton that cited something to the effect (with regard to sales and property taxes only) each new resident generated approximately $6,000 in new services, but initially only paid $900 or $1,000 in taxes. Mr. Laughlin said it was important to note that the study did not include many fees paid that went into the general revenue. Vice Chairman Williams stated if the

new residents generated the revenue commensurate with moving in, Nevada would not have to be passing bond issues.

Mr. Laughlin informed committee members that a two-thirds vote was not necessary for expenditures of funds within Laughlin Associates. Mr. Laughlin said within the framework of Laughlin Associates the Board of Directors set the general policy and framework for the officers. Laughlin focused on bottom-line results. If the bottom-line results came in, the money would be spent, but if the bottom-line results did not come in, then the money would not be spent.

Don Merritt, a Nevada citizen, testified in support of AJR 21. Mr. Merritt said the committee had a wonderful opportunity to demonstrate to the people of Nevada the committee's concern for money. He iterated knowing two-thirds majority was required in both houses to increase taxes, true need would be addressed. Mr. Merritt indicated he would not oppose a tax increase if it was absolutely necessary and would be willing to pay his share. He stated there were times when temporary taxes were put in place and he believed the temporary taxes were still in place and yet there were current budgetary problems. Mr. Merritt urged the committee to vote in favor of AJR 21.

Jim Fontano, a Carson City resident, voiced concern with regard to taxation and the perception of the citizens with the government. Mr. Fontano testified in support of AJR 21. Mr. Fontano believed passing AJR 21 would assist with the perception of the government the citizens had. He believed the passing of AJR 21 would show some of the citizens the government was concerned.

Mr. Fontano echoed some of the testimony previously heard and added most citizens would agree to go along with a tax increase if there was a real need. Mr. Fontano offered his support for AJR 21.

Carole Vilardo, Nevada Taxpayers Association (NTA), testified in support of AJR 21. She echoed most of the testimony already presented to the committee. The NTA supported the bill because since 1988 there had been the need to accomplish structural fiscal reform, both tax-side and budget-side and AJR 21 was just one element in creating tax structural fiscal reform.

Bonnie James, representing the Las Vegas Chamber of Commerce, voiced the Chamber's support for AJR 21. She said most of the citizens did not realize most of the taxes passed out of committee had in fact passed with a two-thirds majority vote.

Ned Air, a Nevada citizen, strongly supported AJR 21. Mr. Air said he would like to use AJR 21 as a tool to entice businesses.

Ms. Air addressed Mrs. Williams comments with regard to waste and agreed there were many problems that needed to be met and he sympathized; however, when he drove down a street and saw three guys sitting around a hole talking while one guy was in the hole digging, he perceived that as waste. Mr. Air relayed a story that he believed demonstrated waste. Mr. Air encouraged the committee to do what was needed to gain a better perception from the public. Mr. Neighbors said it was Mr. Air's perception when he drove pass a manhole the employees were wasting time, but OSHA requirements might state there had to be a person standing above the manhole. He pointed out it could also be perception on the part of the citizen.

Vice Chairman Williams closed the hearing on AJR 21.

There being no further business to come before committee, the meeting was adjourned at 3:30 p.m.

RESPECTFULLY SUBMITTED:

DIANNE LAIRD
Committee Secretary

A.J.R. 21
BILL EXPLANATION

HEARING DATE: May 4, 1993

SUMMARY--Proposes to amend Nevada constitution to require two-thirds majority of each house of legislature to increase certain existing taxes or impose certain new taxes.

Proposes to amend section 18 of article 4 of the Nevada constitution to require a two-thirds majority of each house of the legislature to impose or increase any of the following taxes:

1. Property taxes.
2. Sales and use taxes.
3. Business taxes based upon receipts, income, assets, capital stock or the number of employees.
4. Net proceeds of minerals taxes.
5. Excise taxes on liquor.
6. Excise taxes on cigarettes.

Specifically excludes fees that are used to directly regulate an activity and not to raise revenue from the requirement.

AJR21BE:TAZ/tc
ASSY TAX BE

EXHIBIT D

740

	1991 ASSEMBLY					1991 SENATE			
BILL NO.	YES	NO	A	%		YES	NO	A	%
AB 303 BAT	27	13	2	64.3		13	8	0	61.9
AB 677 BAT	28	14	0	66.7		16	5	0	76 2
AB 685 OPEN-SPACE	34	7	0	81.0		21	0	0	100.0
SB 601 POLICE PROTECT.	42	0	0	100.0		21	0	0	100.0
SB 112 TRANSP	41	0	1	97.6		21	0	0	100.0

	1989 ASSEMBLY					1989 SENATE			
BILL NO.	YES	NO	A	%		YES	NO	A	%
AB 940 GENERA-TION	42	0	0	100.0		21	0	0	100.0
AB 704 INSUR-ANCE	25	17	0	59.5		12	8	0	57 1

	1987 ASSEMBLY					1987 SENATE			
BILL NO.	YES	NO	A	%		YES	NO	A	%
AB 85 BEEF	41	0	1	97.6		21	0	0	100.0

	1985 ASSEMBLY					1985 SENATE			
BILL NO.	YES	NO	A	%		YES	NO	A	%
SB 382	41	0	1	97.6		11	10	0	52.4
SB 203									
AB 555	40	0	2	95.2		20	0	0	95 2
AB 18	41	1	0	97 6		21	0	0	100.0
AB 556	40	0	2	95.2		20	0	0	95.2
AB 397	39	2	0	92.9		19	0	0	90.5
AB 325	41	0	1	97.6		21	0	0	100 0
AB 688	39	1	2	92.9		21	0	0	100.0
AB 602	41	0	0	97.6		20	0	0	95 2
AB 444 LVSTOCK & SHEEP	42	0	0	100.0		20	0	0	95.2

	1983 ASSEMBLY					1983 SENATE			
BILL NO.	YES	NO	A	%		YES	NO	A	%
SB 445	37	5	0	88.1		19	0	1	90.5
AB 191	40	2	0	95.2		20	0	1	95.2
AB 371	40	2	0	95.2		21	0	0	100.0
SB 97	39	3	0	92.9		19	0	2	90.5
AB 496 RESIDEN. CONSTRC.	42	0	0	100.0		21	0	0	100.0
SB 170 ROOM	39	2	1	92.9		21	0	0	100.0
AB 256 ROOM	42	0	0	100.0		20	0	1	95.2

EXHIBIT E

MINUTES OF MEETING
ASSEMBLY COMMITTEE ON TAXATION

Sixty-seventh Session
May 20, 1993

The Assembly Committee on Taxation was called to order by Chairman Robert E. Price at 1:30 p.m., Thursday, May 20, 1993, in Room 332 of the Legislative Building, Carson City, Nevada. Exhibit A is the Meeting Agenda, Exhibit B is the Attendance Roster.

COMMITTEE MEMBERS PRESENT:

Mr. Robert E. Price, Chairman
Mr. Rick C. Bennett
Mr. Peter G. Ernaut
Mr. Ken L. Haller
Mrs. Joan A. Lambert
Mr. John W. Marvel
Mr. Roy Neighbors
Mr. John B. Regan
Mr. Michael A. Schneider
Mr. Larry L. Spitler

COMMITTEE MEMBERS ABSENT:

Mrs. Myrna T. Williams, Vice Chairman (Excused)

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Mr. Ted Zuend, Deputy Fiscal Analyst, Legislative Counsel Bureau

OTHERS PRESENT:

None

Following roll call, Chairman Price opened the hearing on AB 567.

ASSEMBLY BILL 567 - Provides manner of assessing value of certain possessory interests for imposition of property taxes. (BDR 32-779)

the committee would not discuss the casino entertainment tax today and would wait for the report from Mr. Elges. Some discussion followed, but Chairman Price reiterated a report in full would be given upon the receipt of information from Mr. Elges.

Chairman Price asked for committee action on AJR 21.

ASSEMBLY JOINT RESOLUTION 21 - Proposes to amend Nevada constitution to require two-thirds majority of each house of legislature to increase certain existing taxes or impose certain new taxes. (BDR C-166)

ASSEMBLYMAN MARVEL MOVED DO PASS AJR 21.

ASSEMBLYMAN ERNAUT SECONDED THE MOTION.

THE MOTION CARRIED.

* * * * * * * * * *

Chairman Price asked for committee action on AB 331.

ASSEMBLY BILL 331 - Requires annual prepayment of tax on insurance premiums. (BDR 57-1714)

ASSEMBLYMAN ERNAUT MOVED TO INDEFINITELY POSTPONE AB 331.

ASSEMBLYMAN NEIGHBORS SECONDED THE MOTION.

Chairman Price explained AB 331 was part of the Administration's budget. The committee discussed impact and duration of AB 331.

Mr. Spitler was concerned with AB 331 because the proponents of the bill could not explain what would happen in the next biennium. AB 331 created another "fiscal responsibility that was a vacuum."

Mr. Neighbors added AB 331 would be passed along to the consumer.

Mr. Bennett recalled the hearing on AB 331 and commented he did not think a case was made at the hearing where there was any precedence for AB 331. He agreed with Mr. Spitler about the problem remaining in the next budget span. It was just bad policy. Mr. Bennett would not support AB 331.

EXHIBIT B

NEVADA

BALLOT QUESTIONS

1994

A compilation of ballot questions which will appear on the November 8, 1994, Nevada general election ballot

Issued by
CHERYL A. LAU
Secretary of State

LEGISLATIVE ENACTMENTS

The joint resolutions on the following pages are measures passed by the Nevada Legislature which placed Questions 1, 2,3,5 and 6 on the 1994 general election ballot. Material within the text in italics would if approved by the voters, be new language added to the constitution. Material in brackets would, if approved by the voters, be deleted. The term "66th session" refers to the 1991 Nevada Legislature, where the questions originated. Each of the ballot questions were approved by the 1991 and 1993 Legislature. If the measures are approved by the people, the amendments become part of the Nevada Constitution. The condensation, explanation, arguments and fiscal note of the measure have been prepared by the Legislative members or legislative staff.

Questions 4 and 7 are measures passed by the 1993 Nevada Legislature to amend the Sales and Use Tax Act of 1955. If approved by the voters it will amend the Sales and Use Tax Act.

INITIATIVE MEASURES

The Initiative measures, questions 8, 9, 10 and 11, are to amend the Nevada Constitution. If approved by the voters at the 1994 General Election, the Secretary of State shall resubmit the proposals to the voters at the 1996 General Election. If approved in 1996, the amendments would become part of the Nevada Constitution. The condensation, explanation, arguments and fiscal note of the measure have been prepared by the Secretary of State, upon consultation with the Attorney General.

NOTES TO VOTERS

NOTE NO. 1-

Ballot Questions 4 and 7 relate to Nevada's sales tax. It is important that you understand this tax and the process by which it may be changed. As noted below, only a portion of this tax may be changed by you, the voter.

Nevada's sales tax consists of three separate taxes levied at different rates on the sale and use of personal property in the state. The current total rate is 6.50 percent.

The tax includes:

Tax	Rate
1. The Sales and Use Tax	2 Percent
2. The Local School Support Tax	2.25 Percent
3. The City-County Relief Tax	2.25 Percent
Total	6.50 Percent

The Sales and Use Tax may be amended or repealed only with the approval of the voters. The Local School Support Tax and the City-County Relief Tax may be amended or repealed by the legislature without the approval of the voters. For the questions on this ballot, however, the legislature has provided that the Local School Support Tax and the City-County Relief Tax will not be amended unless you approve the corresponding amendment to the Sales and Use Tax.

Depending on its population, each county is also authorized to impose an additional tax at a rate of up to 1 percent, subject to the approval of the voters or governing body in that county. These Additional taxes have, in some counties increased the rate of the sales tax above the rate imposed statewide.

NOTE NO. 2-

Each ballot question includes a FISCAL NOTE that explains only the adverse effect on state and local governments (increased expenses or decreased revenues).

QUESTION NO. 11

An Initiative Relating to Tax Restraint

CONDENSATION (ballot question)

Shall the Nevada Constitution be amended to establish a requirement that at least a two-thirds vote of both houses of the legislature be necessary to pass a measure which generates or increases a tax, fee, assessment, rate or any other form of public revenue?

Yes..... ☑ 283,889

No..... ☐ 79,520

EXPLANATION

A two-thirds majority vote of both houses of the legislature would be required for the passage of any bill or joint resolution which would increase public revenue in any form. The legislature could, by a simple majority vote, refer any such proposal to a vote of the people at the next general election.

ARGUMENTS FOR PASSAGE

Proponents argue that one way to control the raising of taxes is to require more votes in the legislature before a measure increasing taxes could be passed; therefore, a smaller number of legislators could prevent the raising of taxes. This could limit increases in taxes, fees, assessments and assessment rates. A broad consensus of support from the entire state would be needed to pass these increases. It may be more difficult for special interest groups to get increases they favor. It may require state government to prioritize its spending and economize rather than turning to new sources of revenue. The legislature, by simple majority vote, could ask for the people to vote on any increase.

ARGUMENTS AGAINST PASSAGE

Opponents argue that a special interest group would only need a small minority of legislators to defeat any proposed revenue measure. Also a minority of legislators could band together to defeat a tax increase in return for a favorable vote on other legislation. Legislators act responsibly regarding increases in taxes since they are accountable to the public to get re-elected. If this amendment is approved, the state could impose unfunded mandates upon local governments. As a tourism based economy with a tremendous population growth, Nevada must remain flexible to change the tax base, if needed. Nevada should continue to operate by majority rule as the Nevada Constitution now provides.

FISCAL NOTE

Fiscal Impact-No. The proposal to amend the Nevada Constitution to require two-thirds vote to pass a bill or joint resolution which creates, generates or increases any public revenue in any form. The proposal would have no adverse fiscal impact to the State.

FULL TEXT OF THE MEASURE

Initiative relating to Tax Restraint

The people of the State of Nevada do enact as follows:

That section 18 or article 4 of the constitution of the State of Nevada be amended to read as follows:

[Sec:] *Sec. 18.* 1. Every bill, except a bill placed on a consent calendar adopted as provided in [this section, shall] *subsection 4, must* be read by sections on three several days, in each House, unless in case of emergency, two thirds of the House where such bill [may be] *is* pending shall deem it expedient to dispense with this rule. [:but the] *The* reading of a bill by sections, on its final passage, shall in no case be dispensed with, and the vote on its final passage, shall in no case be dispensed with, and the vote on final passage of every bill or joint resolution shall be taken by yeas and nays to be entered on the journals of each House. [: and] *Except as otherwise provided in subsection 2,* a majority of all the members elected in each house [.shall be] is necessary to pass every bill or joint resolution, and all bills or joint resolutions to passed, shall be signed by the presiding officers of the respective Houses and by the Secretary of State and clerk of the Assembly.

2. Except as otherwise provided in subsection 3, an affirmative vote of not fewer than two-thirds of the members elected to each house is necessary to pass a bill or joint resolution which creates, generates, or increases any public revenue in any form, including but not limited to taxes, fees, assessments and rates, or changes in the computation bases for taxes, fees, assessments and rates.

3. A majority of all of the members elected to each house may refer any measure which creates, generates, or increases any revenue in any form to the people of the State at the next general election, and shall become effective and enforced only if it has been approved by a majority of the votes cast on the measure at such election.

4. Each House may provide by rule for the creation of a consent calendar and establish the procedure for the passage of uncontested bills.

State of Nevada

Ballot Questions

1996

A compilation of ballot questions which will appear on the November 5, 1996, General Election Ballot

Issued by

Dean Heller

Secretary of State

NOTES TO VOTERS

Note No. 1

Ballot Questions 13, 14, and 15 relate to Nevada's sales tax. It is important that you understand this tax and the process by which it may be changed. As noted below, only a portion of this tax may be changed by you, the voter, pursuant to the attached ballot questions.

Nevada's statewide sales tax consists of three separate parts levied at different rates on the sale and use of tangible personal property in the state. The current statewide combined rate is 6.50 percent. In addition to these three parts, each county also may impose additional taxes up to a combined rate of 1 percent, subject to the approval of the voters or governing body in that county. These additional taxes have, in seven counties, increased the rate of the sales tax above the 6.5 percent rate imposed statewide.

The tax includes:

TAX	RATE
1. The state Sales and Use Tax	2.00 Percent
2. The Local School Support Tax (LSST)	2.25 Percent
3. The City-County Relief Tax (CCRT)	2.25 Percent
4. Optional local taxes - not more than	1.00 Percent

The state Sales and Use Tax may be amended or repealed only with the approval of the voters. The Local School Support Tax (LSST) and the City-County Relief Tax (CCRT) may be amended or repealed by the Legislature without the approval of the voters. For Questions 13 and 14 on this ballot, however, the Legislature has provided that the LSST and the CCRT will not be amended unless you approve the ballot question. Approval of Question 13 or Question 14 will also add an exemption to the optional local taxes. Question 15 addresses the state Sales and Use Tax only; an exemption from the LSST, CCRT, and optional taxes was previously approved in *Senate Bill 311 of the 1995 Legislative Session.*

Note No. 2

Each ballot question includes a **Fiscal Note** that explains only the adverse effect on state and local governments (increased expenses or decreased revenues). Ballot Questions 6 and 12 pertain to the state issuing bonds (borrowing money) that are repaid by state-imposed property tax revenues. It is estimated that current property tax revenues are sufficient to repay the bonds proposed in Questions 6 and 12.

Approved by the Legislative Commission
March 27, 1996

QUESTION NO. 11

An Initiative Relating to Tax Restraint

CONDENSATION (ballot question)

Shall the Nevada Constitution be amended to establish a requirement that at least a two-thirds vote of both houses of the legislature be necessary to pass a measure which generates or increases a tax, fee, assessment, rate or any other form of public revenue?

Yes 301,382. ☒

No 125,969. ☐

EXPLANATION

A two-thirds majority vote of both houses of the legislature would be required for the passage of any bill or joint resolution which would increase public revenue in any form. The legislature could, by a simple majority vote, refer any such proposal to a vote of the people at the next general election.

ARGUMENTS FOR PASSAGE

Proponents argue that one way to control the raising of taxes is to require more votes in the legislature before a measure increasing taxes could be passed; therefore, a smaller number of legislators could prevent the raising of taxes. This could limit increases in taxes, fees, assessments and assessment rates. A broad consensus of support from the entire state would be needed to pass these increases. It may be more difficult for special interest groups to get increases they favor. It may require state government to prioritize its spending and economize rather than turning to new sources of revenue. The legislature, by simple majority vote, could ask for the people to vote on any increase.

ARGUMENTS AGAINST PASSAGE

Opponents argue that a special interest group would only need a small minority of legislators to defeat any proposed revenue measure. Also a minority of legislators could band together to defeat a tax increase in return for a favorable vote on other legislation. Legislators act responsibly regarding increases in taxes since they are accountable to the public to get re-elected. If this amendment is approved, the state could impose unfunded mandates upon local governments. As a tourism based economy with a tremendous population growth, Nevada must remain flexible to change the tax base, if needed. Nevada should continue to operate by majority rule as the Nevada Constitution now provides.

FISCAL NOTE

Fiscal Impact-No. The proposal to amend the Nevada Constitution to require two-thirds vote to pass a bill or joint resolution which creates, generates or increases any public revenue in any form. The proposal would have no adverse fiscal impact to the State.

FULL TEXT OF THE MEASURE

Initiative relating to Tax Restraint

The people ot the State of Nevada do enact as follows:

That section 18 or article 4 of the constitution of the State of Nevada be amended to read as follows:

[Sec:] *Sec. 18.* 1. Every bill, except a bill placed on a consent calendar adopted as provided in [this section, shall] *subsection 4, must* be read by sections on three several days, in each House, unless in case of emergency, two thirds of the House where such bill [may be] *is* pending shall deem it expedient to dispense with this rule. [:but the] *The* reading of a bill by sections, on its final passage, shall in no case be dispensed with, and the vote on its final passage, shall in no case be dispensed with, and the vote on final passage of every bill or joint resolution shall be taken by yeas and nays to be entered on the journals of each House. [: and] *Except as otherwise provided in subsection 2,* a majority of all the members elected in each house [.shall be] is necessary to pass every bill or joint resolution, and all bills or joint resolutions to passed, shall be signed by the presiding officers of the respective Houses and by the Secretary of State and clerk of the Assembly.

2. Except as otherwise provided in subsection 3, an affirmative vote of not fewer than two-thirds of the members elected to each house is necessary to pass a bill or joint resolution which creates, generates, or increases any public revenue in any form, including but not limited to taxes, fees, assessments and rates, or changes in the computation bases for taxes, fees, assessments and rates.

3. A majority of all of the members elected to each house may refer any measure which creates, generates, or increases any revenue in any form to the people of the State at the next general election, and shall become effective and enforced only if it has been approved by a majority of the votes cast on the measure at such election.

4. Each House may provide by rule for the creation of a consent calendar and establish the procedure for the passage of uncontested bills.

EXHIBIT C

STATE OF NEVADA
LEGISLATIVE COUNSEL BUREAU
LEGISLATIVE BUILDING
401 S. CARSON STREET
CARSON CITY, NEVADA 89701-4747
Fax No.: (775) 684-6600

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JASON FRIERSON, *Assemblyman, Chairman*
Rick Combs, *Director, Secretary*

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MAGGIE CARLTON, *Assemblywoman, Chair*
Cindy Jones *Fiscal Analyst*
Mark Krmpotic, *Fiscal Analyst*

BRENDA J. ERDOES, *Legislative Counsel* (775) 684-6830
ROCKY COOPER, *Legislative Auditor* (775) 684-6815
MICHAEL J. STEWART, *Research Director* (775) 684-6825

May 8, 2019

Legislative Leadership
Legislative Building
401 S. Carson Street
Carson City, NV 89701

Dear Legislative Leadership:

You have asked this office several legal questions relating to the two-thirds majority requirement in Article 4, Section 18(2) of the Nevada Constitution, which provides in relevant part that:

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

Nev. Const. art. 4, § 18(2).[1]

First, you have asked whether the two-thirds majority requirement applies to a bill which extends until a later date—or 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. Second, you have asked whether the two-thirds majority requirement applies to a bill which reduces or eliminates available tax exemptions or tax credits applicable to existing state taxes.

[1] Article 4, Section 18(2) uses the inclusive phrase "taxes, fees, assessments and rates." However, for ease of discussion in this letter, we will use the term "state taxes" to serve in the place of the inclusive phrase "taxes, fees, assessments and rates."

In response to your questions, we first provide pertinent background information regarding Nevada's constitutional requirements for the final passage of bills by the Legislature. Following that, we provide a detailed and comprehensive legal discussion of the relevant authorities that support our legal opinions regarding the application of Nevada's two-thirds majority requirement to your specific legal questions. Finally, we note that the legal opinions expressed in this letter are limited solely to the application of Nevada's two-thirds majority requirement to the specific types of bills directly discussed in this letter. We do not express any other legal opinions in this letter concerning the application of Nevada's two-thirds majority requirement to any other types of bills that are not directly discussed in this letter.

BACKGROUND

1. Purpose and intent of Nevada's original constitutional majority requirement for the final passage of bills.

When the Nevada Constitution was framed in 1864, the Framers debated whether the Legislature should be authorized to pass bills by a simple majority of a quorum under the traditional parliamentary rule or whether the Legislature should be required to meet a greater threshold for the final passage of bills. See Andrew J. Marsh, Official Report of the Debates and Proceedings of the Nevada State Constitutional Convention of 1864, at 143-45 (1866).

Under the traditional parliamentary rule, if a quorum of members is present in a legislative house, a simple majority of the quorum is sufficient for the final passage of bills by the house, unless a constitutional provision establishes a different requirement. See Mason's Manual of Legislative Procedure § 510 (2010). This traditional parliamentary rule is followed by each House of Congress, which may pass bills by a simple majority of a quorum. United States v. Ballin, 144 U.S. 1, 6 (1892) ("[A]t the time this bill passed the house there was present a majority, a quorum, and the house was authorized to transact any and all business. It was in a condition to act on the bill if it desired."); 1 Thomas M. Cooley, Constitutional Limitations 291 (8th ed. 1927).

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

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

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

2. Purpose and intent of Nevada's two-thirds majority requirement for the final passage of bills which create, generate or increase any public revenue in any form.

At the general elections in 1994 and 1996, Nevada's voters approved constitutional amendments to Article 4, Section 18 that were proposed by a ballot initiative pursuant to Article 19, Section 2 of the Nevada Constitution. The amendments provide that:

> Except as otherwise provided in subsection 3, an affirmative vote of not fewer than *two-thirds of the members elected to each House* is necessary to pass a bill or joint resolution which *creates, generates, or increases any public revenue in any form*, including but not limited to taxes, fees, assessments and rates, or changes in the computation bases for taxes, fees, assessments and rates.

Nev. Const. art. 4, § 18(2) (emphasis added). The amendments also include an exception in subsection 3, which provides that "*[a] majority of all of the members elected to each House* may refer any measure which creates, generates, or increases any revenue in any form to the people of the State at the next general election." Nev. Const. art. 4, § 18(3) (emphasis added).

Under the two-thirds majority requirement, if a bill "creates, generates, or increases any public revenue in any form," the Senate may pass the bill only with an affirmative vote of at

least 14 of its 21 members, and the Assembly may pass the bill only with an affirmative vote of at least 28 of its 42 members. However, if the two-thirds majority requirement does not apply to the bill, the Senate and Assembly may pass the bill by a constitutional majority in each House.

When the ballot initiative adding the two-thirds majority requirement to the Nevada Constitution was presented to the voters in 1994 and 1996, one of the primary sponsors of the initiative was former Assemblyman Jim Gibbons. See Guinn v. Legislature (Guinn II), 119 Nev. 460, 471-72 (2003) (discussing the two-thirds majority requirement and describing Assemblyman Gibbons as "the initiative's prime sponsor").[2] During the 1993 Legislative Session, Assemblyman Gibbons sponsored Assembly Joint Resolution No. 21 (A.J.R. 21), which proposed adding a two-thirds majority requirement to Article 4, Section 18(2), but Assemblyman Gibbons was not successful in obtaining its passage. See Legislative History of A.J.R. 21, 67th Leg. (Nev. LCB Research Library 1993).[3] Nevertheless, because Assemblyman Gibbons' legislative testimony on A.J.R. 21 in 1993 provides some contemporaneous extrinsic evidence of the purpose and intent of the two-thirds majority requirement, the Nevada Supreme Court has reviewed and considered that testimony when discussing the two-thirds majority requirement that was ultimately approved by the voters in 1994 and 1996. Guinn II, 119 Nev. at 472.

In his legislative testimony on A.J.R. 21 in 1993, Assemblyman Gibbons stated that the two-thirds majority requirement was modeled on similar constitutional provisions in other states, including Arizona, Arkansas, California, Colorado, Delaware, Florida, Louisiana, Mississippi, Oklahoma and South Dakota. Legislative History of A.J.R. 21, supra (Hearing on A.J.R. 21 Before Assembly Comm. on Taxation, 67th Leg., at 11-13 (Nev. May 4, 1993)). Assemblyman Gibbons testified that the two-thirds majority requirement would "require a two-thirds majority vote in each house of the legislature to increase certain existing taxes or to impose certain new taxes." Id. However, Assemblyman Gibbons also stated that the two-thirds majority requirement "would not impair any existing revenues." Id. Instead, Assemblyman Gibbons indicated that the two-thirds majority requirement "would bring greater stability to Nevada's tax systems, while still allowing the flexibility to meet real fiscal

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[2] In Guinn v. Legislature, the Nevada Supreme Court issued two reported opinions—Guinn I and Guinn II—that discussed the two-thirds majority requirement. Guinn v. Legislature (Guinn I), 119 Nev. 277 (2003), *opinion clarified on denial of reh'g*, Guinn v. Legislature (Guinn II), 119 Nev. 460 (2003). In 2006, the court overruled certain portions of its Guinn I opinion. Nevadans for Nev. v. Beers, 122 Nev. 930, 944 (2006). However, even though the court overruled certain portions of its Guinn I opinion, the court has not overruled any portion of its Guinn II opinion, which remains good law.

[3] Available at: https://www.leg.state.nv.us/Division/Research/Library/LegHistory/LHs/1993/AJR21,1993.pdf.

needs" because "Mr. Gibbons thought it would not be difficult to obtain a two-thirds majority if the need for *new revenues* was clear and convincing." Id. (emphasis added). In particular, Assemblyman Gibbons testified as follows:

> James A. Gibbons, Assembly District 25, spoke as the prime sponsor of A.J.R. 21 which proposed to amend the Nevada Constitution to *require a two-thirds majority vote in each house of the legislature to increase certain existing taxes or to impose certain new taxes.*
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> * * *
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> Mr. Gibbons stressed A.J.R. 21 amended the Nevada Constitution to require bills providing for a general tax increase be passed by a two-thirds majority of both houses of the legislature. The resolution would apply to property taxes, sales and use taxes, business taxes based on income, receipts, assets, capital stock or number of employees, taxes on net proceeds of mines and taxes on liquor and cigarettes.
>
> *Mr. Gibbons explained A.J.R. 21 was modeled on constitutional provisions which were in effect in a number of other states.* Some of the provisions were adopted recently in response to a growing concern among voters about increasing tax burdens and some of the other provisions dated back to earlier times.
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> * * *
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> Mr. Gibbons believed a provision requiring an extraordinary majority was a device used to hedge or protect certain laws which he believed should not be lightly changed. A.J.R. 21 would ensure greater stability and preserve certain statutes from the constant tinkering of transient majorities.
>
> Mr. Gibbons addressed some of the anticipated objections. Some will claim A.J.R. 21 would deprive the state of revenues necessary to provide essential state services. Mr. Gibbons conveyed that was not the case. A.J.R. 21 *would not impair any existing revenues.* It was not a tax rollback and did not impose rigid caps on taxes or spending. *Mr. Gibbons thought it would not be difficult to obtain a two-thirds majority if the need for new revenues was clear and convincing.* A.J.R. 21 would not hamstring state government or prevent state government from responding to legitimate fiscal emergencies.
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> * * *
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> Mr. Gibbons concluded by saying the measure did not propose government do less, but actually A.J.R. 21 could permit government to do more. A.J.R. 21 was a

> simple moderate measure that *would bring greater stability to Nevada's tax systems, while still allowing the flexibility to meet real fiscal needs.* Mr. Gibbons urged the committee's approval of A.J.R. 21.

Legislative History of A.J.R. 21, supra (Hearing on A.J.R. 21 Before Assembly Comm. on Taxation, 67th Leg., at 11-13 (Nev. May 4, 1993) (emphasis added)).

In addition to Assemblyman Gibbons' legislative testimony on A.J.R. 21 in 1993, the ballot materials presented to the voters in 1994 and 1996 also provide some contemporaneous extrinsic evidence of the purpose and intent of the two-thirds majority requirement. Guinn, 119 Nev. at 471-72. The ballot materials informed the voters that the two-thirds majority requirement would make it more difficult for the Legislature to enact bills "raising" or "increasing" taxes and that "[i]t may require state government to prioritize its spending and economize rather than turning to *new sources* of revenue." Nev. Ballot Questions 1994, Question No. 11, at 1 (Nev. Sec'y of State 1994) (emphasis added). In particular, the ballot materials stated as follows:

ARGUMENTS FOR PASSAGE

> Proponents argue that one way to control the raising of taxes is to require more votes in the legislature before a measure increasing taxes could be passed; therefore, a smaller number of legislators could prevent the raising of taxes. This could limit increases in taxes, fees, assessments and assessment rates. A broad consensus of support from the entire state would be needed to pass these increases. It may be more difficult for special interest groups to get increases they favor. *It may require state government to prioritize its spending and economize rather than turning to new sources of revenue.* The legislature, by simple majority vote, could ask for the people to vote on any increase.

ARGUMENTS AGAINST PASSAGE

> Opponents argue that a special interest group would only need a small minority of legislators to defeat any proposed revenue measure. Also a minority of legislators could band together to defeat a tax increase in return for a favorable vote on other legislation. Legislators act responsibly regarding increases in taxes since they are accountable to the public to get re-elected. If this amendment is approved, the state could impose unfunded mandates upon local governments. As a tourism based economy with a tremendous population growth, Nevada must remain flexible to change the tax base, if needed. Nevada should continue to operate by majority rule as the Nevada Constitution now provides.

Nev. Ballot Questions 1994, Question No. 11, at 1 (Nev. Sec'y of State 1994) (emphasis added).

Finally, based on Assemblyman Gibbons' legislative testimony on A.J.R. 21 in 1993 and the ballot materials presented to the voters in 1994 and 1996, the Nevada Supreme Court has described the purpose and intent of the two-thirds majority requirement as follows:

> The supermajority requirement was intended to make it more difficult for the Legislature to pass *new* taxes, hopefully encouraging efficiency and effectiveness in government. Its proponents argued that the tax restriction might also encourage state government to prioritize its spending and economize rather than explore *new* sources of revenue.

Guinn II, 119 Nev. at 471 (emphasis added).

With this background information in mind, we turn next to discussing your specific legal questions.

DISCUSSION

You have asked several legal questions relating to the two-thirds majority requirement in Article 4, Section 18(2). First, you have asked whether the two-thirds majority requirement applies to a bill which extends until a later date—or 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. Second, you have asked whether the two-thirds majority requirement applies to a bill which reduces or eliminates available tax exemptions or tax credits applicable to existing state taxes.

To date, there are no reported cases from Nevada's appellate courts addressing these legal questions. In the absence of any controlling Nevada case law, we must address these legal questions by: (1) applying several well-established rules of construction followed by Nevada's appellate courts; (2) examining contemporaneous extrinsic evidence of the purpose and intent of the two-thirds majority requirement when it was considered by the Legislature in 1993 and presented to the voters in 1994 and 1996; and (3) considering case law interpreting similar constitutional provisions from other jurisdictions for guidance in this area of the law.

We begin by discussing the rules of construction for constitutional provisions approved by the voters through a ballot initiative. Following that discussion, we answer each of your specific legal questions.

1. Rules of construction for constitutional provisions approved by the voters through a ballot initiative.

The Nevada Supreme Court has long held that the rules of statutory construction also govern the interpretation of constitutional provisions, including provisions approved by the

voters through a ballot initiative. See Lorton v. Jones, 130 Nev. 51, 56-57 (2014) (applying the rules of statutory construction to the constitutional term-limit provisions approved by the voters through a ballot initiative). As stated by the court:

> In construing constitutions and statutes, the first and last duty of courts is to ascertain the intention of the convention and legislature; and in doing this they must be governed by well-settled rules, applicable alike to the construction of constitutions and statutes.

State ex rel. Wright v. Dovey, 19 Nev. 396, 399 (1887). Thus, when applying the rules of construction to constitutional provisions approved by the voters through a ballot initiative, the primary task of the court is to ascertain the intent of the drafters and the voters and to adopt an interpretation that best captures their objective. Nev. Mining Ass'n v. Erdoes, 117 Nev. 531, 538 (2001).

To ascertain the intent of the drafters and the voters, the court will first examine the language of the constitutional provision to determine whether it has a plain and ordinary meaning. Miller v. Burk, 124 Nev. 579, 590 (2008). If the constitutional language is clear on its face and is not susceptible to any ambiguity, uncertainty or doubt, the court will generally give the constitutional language its plain and ordinary meaning, unless doing so would violate the spirit of the provision or would lead to an absurd or unreasonable result. Miller, 124 Nev. at 590-91; Nev. Mining Ass'n, 117 Nev. at 542 & n.29.

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

Furthermore, even when there is some ambiguity, uncertainty or doubt as to the meaning of a constitutional provision, that ambiguity, uncertainty or doubt must be resolved in favor of the Legislature and its general power to enact legislation. When the Nevada Constitution imposes limitations upon the Legislature's power, those limitations "are to be strictly construed, and are not to be given effect as against the general power of the legislature, unless such limitations clearly inhibit the act in question." In re Platz, 60 Nev. 296, 308 (1940) (quoting Baldwin v. State, 3 S.W. 109, 111 (Tex. Ct. App. 1886)). As a result, the language of the Nevada Constitution "must be strictly construed in favor of the

power of the legislature to enact the legislation under it." Id. Therefore, even when a constitutional provision imposes restrictions and limitations upon the Legislature's power, those "[r]estrictions and limitations are not extended to include matters not covered." City of Los Angeles v. Post War Pub. Works Rev. Bd., 156 P.2d 746, 754 (Cal. 1945).

For example, under the South Dakota Constitution, the South Dakota Legislature may pass its general appropriations bill to fund the operating expenses of state government by a majority of all the members elected to each House, but the final passage of any special appropriations bills to authorize funding for other purposes requires "a two-thirds vote of all the members of each branch of the Legislature." S.D. Const. art. III, § 18, art. XII, § 2. In interpreting this two-thirds majority requirement, the South Dakota Supreme Court has determined that the requirement must not be extended by construction or inference to include situations not clearly within its terms. Apa v. Butler, 638 N.W.2d 57, 69-70 (S.D. 2001). As further explained by the court:

> [P]etitioners strongly urged during oral argument that the challenged appropriations from the [special funds] must be special appropriations because it took a two-thirds majority vote of each House of the legislature to create the two special funds in the first instance. Petitioners correctly pointed out that allowing money from the two funds to be reappropriated in the general appropriations bill would allow the legislature to undo by a simple majority vote what it took a two-thirds majority to create. On that basis, petitioners invite this Court to read a two-thirds vote requirement into the Constitution for the amendment or repeal of any special continuing appropriations measure. This we cannot do.
>
> Our Constitution must be construed by its plain meaning: "If the words and language of the provision are unambiguous, 'the language in the constitution must be applied as it reads.'" Cid v. S.D. Dep't of Social Servs., 598 N.W.2d 887, 890 (S.D. 1999). Here, the constitutional two-thirds voting requirement for appropriations measures is only imposed on the *passage* of a special appropriation. See S.D. Const. art. XII, § 2. There is no constitutional requirement for a two-thirds vote on the repeal or amendment of an existing special appropriation, not to mention a continuing special appropriation. Generally:
>
> > [s]pecial provisions in the constitution as to the number of votes required for the passage of acts of a particular nature . . . are not extended by construction or inference to include situations not clearly within their terms. Accordingly, a special provision regulating the number of votes necessary for the passage of bills of a certain character does not apply to the repeal of laws of this character, or to an act which only amends them.

Apa, 638 N.W.2d at 69-70 (quoting 82 C.J.S. Statutes § 39 (1999) (republished as 82 C.J.S. Statutes § 52 (Westlaw 2019)).

Lastly, in matters involving state constitutional law, the Nevada Supreme Court is the final arbiter or interpreter of the meaning of the Nevada Constitution. Nevadans for Nev. v. Beers, 122 Nev. 930, 943 n.20 (2006) ("A well-established tenet of our legal system is that the judiciary is endowed with the duty of constitutional interpretation."); Guinn II, 119 Nev. at 471 (describing the Nevada Supreme Court and its justices "as the ultimate custodians of constitutional meaning."). Nevertheless, even though the final power to decide the meaning of the Nevada Constitution ultimately rests with the judiciary, "[i]n the performance of assigned constitutional duties each branch of the Government must initially interpret the Constitution, and the interpretation of its powers by any branch is due great respect from the others." United States v. Nixon, 418 U.S. 683, 703 (1974).

Accordingly, the Nevada Supreme Court has recognized that a reasonable construction of a constitutional provision by the Legislature should be given great weight. State ex rel. Coffin v. Howell, 26 Nev. 93, 104-05 (1901); State ex rel. Cardwell v. Glenn, 18 Nev. 34, 43-46 (1883). This is particularly true when a constitutional provision concerns the passage of legislation. Id. Thus, when construing a constitutional provision, "although the action of the legislature is not final, its decision upon this point is to be treated by the courts with the consideration which is due to a co-ordinate department of the state government, and in case of a reasonable doubt as to the meaning of the words, the construction given to them by the legislature ought to prevail." Dayton Gold & Silver Mining Co. v. Seawell, 11 Nev. 394, 399-400 (1876).

The weight given to the Legislature's construction of a constitutional provision involving legislative procedure is of particular force when the meaning of the constitutional provision is subject to any uncertainty, ambiguity or doubt. Nev. Mining Ass'n, 117 Nev. at 539-40. Under such circumstances, the Legislature may rely on an opinion of the Legislative Counsel which interprets the constitutional provision, and "the Legislature is entitled to deference in its counseled selection of this interpretation." Id. at 540. For example, when the meaning of the term "midnight Pacific standard time," as formerly used in the constitutional provision limiting legislative sessions to 120 days, was subject to uncertainty, ambiguity and doubt following the 2001 Legislative Session, the Nevada Supreme Court explained that the Legislature's interpretation of the constitutional provision was entitled to deference because "[i]n choosing this interpretation, the Legislature acted on Legislative Counsel's opinion that this is a reasonable construction of the provision. We agree that it is, and the Legislature is entitled to deference in its counseled selection of this interpretation." Id.

Consequently, in determining whether the two-thirds majority requirement applies to a particular bill, the Legislature has the power to interpret Article 4, Section 18(2), in the first instance, as a reasonable and necessary corollary power to the exercise of its expressly granted and exclusive constitutional power to enact laws by the passage of bills. See Nev. Const. art. 4, § 23 (providing that "no law shall be enacted except by bill."); State ex rel. Torreyson v. Grey, 21 Nev. 378, 380-84 (1893) (discussing the power of the Legislature to

interpret constitutional provisions governing legislative procedure). Moreover, because Article 4, Section 18(2) involves the exercise of the Legislature's lawmaking power, any uncertainty, ambiguity or doubt regarding the application of the two-thirds majority requirement must be resolved in favor of the Legislature's lawmaking power and against restrictions on that power. See Platz, 60 Nev. at 308 (stating that the language of the Nevada Constitution "must be strictly construed in favor of the power of the legislature to enact the legislation under it."). As further explained by the Nevada Supreme Court:

> Briefly stated, legislative power is the power of law-making representative bodies to frame and enact laws, and to amend or repeal them. This power is indeed very broad, and, except where limited by Federal or State Constitutional provisions, that power is practically absolute. Unless there are specific constitutional limitations to the contrary, statutes are to be construed in favor of the legislative power.

Galloway v. Truesdell, 83 Nev. 13, 20 (1967).

Finally, when the Legislature exercises its power to interpret Article 4, Section 18(2) in the first instance, the Legislature may resolve any uncertainty, ambiguity or doubt regarding the application of the two-thirds majority requirement by following an opinion of the Legislative Counsel which interprets the constitutional provision, and the judiciary will typically afford the Legislature deference in its counseled selection of that interpretation. With these rules of construction as our guide, we must apply them in the same manner as Nevada's appellate courts to answer each of your specific legal questions.

2. Does the two-thirds majority requirement apply to a bill which extends until a later date—or 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?

Under the rules of construction, we must start by examining the plain language of the two-thirds majority requirement in Article 4, Section 18(2), which provides in relevant part that:

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

Nev. Const. art. 4, § 18(2) (emphasis added).

Based on its plain language, the two-thirds majority requirement applies to a bill which "creates, generates, or increases any public revenue in any form." The two-thirds majority requirement, however, does not provide any definitions to assist the reader in applying the terms "creates, generates, or increases." Therefore, in the absence of any constitutional definitions, we must give those terms their ordinary and commonly understood meanings.

As explained by the Nevada Supreme Court, "[w]hen a word is used in a statute or constitution, it is supposed it is used in its ordinary sense, unless the contrary is indicated." Ex parte Ming, 42 Nev. 472, 492 (1919); Seaborn v. Wingfield, 56 Nev. 260, 267 (1935) (stating that a word or term "appearing in the constitution must be taken in its general or usual sense."). To arrive at the ordinary and commonly understood meaning of the constitutional language, the court will usually rely upon dictionary definitions because those definitions reflect the ordinary meanings that are commonly ascribed to words and terms. See Rogers v. Heller, 117 Nev. 169, 173 & n.8 (2001); Cunningham v. State, 109 Nev. 569, 571 (1993). Therefore, unless it is clear that the drafters of a constitutional provision intended for a term to be given a technical meaning, the court has emphasized that "[t]he Constitution was written to be understood by the voters; its words and phrases were used in their normal and ordinary as distinguished from technical meaning." Strickland v. Waymire, 126 Nev. 230, 234 (2010) (quoting Dist. of Columbia v. Heller, 554 U.S. 570, 576 (2008)).

Accordingly, in interpreting the two-thirds majority requirement, we must review the normal and ordinary meanings commonly ascribed to the terms "creates, generates, or increases" in Article 4, Section 18(2). The common dictionary meaning of the term "create" is to "bring into existence" or "produce." Webster's New Collegiate Dictionary 304 (9th ed. 1991). The common dictionary meaning of the term "generate" is also to "bring into existence" or "produce." Id. at 510. Finally, the common dictionary meaning of the term "increase" is to "make greater" or "enlarge." Id. at 611.

Based on the normal and ordinary meanings of the terms "creates, generates, or increases" as used in Article 4, Section 18(2), we believe that the two-thirds majority requirement applies to a bill which directly brings into existence, produces or enlarges public revenue in the first instance by imposing new or increased state taxes. However, when a bill does not impose new or increased state taxes but simply maintains the existing "computation bases" currently in effect for *existing* state taxes, we do not believe that the two-thirds majority requirement applies to the bill.

Given the plain language in Article 4, Section 18(2), the two-thirds majority requirement applies to a bill which makes "changes in the *computation bases* for taxes, fees, assessments and rates." Nev. Const. art. 4, § 18(2) (emphasis added). Based on its normal and ordinary meaning, a "computation base" is a formula that consists of "a number that is multiplied by a rate or [from] which a percentage or fraction is calculated." Webster's New Collegiate Dictionary 133 & 271 (9th ed. 1991) (defining the terms "computation" and "base"). In other words, a "computation base" is a formula which consists of a base number,

such as an amount of money, and a number serving as a multiplier, such as a percentage or fraction, that is used to calculate the product of those two numbers.

By applying the normal and ordinary meaning of the term "computation base," we believe that the two-thirds majority requirement applies to a bill which directly changes the statutory computation bases—that is, the statutory formulas—used for calculating existing state taxes, so that the revised statutory formulas directly bring into existence, produce or enlarge public revenue in the first instance because the existing statutory base numbers or the existing statutory multipliers are changed by the bill in a manner that "creates, generates, or increases any public revenue." Nev. Const. art. 4, § 18(2). However, when a bill does not change—but maintains—the existing statutory base numbers and the existing statutory multipliers currently in effect for the existing statutory formulas, we do not believe that the bill "creates, generates, or increases any public revenue" within the meaning, purpose and intent of the two-thirds majority requirement because the existing "computation bases" currently in effect are not changed by the bill. Id.

Accordingly, to answer your first question, we must determine whether a bill which extends until a later date—or revises or eliminates—a future decrease in or future expiration of existing state taxes would be considered a bill which *changes* or one which *maintains* the existing computation bases currently in effect for the existing state taxes. In order to make this determination, we must consider several well-established rules of construction governing statutes that are not legally operative and binding yet.

It is well established that "[t]he existence of a law, and the time when it shall take effect, are two separate and distinct things. The law exists from the date of approval, but its operation [may be] postponed to a future day." People ex rel. Graham v. Inglis, 43 N.E. 1103, 1104 (Ill. 1896). Thus, because the Legislature has the power to postpone the operation of a statute until a later time, it may enact a statute that has both an effective date and a later operative date. 82 C.J.S. Statutes § 549 (Westlaw 2019). Under such circumstances, the effective date is the date upon which the statute becomes an existing law, but the later operative date is the date upon which the requirements of the statute will actually become legally binding. 82 C.J.S. Statutes § 549 (Westlaw 2019); Preston v. State Bd. of Equal., 19 P.3d 1148, 1167 (Cal. 2001). When a statute has both an effective date and a later operative date, the statute must be understood as speaking from its later operative date when it actually becomes legally binding and not from its earlier effective date when it becomes an existing law but does not have any legally binding requirements yet. 82 C.J.S. Statutes § 549 (Westlaw 2019); Longview Co. v. Lynn, 108 P.2d 365, 373 (Wash. 1940). Consequently, until the statute reaches its later operative date, the statute is not legally operative and binding yet, and the statute does not confer any presently existing and enforceable legal rights or benefits under its provisions. Id.; Levinson v. City of Kansas City, 43 S.W.3d 312, 316-18 (Mo. Ct. App. 2001).

Consequently, if an existing statute provides for a future decrease in or future expiration of existing state taxes, that future decrease or expiration is not legally operative and binding yet, and the statute does not confer any presently existing and enforceable legal rights or benefits under its provisions to that future decrease or expiration. Because such a future decrease or expiration is not legally operative and binding yet, we believe that the two-thirds majority requirement does not apply to a bill which extends until a later date—or revises or eliminates—the future decrease or expiration because such a bill does not change—but maintains—the existing computation bases currently in effect for the existing state taxes.

We find support for our interpretation of the plain language in Article 4, Section 18(2) from the contemporaneous extrinsic evidence of the purpose and intent of the two-thirds majority requirement when it was considered by the Legislature in 1993 and presented to the voters in 1994 and 1996.

When interpreting constitutional provisions approved by the voters through a ballot initiative, the court may consider contemporaneous extrinsic evidence of the purpose and intent of the constitutional provisions that was available when the initiative was presented to the voters for approval. See 42 Am. Jur. 2d Initiative & Referendum § 49 (Westlaw 2019) ("To the extent possible, when interpreting a ballot initiative, courts attempt to place themselves in the position of the voters at the time the initiative was placed on the ballot and try to interpret the initiative using the tools available to citizens at that time."). However, even though the court may consider contemporaneous extrinsic evidence of intent, the court will not consider post-enactment statements, affidavits or testimony from sponsors regarding their intent. See A-NLV Cab Co. v. State Taxicab Auth., 108 Nev. 92, 95-96 (1992) (holding that the court will not consider post-enactment statements, affidavits or testimony from legislators as a means of establishing their legislative intent, and any such materials are inadmissible in evidence as a matter of law); Alaskans for a Common Language, Inc. v. Kritz, 170 P.3d 183, 193 (Alaska 2007) ("Because we must construe an initiative by looking to the materials considered by the voters themselves, we cannot rely on affidavits of the sponsors' intent."); 42 Am. Jur. 2d Initiative & Referendum § 49 (Westlaw 2019).

The court may find contemporaneous extrinsic evidence of intent from the legislative history surrounding the proposal and approval of the ballot measure. See Ramsey v. City of N. Las Vegas, 133 Nev. Adv. Op. 16, 392 P.3d 614, 617-19 (2017). The court also may find contemporaneous extrinsic evidence of intent from statements made by proponents and opponents of the ballot measure. See Guinn II, 119 Nev. at 471-72. Finally, the court may find contemporaneous extrinsic evidence of intent from the ballot materials provided to the voters, such as the question, explanation and arguments for and against passage included in the sample ballots sent to the voters. See Nev. Mining Ass'n, 117 Nev. at 539; Pellegrini v. State, 117 Nev. 860, 876-77 (2001).

As discussed previously, based on the legislative testimony surrounding A.J.R. 21 in 1993 and the ballot materials presented to the voters in 1994 and 1996, there is

contemporaneous extrinsic evidence that the two-thirds majority requirement was intended to apply to a bill which directly brings into existence, produces or enlarges public revenue in the first instance by raising "new taxes" or "new revenues" or by increasing "existing taxes." Legislative History of A.J.R. 21, supra (Hearing on A.J.R. 21 Before Assembly Comm. on Taxation, 67th Leg., at 11-13 (Nev. May 4, 1993)); Nev. Ballot Questions 1994, Question No. 11, at 1 (Nev. Sec'y of State 1994). However, the contemporaneous extrinsic evidence also indicates that the two-thirds majority requirement was not intended to "impair any existing revenues." Id.

Furthermore, there is nothing in the contemporaneous extrinsic evidence to indicate that the two-thirds majority requirement was intended to apply to a bill which does not change—but maintains—the existing computation bases currently in effect for existing state taxes. We believe that the absence of such contemporaneous extrinsic evidence is consistent with the fact that: (1) such a bill does not raise new state taxes and revenues because it maintains the existing state taxes and revenues currently in effect; and (2) such a bill does not increase the existing state taxes and revenues currently in effect—but maintains them in their current state under the law—because the existing computation bases currently in effect are not changed by the bill.

Finally, we find support for our interpretation of the plain language in Article 4, Section 18(2) based on the case law interpreting similar constitutional provisions from other jurisdictions. As discussed previously, the two-thirds majority requirement in the Nevada Constitution was modeled on constitutional provisions from other states. Legislative History of A.J.R. 21, supra (Hearing on A.J.R. 21 Before Assembly Comm. on Taxation, 67th Leg., at 12-13 (Nev. May 4, 1993)). As confirmed by Assemblyman Gibbons:

> Mr. Gibbons explained A.J.R. 21 was modeled on constitutional provisions which were in effect in a number of other states. Some of the provisions were adopted recently in response to a growing concern among voters about increasing tax burdens and some of the other provisions dated back to earlier times.

Id. at 12.

Under the rules of construction, "[w]hen Nevada legislation is patterned after a federal statute or the law of another state, it is understood that 'the courts of the adopting state usually *follow the construction placed on the statute in the jurisdiction of its inception.*'" Advanced Sports Info. v. Novotnak, 114 Nev. 336, 340 (1998) (quoting Sec. Inv. Co. v. Donnelley, 89 Nev. 341, 347 n.6 (1973)). Thus, if a provision in the Nevada Constitution is modeled on a similar constitutional provision "from a sister state, it is presumably adopted with the construction given it by the highest court of the sister state." State ex rel. Harvey v. Second Jud. Dist. Ct., 117 Nev. 754, 763 (2001) ("[S]ince Nevada relied upon the California Constitution as a basis for developing the Nevada Constitution, it is appropriate for us to look

to the California Supreme Court's interpretation of the [similar] language in the California Constitution.").

Consequently, in interpreting and applying Nevada's two-thirds majority requirement, it is appropriate to consider case law from the other states where courts have interpreted the similar supermajority requirements that served as the model for Nevada's two-thirds majority requirement. Furthermore, in considering that case law, we must presume that the drafters and voters intended for Nevada's two-thirds majority requirement to be interpreted in a manner that adopts and follows the judicial interpretations placed on the similar supermajority requirements by the courts from those other states.

In 1992, the voters of Oklahoma approved a state constitutional provision imposing a three-fourths supermajority requirement on the Oklahoma Legislature that applies to "[a]ll bills for raising revenue" or "[a]ny revenue bill." Okla. Const. art. V, § 33. In addition, Oklahoma has a state constitutional provision, known as an "Origination Clause," which provides that "[a]ll bills for raising revenue" must originate in the lower house of the Oklahoma Legislature. Id. The Oklahoma Supreme Court has adopted the same interpretation for the term "bills for raising revenue" with regard to both state constitutional provisions. Okla. Auto. Dealers Ass'n v. State ex rel. Okla. Tax Comm'n, 401 P.3d 1152, 1158 n.35 (Okla. 2017). In relevant part, Oklahoma's constitutional provisions state:

> A. *All bills for raising revenue* shall originate in the House of Representatives. The Senate may propose amendments to revenue bills.
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> * * *
>
> D. *Any revenue bill* originating in the House of Representatives may become law without being submitted to a vote of the people of the state if such bill receives the approval of three-fourths (3/4) of the membership of the House of Representatives and three-fourths (3/4) of the membership of the Senate and is submitted to the Governor for appropriate action. * * *

Okla. Const. art. V, § 33 (emphasis added).

In Fent v. Fallin, 345 P.3d 1113, 1114-15 (Okla. 2014), the petitioner claimed that Oklahoma's supermajority requirement applied to a bill which modified Oklahoma's income tax rates even though the effect of the modifications did not increase revenue. The bill included provisions "deleting expiration date of specified tax rate levy." Id. at 1116 n.6. The Oklahoma Supreme Court held that the supermajority requirement did not apply to the bill. Id. at 1115-18. In discussing the purpose and intent of Oklahoma's supermajority requirement for "bills for raising revenue," the court found that:

> [T]he ballot title reveals that the measure was aimed only at bills "intended to raise revenue" and "revenue raising bills." The plain, popular, obvious and natural meaning of "raise" in this context is "increase." This plain and popular meaning was expressed in the public theme and message of the proponents of this amendment: "No New Taxes Without a Vote of the People."
>
> Reading the ballot title and text of the provision together reveals the 1992 amendment had two primary purposes. First, the amendment has the effect of limiting the generation of State revenue to existing revenue measures. Second, the amendment requires future bills "intended to raise revenue" to be approved by either a vote of the people or a three-fourths majority in both houses of the Legislature.

Id. at 1117.

Based on the purpose and intent of Oklahoma's supermajority requirement for "bills for raising revenue," the court determined that "[n]othing in the ballot title or text of the provision reveals any intent to bar or restrict the Legislature from amending the existing revenue measures, so long as such statutory amendments do not 'raise' or increase the tax burden." Id. at 1117-18. Given that the bill at issue in Fent included provisions "deleting expiration date of specified tax rate levy," we must presume the court concluded that those provisions of the bill did not result in an increase in the tax burden that triggered the supermajority requirement even though those provisions of the bill eliminated the future expiration of existing state taxes.

In Naifeh v. State ex rel. Okla. Tax Comm'n, 400 P.3d 759, 761 (Okla. 2017), the petitioners claimed that Oklahoma's supermajority requirement applied to a bill which was intended to "generate approximately $225 million per year in new revenue for the State through a new $1.50 assessment on each pack of cigarettes." The state argued that the supermajority requirement did not apply to the cigarette-assessment bill because it was a regulatory measure, not a revenue measure. Id. at 766. In particular, the state contended that: (1) the primary purposes of the bill were to reduce the incidence of smoking and compensate the state for the harms caused by smoking; (2) any raising of revenue by the bill was merely incidental to those purposes; and (3) the bill did not levy a tax, but rather assessed a regulatory fee whose proceeds would be used to offset the costs of State-provided healthcare for those who smoke, even though most of the revenue generated by the bill was not earmarked for that purpose. Id. at 766-68.

The Oklahoma Supreme Court held that the supermajority requirement applied to the cigarette-assessment bill because the text of the bill "conclusively demonstrate[d] that the primary operation and effect of the measure [was] to raise *new* revenue to support state government." Id. at 766 (emphasis added). In reaching its holding, the court reiterated the two-part test that it uses to determine whether a bill is subject to Oklahoma's supermajority

requirement for "bills for raising revenue." Id. at 765. Under the two-part test, a bill is subject to the supermajority requirement if: (1) the principal object of the bill is to raise *new* revenue for the support of state government, as opposed to a bill under which revenue may incidentally arise; and (2) the bill levies a *new* tax in the strict sense of the word. Id. In a companion case, the court stated that it invalidated the cigarette-assessment bill because:

> [T]he cigarette measure fit squarely within our century-old test for "revenue bills," in that it both had the primary purpose of raising revenue for the support of state government *and* it levied a *new* tax in the strict sense of the word.

Okla. Auto. Dealers Ass'n, 401 P.3d at 1153 (emphasis added); accord Sierra Club v. State ex rel. Okla. Tax Comm'n, 405 P.3d 691, 694-95 (Okla. 2017).

In 1996, the voters of Oregon approved a state constitutional provision imposing a three-fifths supermajority requirement on the Oregon Legislature, which provides that "[t]hree-fifths of all members elected to each House shall be necessary to pass *bills for raising revenue*." Or. Const. art. IV, § 25 (emphasis added). In addition, Oregon has a state constitutional provision, known as an "Origination Clause," which provides that "*bills for raising revenue* shall originate in the House of Representatives." Or. Const. art. IV, § 18 (emphasis added). The Oregon Supreme Court has adopted the same interpretation for the term "bills for raising revenue" with regard to both state constitutional provisions. Bobo v. Kulongoski, 107 P.3d 18, 24 (Or. 2005).

In determining the scope of Oregon's constitutional provisions for "bills for raising revenue," the Oregon Supreme Court has adopted a two-part test that is similar to the two-part test followed by the Oklahoma Supreme Court. Bobo, 107 P.3d at 24. In particular, the Oregon Supreme Court has stated:

> Considering the wording of [each constitutional provision], its history, and the case law surrounding it, we conclude that the question whether a bill is a "bill for raising revenue" entails two issues. The first is whether the bill collects or brings money into the treasury. If it does not, that is the end of the inquiry. If a bill does bring money into the treasury, the remaining question is whether *the bill possesses the essential features of a bill levying a tax.*

Id. (emphasis added).

In applying its two-part test in Bobo, the court observed that "not every statute that brought money into the treasury was a 'bill for raising revenue' within the meaning of [the constitutional provisions]." Bobo, 107 P.3d at 24. Instead, the court found that the constitutional provisions applied only to the specific types of bills that the framers had in mind—"bills to levy taxes and similar exactions." Id. at 23. Based on the normal and

ordinary meanings commonly ascribed to the terms "raise" and "revenue" in the constitutional provisions, the court reached the following conclusions:

> We draw two tentative conclusions from those terms. First, a bill will "raise" revenue only if it "collects" or "brings in" money to the treasury. Second, not every bill that collects or brings in money to the treasury is a "bil[l] for raising revenue." Rather, the definition of "revenue" suggests that the framers had a specific type of bill in mind—*bills to levy taxes and similar exactions.*

Id. (emphasis added).

After considering the case law from Oklahoma and Oregon, we believe it is reasonable to interpret Nevada's two-thirds majority requirement in a manner that adopts and follows the judicial interpretations placed on the similar supermajority requirements by the courts from those states. Under those judicial interpretations, we believe that Nevada's two-thirds majority requirement does not apply to a bill unless it levies new or increased state taxes in the strict sense of the word or possesses the essential features of a bill that levies new or increased state taxes or similar exactions, "including but not limited to taxes, fees, assessments and rates, or changes in the computation bases for taxes, fees, assessments and rates." Nev. Const. art. 4, § 18(2).

Consequently, we believe that Nevada's two-thirds majority requirement does not apply to a bill which extends until a later date—or 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, because such a bill does not levy new or increased state taxes as described in the cases from Oklahoma and Oregon. Instead, because such a bill maintains the existing computation bases currently in effect for the existing state taxes, it is the opinion of this office that such a bill does not create, generate or increase any public revenue within the meaning, purpose and intent of Nevada's two-thirds majority requirement because the existing computation bases currently in effect are not changed by the bill.

3. Does the two-thirds majority requirement apply to a bill which reduces or eliminates available tax exemptions or tax credits applicable to existing state taxes?

As discussed previously, Article 4, Section 18(2) provides that the two-thirds majority requirement applies to a bill which "creates, generates, or increases any public revenue in any form, including but not limited to taxes, fees, assessments and rates, or *changes in the computation bases for taxes, fees, assessments and rates.*" Nev. Const. art. 4, § 18(2) (emphasis added). Based on the plain language in Article 4, Section 18(2), we do not believe that the two-thirds majority requirement applies to a bill which reduces or eliminates available tax exemptions or tax credits applicable to existing state taxes because such a reduction or

elimination does not change the existing computation bases or statutory formulas used to calculate the underlying taxes to which the exemptions or credits are applicable.

The plain language in Article 4, Section 18(2) expressly states that the two-thirds majority requirement applies to changes in "computation bases," but it is silent with regard to changes in tax exemptions or tax credits. Nev. Const. art. 4, § 18(2). Nevertheless, under long-standing legal principles, it is well established that tax exemptions or tax credits are not part of the computation bases or statutory formulas used to calculate the underlying taxes to which the exemptions or credits are applicable. Instead, tax exemptions or tax credits apply only after the underlying taxes have been calculated using the computation bases or statutory formulas and the taxpayer properly and timely claims the tax exemptions or tax credits as a statutory exception to liability for the amount of the taxes. See City of Largo v. AHF-Bay Fund, LLC, 215 So.3d 10, 14-15 (Fla. 2017); State v. Allred, 195 P.2d 163, 167-170 (Ariz. 1948); Rutgers Ch. of Delta Upsilon Frat. v. City of New Brunswick, 28 A.2d 759, 760-61 (N.J. 1942); Chesney v. Byram, 101 P.2d 1106, 1110-12 (Cal. 1940). As explained by the Missouri Supreme Court:

> The burden is on the taxpayer to establish that property is entitled to be exempt. An exemption from taxation can be waived. Until the exempt status is established the property is subject to taxation even though the facts would have justified the exempt status if they had been presented for a determination of that issue.

State ex rel. Council Apts., Inc. v. Leachman, 603 S.W.2d 930, 931 (Mo. 1980) (citations omitted). As a result, if the taxpayer fails to properly and timely claim the tax exemptions or tax credits, the taxpayer is liable for the amount of the taxes. See State Tax Comm'n v. Am. Home Shield of Nev., Inc., 127 Nev. 382, 386-87 (2011) (holding that a taxpayer that erroneously made tax payments on "exempt services" was not entitled to claim a refund after the 1-year statute of limitations on refund claims expired).

Accordingly, based on the plain language in Article 4, Section 18(2), we do not believe that a bill which reduces or eliminates available tax exemptions or tax credits changes the computation bases used to calculate the underlying state taxes within the meaning, purpose and intent of the two-thirds majority requirement because the existing computation bases currently in effect are not changed by the bill. Furthermore, based on the legislative testimony surrounding A.J.R. 21 in 1993 and the ballot materials presented to the voters in 1994 and 1996, there is nothing in the contemporaneous extrinsic evidence to indicate that the two-thirds majority requirement was intended to apply to a bill which reduces or eliminates available tax exemptions or tax credits. Finally, based on the case law interpreting similar constitutional provisions from other jurisdictions, courts have consistently held that similar supermajority requirements do not apply to bills which reduce or eliminate available tax exemptions or tax credits.

Unlike the supermajority requirements in other state constitutions, the Louisiana Constitution expressly provides that its supermajority requirement applies to "a repeal of an existing tax exemption." La. Const. art. VII, § 2. Specifically, the Louisiana Constitution states:

> The levy of a new tax, an increase in an existing tax, or a repeal of an existing tax exemption shall require the enactment of a law by two-thirds of the elected members of each house of the legislature.

La. Const. art. VII, § 2.

In determining the scope of Louisiana's supermajority requirement, the Louisiana Court of Appeals explained that the supermajority requirement did not apply to legislation which suspended a tax exemption—but did not repeal the exemption—because "[a] suspension (which is time-limited) of an exemption is not the same thing as a permanent repeal." La. Chem. Ass'n v. State ex rel. La. Dep't of Revenue, 217 So.3d 455, 462-63 (La. Ct. App. 2017), *writ of review denied*, 227 So.3d 826 (La. 2017). Furthermore, the court rejected the argument that because the supermajority requirement applied to the prior legislation that enacted the underlying tax levy for which the exemption was granted, the supermajority requirement by necessary implication also had to be applied to any subsequent legislation that suspended the tax exemption. Id. In rejecting that argument, the court stated:

> The levy of the initial tax, preceding the decision to grant an exemption, is the manner in which the Legislature raises revenue. Since 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.

As discussed previously, Oklahoma's supermajority requirement applies to "[a]ll bills for raising revenue" or "[a]ny revenue bill." Okla. Const. art. V, § 33. In Okla. Auto. Dealers Ass'n v. State ex rel. Okla. Tax Comm'n, 401 P.3d 1152, 1153 (Okla. 2017), the Oklahoma Supreme Court was presented with the "question of whether a measure revoking an exemption from an *already levied* tax is a 'revenue bill' subject to Article V, Section 33's requirements." The court held that the bill was not a bill for raising revenue that was subject to Oklahoma's supermajority requirement because: (1) the bill did not "levy a tax in the strict sense of the word"; and (2) the "removal of an exemption from an *already levied* tax is different from levying a tax in the first instance." Id. at 1153-54.

At issue in the Oklahoma case was House Bill 2433 of the 2017 legislative session, which removed a long-standing exemption from the state's sales tax for automobiles that were otherwise subject to the state's excise tax. The Oklahoma Supreme Court explained the effect of H.B. 2433 as follows:

> In 1933, the Legislature levied a sales tax on all tangible personal property—including automobiles—and that sales tax has remained part of our tax code ever since. In 1935, however, the Legislature added an exemption for automobile sales in the sales-tax provisions, so that automobiles were subject to only an automobile excise tax from that point forward. H.B. 2433 revokes part of that sales tax exemption so that sales of automobiles are once again subject to the sales tax, but only a 1.25% sales tax. Sales of automobiles remain exempt from the remainder of the sales tax levy. H.B. 2433 does not, however, levy any new sales or excise tax, as the text of the measure and related provisions demonstrate.
>
> For example, the sales tax levy can be found in 68 Okla. Stat. § 1354, imposing a tax upon "the gross receipts or gross proceeds of each sale" of tangible personal property and other specifically enumerated items. The last amendment increasing the sales tax levy was in 1989, when the rate was raised to 4.5%. Nothing in H.B. 2433 amends the sales tax levy contained in section 1354; the rate remains 4.5%. Likewise, the levy of the motor vehicle excise tax is found in 68 Okla. Stat. § 2103. That levy has not been increased since 1985, and nothing in H.B. 2433 amends the levy contained in section 2103. *Both before and after the enactment of H.B. 2433, the levy remains the same:* every new vehicle is subject to an excise tax at 3.25% of its value, and every used vehicle is subject to an excise tax of $20.00 on the first $1,500.00 or less of its value plus 3.25% of its remaining value, if any.

Okla. Auto. Dealers Ass'n, 401 P.3d at 1154-55 (emphasis added and footnotes omitted).

In determining that H.B. 2433 was not a bill for raising revenue that was subject to Oklahoma's supermajority requirement, the Oklahoma Supreme Court stated that:

> At bottom, Petitioners' argument is that H.B. 2433 must be a revenue bill because it causes people to have to pay more taxes. But 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." . . . *Yet, despite their common effect (causing someone to have to pay a tax they previously didn't have to pay), removing an exemption and levying a new tax are distinct as a matter of fact and law. Our Constitution's restrictions on the enactment of revenue bills are aimed only at those bills that actually levy a tax.* The policy underlying those restrictions is not undercut in an instance such as this, because the original levies of the sales tax on automobile sales were subject to Article V, Section 33's restrictions.

Okla. Auto. Dealers Ass'n, 401 P.3d at 1158 (emphasis added).

As discussed previously, the Oregon Supreme Court has adopted the same interpretation for the term "bills for raising revenue" with regard to Oregon's supermajority requirement and its Origination Clause. Bobo v. Kulongoski, 107 P.3d 18, 24 (Or. 2005). In City of Seattle v. Or. Dep't of Revenue, 357 P.3d 979, 980 (Or. 2015), the plaintiff claimed that the Oregon Legislature's passage of Senate Bill 495, which eliminated a tax exemption benefitting out-of-state municipalities that had certain electric utility facilities in Oregon, violated Oregon's Origination Clause because S.B. 495 was a bill for raising revenue that did not originate in the Oregon House of Representatives. However, the Oregon Supreme Court held that S.B. 495's elimination of the tax exemption did not make it a "bill for raising revenue" that was subject to Oregon's Origination Clause. Id. at 985-88.

After applying its two-part test from Bobo, the Oregon Supreme Court determined that S.B. 495 was not a bill for raising revenue because by "declaring that a property interest held by taxpayers previously exempt from taxation is now subject to taxation, the legislature did not levy a tax." City of Seattle, 357 P.3d at 987. The court rejected the taxpayers' argument that S.B. 495 was a bill for raising revenue because "the burden of increased taxes falls solely on the newly-taxed entities." Id. at 988. Instead, the court found that:

> We think, however, taxpayers' argument misses the mark because it focuses exclusively on the revenue effect of S.B. 495. As we stated in Bobo, the revenue effect of a bill, in and of itself, does not determine if the bill is a "bill[] for raising revenue." 107 P.3d at 24 ("If a bill does bring money into the treasury, the remaining question is whether the bill possesses the essential features of a bill levying a tax."). As we have explained, S.B. 495 repeals taxpayers' tax exemption as out-of-state municipal corporations and places taxpayers on the same footing as domestic electric cooperatives. The bill does not directly levy a tax on taxpayers.

Id. (footnotes omitted).

After considering the case law from Oklahoma and Oregon, we believe it is reasonable to interpret Nevada's two-thirds majority requirement in a manner that adopts and follows the judicial interpretations placed on the similar supermajority requirements by the courts from those states. Under those judicial interpretations, we believe that Nevada's two-thirds majority requirement does not apply to a bill which reduces or eliminates available tax exemptions or tax credits because such a reduction or elimination does not change the existing computation bases or statutory formulas used to calculate the underlying state taxes to which the exemptions or credits are applicable. Consequently, it is the opinion of this office that Nevada's two-thirds majority requirement does not apply to a bill which reduces or eliminates available tax exemptions or tax credits applicable to existing state taxes.

CONCLUSION

It is the opinion of this office that Nevada's two-thirds majority requirement does not apply to a bill which extends until a later date—or 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, because such a bill does not change—but maintains—the existing computation bases currently in effect for the existing state taxes.

It also is the opinion of this office that Nevada's two-thirds majority requirement does not apply to a bill which reduces or eliminates available tax exemptions or tax credits applicable to existing state taxes, because such a reduction or elimination does not change the existing computation bases used to calculate the underlying state taxes to which the exemptions or credits are applicable.

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

Sincerely,

Brenda J. Erdoes
Legislative Counsel

Kevin C. Powers
Chief Litigation Counsel

KCP:dtm
Ref No 190502085934
File No. OP_Erdoes19050413742

EXHIBIT D

EMERGENCY REQUEST of Senate Majority Leader

Senate Bill No. 551–Senator Cannizzaro

CHAPTER.....

AN ACT relating to state financial administration; eliminating certain duties of the Department of Taxation relating to the commerce tax and the payroll taxes imposed on certain businesses; continuing the existing legally operative rates of the payroll taxes imposed on certain businesses; revising provisions governing the credits against the payroll taxes imposed on certain businesses for taxpayers who donate money to a scholarship organization; eliminating the education savings accounts program; making appropriations for certain purposes relating to school safety and to provide supplemental support of the operation of the school districts; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law imposes an annual commerce tax on each business entity whose Nevada gross revenue in a fiscal year exceeds $4,000,000, with the rate of the commerce tax based on the industry in which the business entity is primarily engaged. (NRS 363C.200, 363C.300-363C.560) Existing law also imposes: (1) a payroll tax on financial institutions and on mining companies subject to the tax on the net proceeds of minerals, with the rate of the payroll tax set at 2 percent of the amount of the wages, as defined under existing law, paid by the financial institution or mining company during each calendar quarter in connection with its business activities; and (2) a payroll tax on other business entities, with the rate of the payroll tax set at 1.475 percent of the amount of the wages, as defined under existing law but excluding the first $50,000 thereof, paid by the business entity during each calendar quarter in connection with its business activities. (NRS 363A.130, 363B.110, 612.190) However, a business entity that pays both the payroll tax and the commerce tax is entitled to a credit against the payroll tax of a certain amount of the commerce tax paid by the business entity. (NRS 363A.130, 363B.110)

Existing law further establishes a rate adjustment procedure that is used by the Department of Taxation to determine whether the rates of the payroll taxes should be reduced in future fiscal years under certain circumstances. Under the rate adjustment procedure, on or before September 30 of each even-numbered year, the Department must determine the combined revenue from the commerce tax and the payroll taxes for the preceding fiscal year. If that combined revenue exceeds a certain threshold amount, the Department must make additional calculations to determine future reduced rates for the payroll taxes. However, any future reduced rates for the payroll taxes do not go into effect and become legally operative until July 1 of the following odd-numbered year. (NRS 360.203) This rate adjustment procedure was enacted by the Legislature during the 2015 Legislative Session and became effective on July 1, 2015. (Sections 62 and 114 of chapter 487, Statutes of Nevada 2015, pp. 2896, 2955) Since July 1, 2015, no future reduced rates for the payroll taxes have gone into effect and become legally operative based on the rate adjustment procedure. As a result, the existing legally operative rates of the payroll

taxes are still 2 percent and 1.475 percent, respectively. (NRS 363A.130, 363B.110)

Section 39 of this bill eliminates the rate adjustment procedure used by the Department of Taxation to determine whether the rates of the payroll taxes should be reduced in any fiscal year. **Section 37** of this bill maintains and continues the existing legally operative rates of the payroll taxes at 2 percent and 1.475 percent, respectively, without any changes or reductions in the rates of those taxes pursuant to the rate adjustment procedure for any fiscal year. **Section 37** also provides that the Department must not apply or use the rate adjustment procedure to determine any future reduced rates for the payroll taxes for any fiscal year. **Sections 2 and 3** of this bill make conforming changes.

Existing law establishes a credit against the payroll tax paid by certain businesses equal to an amount which is approved by the Department and which must not exceed the amount of any donation of money which is made by a taxpayer to a scholarship organization that provides grants on behalf of pupils who are members of a household with a household income which is not more than 300 percent of the federally designated level signifying poverty to attend schools in this State, including private schools, chosen by the parents or legal guardians of those pupils (NRS 363A.130, 363B.110) Under existing law, the Department: (1) is required to approve or deny applications for the tax credit in the order in which the applications are received by the Department; and (2) is authorized to approve applications for each fiscal year until the amount of tax credits approved for the fiscal year is the amount authorized by statute for that fiscal year. Assembly Bill No. 458 of this legislative session establishes that for Fiscal Years 2019-2020 and 2020-2021, the amount authorized is $6,655,000 for each fiscal year. **Sections 2.5 and 3.5** of this bill authorize the Department to approve, in addition to the amount of credits authorized for Fiscal Years 2019-2020 and 2020-2021, an amount of tax credits equal to $4,745,000 for each of those fiscal years. **Section 30.75** of this bill: (1) prohibits a scholarship organization from using a donation for which the donor received a tax credit to provide a grant on behalf of a pupil unless the scholarship organization used a donation for which the donor received a tax credit to provide a grant on behalf of the pupil for the immediately preceding scholarship year or reasonably expects to provide a grant of the same amount on behalf of the pupil for each school year until the pupil graduates from high school; and (2) requires a scholarship organization to repay the amount of any tax credit approved by the Department if the scholarship organization violates this provision.

Senate Bill No. 302 (S.B. 302) of the 78th Session of the Nevada Legislature established the education savings accounts program, pursuant to which grants of money are made to certain parents on behalf of their children to defray the cost of instruction outside the public school system. (Chapter 332, Statutes of Nevada 2015, p. 1824; NRS 353B.700-353B.930) Following a legal challenge of S.B. 302, the Nevada Supreme Court held in Schwartz v. Lopez, 132 Nev. 732 (2016), that the legislation was valid under Section 2 of Article 11 of the Nevada Constitution, which requires a uniform system of common schools, and under Section 10 of Article 11 of the Nevada Constitution, which prohibits the use of public money for a sectarian purpose. However, the Nevada Supreme Court found that the Legislature did not make an appropriation for the support of the education savings accounts program and held that the use of any money appropriated for K-12 public education for the education savings accounts program would violate Sections 2 and 6 of Article 11 of the Nevada Constitution. The Court enjoined enforcement of section 16 of S.B. 302, which amended NRS 387.124 to require that all money deposited in education savings accounts be subtracted from each school district's quarterly apportionments from the State Distributive School Account. Because the

Court has enjoined this provision of law and the Legislature has not made an appropriation for the support of the education savings accounts program, the education savings accounts program is not operating. **Section 39.5** of this bill eliminates the education savings accounts program. **Sections 30.1-30.7 and 30.8-30.95** of this bill make conforming changes related to the elimination of the education savings accounts program.

Section 31 of this bill makes an appropriation for the costs of school safety facility improvements. **Section 36.5** of this bill makes an appropriation to provide supplemental support to the operations of the school districts of this State, distributed in amounts based on the 2018 enrollment of the school districts of this State.

EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~[omitted material]~~ is material to be omitted.

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

Section 1. (Deleted by amendment.)

Sec. 2. NRS 363A.130 is hereby amended to read as follows:

363A.130 1. ~~[Except as otherwise provided in NRS 360.203, there]~~ ***There*** is hereby imposed an excise tax on each employer at the rate of 2 percent of the wages, as defined in NRS 612.190, paid by the employer during a calendar quarter with respect to employment in connection with the business activities of the employer.

2. The tax imposed by this section:

(a) Does not apply to any person or other entity or any wages this State is prohibited from taxing under the Constitution, laws or treaties of the United States or the Nevada Constitution.

(b) Must not be deducted, in whole or in part, from any wages of persons in the employment of the employer.

3. Each employer shall, on or before the last day of the month immediately following each calendar quarter for which the employer is required to pay a contribution pursuant to NRS 612.535:

(a) File with the Department a return on a form prescribed by the Department; and

(b) Remit to the Department any tax due pursuant to this section for that calendar quarter.

4. In determining the amount of the tax due pursuant to this section, an employer is entitled to subtract from the amount calculated pursuant to subsection 1 a credit in an amount equal to 50 percent of the amount of the commerce tax paid by the employer pursuant to chapter 363C of NRS for the preceding taxable year. The credit may only be used for any of the 4 calendar quarters

immediately following the end of the taxable year for which the commerce tax was paid. The amount of credit used for a calendar quarter may not exceed the amount calculated pursuant to subsection 1 for that calendar quarter. Any unused credit may not be carried forward beyond the fourth calendar quarter immediately following the end of the taxable year for which the commerce tax was paid, and a taxpayer is not entitled to a refund of any unused credit.

5. An employer who makes a donation of money to a scholarship organization during the calendar quarter for which a return is filed pursuant to this section is entitled, in accordance with NRS 363A.139, to a credit equal to the amount authorized pursuant to NRS 363A.139 against any tax otherwise due pursuant to this section. As used in this subsection, "scholarship organization" has the meaning ascribed to it in NRS 388D.260.

Sec. 2.5. NRS 363A.139 is hereby amended to read as follows:

363A.139 1. Any taxpayer who is required to pay a tax pursuant to NRS 363A.130 may receive a credit against the tax otherwise due for any donation of money made by the taxpayer to a scholarship organization in the manner provided by this section.

2. To receive the credit authorized by subsection 1, a taxpayer who intends to make a donation of money to a scholarship organization must, before making such a donation, notify the scholarship organization of the taxpayer's intent to make the donation and to seek the credit authorized by subsection 1. A scholarship organization shall, before accepting any such donation, apply to the Department of Taxation for approval of the credit authorized by subsection 1 for the donation. The Department of Taxation shall, within 20 days after receiving the application, approve or deny the application and provide to the scholarship organization notice of the decision and, if the application is approved, the amount of the credit authorized. Upon receipt of notice that the application has been approved, the scholarship organization shall provide notice of the approval to the taxpayer who must, not later than 30 days after receiving the notice, make the donation of money to the scholarship organization. If the taxpayer does not make the donation of money to the scholarship organization within 30 days after receiving the notice, the scholarship organization shall provide notice of the failure to the Department of Taxation and the taxpayer forfeits any claim to the credit authorized by subsection 1.

3. The Department of Taxation shall approve or deny applications for the credit authorized by subsection 1 in the order in which the applications are received.

4. Except as otherwise provided in subsection 5, the Department of Taxation may, for each fiscal year, approve applications for the credit authorized by subsection 1 until the total amount of the credits authorized by subsection 1 and approved by the Department of Taxation pursuant to this subsection is:

(a) For Fiscal Year 2015-2016, $5,000,000;

(b) For Fiscal Year 2016-2017, $5,500,000; and

(c) For each succeeding fiscal year, an amount equal to 110 percent of the amount authorized for the immediately preceding fiscal year.

➥ The amount of any credit which is forfeited pursuant to subsection 2 must not be considered in calculating the amount of credits authorized for any fiscal year.

5. ~~[In]~~ ***Except as otherwise provided in this subsection, in*** addition to the amount of credits authorized by subsection 4 for Fiscal ~~[Year 2017-2018,]~~ ***Years 2019-2020 and 2020-2021,*** the Department of Taxation may approve applications for the credit authorized by subsection 1 for ~~[that]~~ ***each of those*** fiscal ~~[year]~~ ***years*** until the total amount of the credits authorized by subsection 1 and approved by the Department of Taxation pursuant to this subsection and subsection 5 of NRS 363B.119 is ~~[$20,000,000.]~~ ***$4,745,000.*** The provisions of paragraph (c) of subsection 4 do not apply to the amount of credits authorized by this subsection and the amount of credits authorized by this subsection must not be considered when determining the amount of credits authorized for a fiscal year pursuant to that paragraph. If, in Fiscal Year ~~[2017-2018,]~~ ***2019-2020 or 2020-2021,*** the amount of credits authorized by subsection 1 and approved pursuant to this subsection is less than ~~[$20,000,000,]~~ ***$4,745,000,*** the remaining amount of credits pursuant to this subsection must be carried forward and made available for approval during subsequent fiscal years until the total amount of credits authorized by subsection 1 and approved pursuant to this subsection is equal to ~~[$20,000,000.]~~ ***$9,490,000.*** The amount of any credit which is forfeited pursuant to subsection 2 must not be considered in calculating the amount of credits authorized pursuant to this subsection.

6. If a taxpayer applies to and is approved by the Department of Taxation for the credit authorized by subsection 1, the amount of the credit provided by this section is equal to the amount approved by the Department of Taxation pursuant to subsection 2, which must

not exceed the amount of the donation made by the taxpayer to a scholarship organization. The total amount of the credit applied against the taxes described in subsection 1 and otherwise due from a taxpayer must not exceed the amount of the donation.

7. If the amount of the tax described in subsection 1 and otherwise due from a taxpayer is less than the credit to which the taxpayer is entitled pursuant to this section, the taxpayer may, after applying the credit to the extent of the tax otherwise due, carry the balance of the credit forward for not more than 5 years after the end of the calendar year in which the donation is made or until the balance of the credit is applied, whichever is earlier.

8. As used in this section, "scholarship organization" has the meaning ascribed to it in NRS 388D.260.

Sec. 3. NRS 363B.110 is hereby amended to read as follows:

363B.110 1. ~~[Except as otherwise provided in NRS 360.203, there]~~ ***There*** is hereby imposed an excise tax on each employer at the rate of 1.475 percent of the amount by which the sum of all the wages, as defined in NRS 612.190, paid by the employer during a calendar quarter with respect to employment in connection with the business activities of the employer exceeds $50,000.

2. The tax imposed by this section:

(a) Does not apply to any person or other entity or any wages this State is prohibited from taxing under the Constitution, laws or treaties of the United States or the Nevada Constitution.

(b) Must not be deducted, in whole or in part, from any wages of persons in the employment of the employer.

3. Each employer shall, on or before the last day of the month immediately following each calendar quarter for which the employer is required to pay a contribution pursuant to NRS 612.535:

(a) File with the Department a return on a form prescribed by the Department; and

(b) Remit to the Department any tax due pursuant to this chapter for that calendar quarter.

4. In determining the amount of the tax due pursuant to this section, an employer is entitled to subtract from the amount calculated pursuant to subsection 1 a credit in an amount equal to 50 percent of the amount of the commerce tax paid by the employer pursuant to chapter 363C of NRS for the preceding taxable year. The credit may only be used for any of the 4 calendar quarters immediately following the end of the taxable year for which the commerce tax was paid. The amount of credit used for a calendar quarter may not exceed the amount calculated pursuant to

subsection 1 for that calendar quarter. Any unused credit may not be carried forward beyond the fourth calendar quarter immediately following the end of the taxable year for which the commerce tax was paid, and a taxpayer is not entitled to a refund of any unused credit.

5. An employer who makes a donation of money to a scholarship organization during the calendar quarter for which a return is filed pursuant to this section is entitled, in accordance with NRS 363B.119, to a credit equal to the amount authorized pursuant to NRS 363B.119 against any tax otherwise due pursuant to this section. As used in this subsection, "scholarship organization" has the meaning ascribed to it in NRS 388D.260.

Sec. 3.5. NRS 363B.119 is hereby amended to read as follows:

363B.119 1. Any taxpayer who is required to pay a tax pursuant to NRS 363B.110 may receive a credit against the tax otherwise due for any donation of money made by the taxpayer to a scholarship organization in the manner provided by this section.

2. To receive the credit authorized by subsection 1, a taxpayer who intends to make a donation of money to a scholarship organization must, before making such a donation, notify the scholarship organization of the taxpayer's intent to make the donation and to seek the credit authorized by subsection 1. A scholarship organization shall, before accepting any such donation, apply to the Department of Taxation for approval of the credit authorized by subsection 1 for the donation. The Department of Taxation shall, within 20 days after receiving the application, approve or deny the application and provide to the scholarship organization notice of the decision and, if the application is approved, the amount of the credit authorized. Upon receipt of notice that the application has been approved, the scholarship organization shall provide notice of the approval to the taxpayer who must, not later than 30 days after receiving the notice, make the donation of money to the scholarship organization. If the taxpayer does not make the donation of money to the scholarship organization within 30 days after receiving the notice, the scholarship organization shall provide notice of the failure to the Department of Taxation and the taxpayer forfeits any claim to the credit authorized by subsection 1.

3. The Department of Taxation shall approve or deny applications for the credit authorized by subsection 1 in the order in which the applications are received.

4. Except as otherwise provided in subsection 5, the Department of Taxation may, for each fiscal year, approve

applications for the credit authorized by subsection 1 until the total amount of the credits authorized by subsection 1 and approved by the Department of Taxation pursuant to this subsection is:

(a) For Fiscal Year 2015-2016, $5,000,000;

(b) For Fiscal Year 2016-2017, $5,500,000; and

(c) For each succeeding fiscal year, an amount equal to 110 percent of the amount authorized for the immediately preceding fiscal year.

➥ The amount of any credit which is forfeited pursuant to subsection 2 must not be considered in calculating the amount of credits authorized for any fiscal year.

5. In addition to the amount of credits authorized by subsection 4 for Fiscal ~~[Year 2017-2018,]~~ ***Years 2019-2020 and 2020-2021,*** the Department of Taxation may approve applications for the credit authorized by subsection 1 for ~~[that]~~ ***each of those*** fiscal ~~[year]~~ ***years*** until the total amount of the credits authorized by subsection 1 and approved by the Department of Taxation pursuant to this subsection and subsection 5 of NRS 363A.139 is ~~[$20,000,000.]~~ ***$4,745,000.*** The provisions of paragraph (c) of subsection 4 do not apply to the amount of credits authorized by this subsection and the amount of credits authorized by this subsection must not be considered when determining the amount of credits authorized for a fiscal year pursuant to that paragraph. If, in Fiscal Year ~~[2017-2018,]~~ ***2019-2020 or 2020-2021,*** the amount of credits authorized by subsection 1 and approved pursuant to this subsection is less than ~~[$20,000,000,]~~ ***$4,745,000,*** the remaining amount of credits pursuant to this subsection must be carried forward and made available for approval during subsequent fiscal years until the total amount of credits authorized by subsection 1 and approved pursuant to this subsection is equal to ~~[$20,000,000.]~~ ***$9,490,000.*** The amount of any credit which is forfeited pursuant to subsection 2 must not be considered in calculating the amount of credits authorized pursuant to this subsection.

6. If a taxpayer applies to and is approved by the Department of Taxation for the credit authorized by subsection 1, the amount of the credit provided by this section is equal to the amount approved by the Department of Taxation pursuant to subsection 2, which must not exceed the amount of the donation made by the taxpayer to a scholarship organization. The total amount of the credit applied against the taxes described in subsection 1 and otherwise due from a taxpayer must not exceed the amount of the donation.

7. If the amount of the tax described in subsection 1 and otherwise due from a taxpayer is less than the credit to which the

taxpayer is entitled pursuant to this section, the taxpayer may, after applying the credit to the extent of the tax otherwise due, carry the balance of the credit forward for not more than 5 years after the end of the calendar year in which the donation is made or until the balance of the credit is applied, whichever is earlier.

8. As used in this section, "scholarship organization" has the meaning ascribed to it in NRS 388D.260.

Secs. 4-30. (Deleted by amendment.)

Sec. 30.1. NRS 219A.140 is hereby amended to read as follows:

219A.140 1. To be eligible to serve on the Youth Legislature, a person:

(a) Must be:

(1) A resident of the senatorial district of the Senator who appoints him or her;

(2) Enrolled in a public school or private school located in the senatorial district of the Senator who appoints him or her; or

(3) A homeschooled child ~~[or opt-in child]~~ who is otherwise eligible to be enrolled in a public school in the senatorial district of the Senator who appoints him or her;

(b) Except as otherwise provided in subsection 3 of NRS 219A.150, must be:

(1) Enrolled in a public school or private school in this State in grade 9, 10 or 11 for the first school year of the term for which he or she is appointed; or

(2) A homeschooled child ~~[or opt-in child]~~ who is otherwise eligible to enroll in a public school in this State in grade 9, 10 or 11 for the first school year of the term for which he or she is appointed; and

(c) Must not be related by blood, adoption or marriage within the third degree of consanguinity or affinity to the Senator who appoints him or her or to any member of the Assembly who collaborated to appoint him or her.

2. If, at any time, a person appointed to the Youth Legislature changes his or her residency or changes his or her school of enrollment in such a manner as to render the person ineligible under his or her original appointment, the person shall inform the Board, in writing, within 30 days after becoming aware of such changed facts.

3. A person who wishes to be appointed or reappointed to the Youth Legislature must submit an application on the form prescribed pursuant to subsection 4 to the Senator of the senatorial district in which the person resides, is enrolled in a public school or

private school or, if the person is a homeschooled child , ~~[or opt-in child,]~~ the senatorial district in which he or she is otherwise eligible to be enrolled in a public school. A person may not submit an application to more than one Senator in a calendar year.

4. The Board shall prescribe a form for applications submitted pursuant to this section, which must require the signature of the principal of the school in which the applicant is enrolled or, if the applicant is a homeschooled child , ~~[or opt-in child,]~~ the signature of a member of the community in which the applicant resides other than a relative of the applicant.

Sec. 30.15. NRS 219A.150 is hereby amended to read as follows:

219A.150 1. A position on the Youth Legislature becomes vacant upon:

(a) The death or resignation of a member.

(b) The absence of a member for any reason from:

(1) Two meetings of the Youth Legislature, including, without limitation, meetings conducted in person, meetings conducted by teleconference, meetings conducted by videoconference and meetings conducted by other electronic means;

(2) Two activities of the Youth Legislature;

(3) Two event days of the Youth Legislature; or

(4) Any combination of absences from meetings, activities or event days of the Youth Legislature, if the combination of absences therefrom equals two or more,

↪ unless the absences are, as applicable, excused by the Chair or Vice Chair of the Board.

(c) A change of residency or a change of the school of enrollment of a member which renders that member ineligible under his or her original appointment.

2. In addition to the provisions of subsection 1, a position on the Youth Legislature becomes vacant if:

(a) A member of the Youth Legislature graduates from high school or otherwise ceases to attend public school or private school for any reason other than to become a homeschooled child *;* ~~[or opt-in child;]~~ or

(b) A member of the Youth Legislature who is a homeschooled child ~~[or opt-in child]~~ completes an educational plan of instruction for grade 12 or otherwise ceases to be a homeschooled child ~~[or opt-in child]~~ for any reason other than to enroll in a public school or private school.

3. A vacancy on the Youth Legislature must be filled:

(a) For the remainder of the unexpired term in the same manner as the original appointment, except that, if the remainder of the unexpired term is less than 1 year, the member of the Senate who made the original appointment may appoint a person who:

(1) Is enrolled in a public school or private school in this State in grade 12 or who is a homeschooled child ~~[or opt-in child]~~ who is otherwise eligible to enroll in a public school in this State in grade 12; and

(2) Satisfies the qualifications set forth in paragraphs (a) and (c) of subsection 1 of NRS 219A.140.

(b) Insofar as is practicable, within 30 days after the date on which the vacancy occurs.

4. As used in this section, "event day" means any single calendar day on which an official, scheduled event of the Youth Legislature is held, including, without limitation, a course of instruction, a course of orientation, a meeting, a seminar or any other official, scheduled activity.

Sec. 30.2. NRS 385.007 is hereby amended to read as follows:

385.007 As used in this title, unless the context otherwise requires:

1. "Achievement charter school" means a public school operated by a charter management organization, as defined in NRS 388B.020, an educational management organization, as defined in NRS 388B.030, or other person pursuant to a contract with the Achievement School District pursuant to NRS 388B.210 and subject to the provisions of chapter 388B of NRS.

2. "Department" means the Department of Education.

3. "English learner" has the meaning ascribed to it in 20 U.S.C. § 7801(20).

4. "Homeschooled child" means a child who receives instruction at home and who is exempt from compulsory attendance pursuant to NRS 392.070 . ~~[, but does not include an opt-in child.]~~

5. "Local school precinct" has the meaning ascribed to it in NRS 388G.535.

6. ~~[~~"Opt-in child" means a child for whom an education savings account has been established pursuant to NRS 353B.850, who is not enrolled full-time in a public or private school and who receives all or a portion of his or her instruction from a participating entity, as defined in NRS 353B.750.

~~7.]~~ "Public schools" means all kindergartens and elementary schools, junior high schools and middle schools, high schools, charter schools and any other schools, classes and educational programs which receive their support through public taxation and,

except for charter schools, whose textbooks and courses of study are under the control of the State Board.

~~[8.]~~ *7.* "School bus" has the meaning ascribed to it in NRS 484A.230.

~~[9.]~~ *8.* "State Board" means the State Board of Education.

~~[10.]~~ *9.* "University school for profoundly gifted pupils" has the meaning ascribed to it in NRS 388C.040.

Sec. 30.25. NRS 385B.060 is hereby amended to read as follows:

385B.060 1. The Nevada Interscholastic Activities Association shall adopt rules and regulations in the manner provided for state agencies by chapter 233B of NRS as may be necessary to carry out the provisions of this chapter. The regulations must include provisions governing the eligibility and participation of homeschooled children ~~[and opt-in children]~~ in interscholastic activities and events. In addition to the regulations governing eligibility ~~[:~~

~~(a) A]~~ *, a* homeschooled child who wishes to participate must have on file with the school district in which the child resides a current notice of intent of a homeschooled child to participate in programs and activities pursuant to NRS 388D.070.

~~[(b) An opt-in child who wishes to participate must have on file with the school district in which the child resides a current notice of intent of an opt-in child to participate in programs and activities pursuant to NRS 388D.140.]~~

2. The Nevada Interscholastic Activities Association shall adopt regulations setting forth:

(a) The standards of safety for each event, competition or other activity engaged in by a spirit squad of a school that is a member of the Nevada Interscholastic Activities Association, which must substantially comply with the spirit rules of the National Federation of State High School Associations, or its successor organization; and

(b) The qualifications required for a person to become a coach of a spirit squad.

3. If the Nevada Interscholastic Activities Association intends to adopt, repeal or amend a policy, rule or regulation concerning or affecting homeschooled children, the Association shall consult with the Northern Nevada Homeschool Advisory Council and the Southern Nevada Homeschool Advisory Council, or their successor organizations, to provide those Councils with a reasonable opportunity to submit data, opinions or arguments, orally or in writing, concerning the proposal or change. The Association shall

consider all written and oral submissions respecting the proposal or change before taking final action.

4. As used in this section, "spirit squad" means any team or other group of persons that is formed for the purpose of:

(a) Leading cheers or rallies to encourage support for a team that participates in a sport that is sanctioned by the Nevada Interscholastic Activities Association; or

(b) Participating in a competition against another team or other group of persons to determine the ability of each team or group of persons to engage in an activity specified in paragraph (a).

Sec. 30.3. NRS 385B.150 is hereby amended to read as follows:

385B.150 1. A homeschooled child must be allowed to participate in interscholastic activities and events in accordance with the regulations adopted by the Nevada Interscholastic Activities Association pursuant to NRS 385B.060 if a notice of intent of a homeschooled child to participate in programs and activities is filed for the child with the school district in which the child resides for the current school year pursuant to NRS 388D.070.

2. ~~[An opt-in child must be allowed to participate in interscholastic activities and events in accordance with the regulations adopted by the Nevada Interscholastic Activities Association pursuant to NRS 385B.060 if a notice of intent of an opt-in child to participate in programs and activities is filed for the child with the school district in which the child resides for the current school year pursuant to NRS 388D.140.~~

~~3.]~~ The provisions of this chapter and the regulations adopted pursuant thereto that apply to pupils enrolled in public schools who participate in interscholastic activities and events apply in the same manner to homeschooled children ~~[and opt-in children]~~ who participate in interscholastic activities and events, including, without limitation, provisions governing:

(a) Eligibility and qualifications for participation;
(b) Fees for participation;
(c) Insurance;
(d) Transportation;
(e) Requirements of physical examination;
(f) Responsibilities of participants;
(g) Schedules of events;
(h) Safety and welfare of participants;
(i) Eligibility for awards, trophies and medals;
(j) Conduct of behavior and performance of participants; and
(k) Disciplinary procedures.

Sec. 30.35. NRS 385B.160 is hereby amended to read as follows:

385B.160 No challenge may be brought by the Nevada Interscholastic Activities Association, a school district, a public school or a private school, a parent or guardian of a pupil enrolled in a public school or a private school, a pupil enrolled in a public school or private school, or any other entity or person claiming that an interscholastic activity or event is invalid because homeschooled children ~~[or opt-in children]~~ are allowed to participate in the interscholastic activity or event.

Sec. 30.4. NRS 385B.170 is hereby amended to read as follows:

385B.170 A school district, public school or private school shall not prescribe any regulations, rules, policies, procedures or requirements governing the:

1. Eligibility of homeschooled children ~~[or opt-in children]~~ to participate in interscholastic activities and events pursuant to this chapter; or

2. Participation of homeschooled children ~~[or opt-in children]~~ in interscholastic activities and events pursuant to this chapter,

↪ that are more restrictive than the provisions governing eligibility and participation prescribed by the Nevada Interscholastic Activities Association pursuant to NRS 385B.060.

Sec. 30.45. NRS 387.045 is hereby amended to read as follows:

387.045 ~~[Except as otherwise provided in NRS 353B.700 to 353B.930, inclusive:]~~

1. No portion of the public school funds or of the money specially appropriated for the purpose of public schools shall be devoted to any other object or purpose.

2. No portion of the public school funds shall in any way be segregated, divided or set apart for the use or benefit of any sectarian or secular society or association.

Sec. 30.5. NRS 387.1223 is hereby amended to read as follows:

387.1223 1. On or before October 1, January 1, April 1 and July 1, each school district shall report to the Department, in the form prescribed by the Department, the average daily enrollment of pupils pursuant to this section for the immediately preceding quarter of the school year.

2. Except as otherwise provided in subsection 3, basic support of each school district must be computed by:

(a) Multiplying the basic support guarantee per pupil established for that school district for that school year by the sum of:

(1) The count of pupils enrolled in kindergarten and grades 1 to 12, inclusive, based on the average daily enrollment of those pupils during the quarter, including, without limitation, the count of pupils who reside in the county and are enrolled in any charter school and the count of pupils who are enrolled in a university school for profoundly gifted pupils located in the county.

(2) The count of pupils not included under subparagraph (1) who are enrolled full-time in a program of distance education provided by that school district, a charter school located within that school district or a university school for profoundly gifted pupils, based on the average daily enrollment of those pupils during the quarter.

(3) The count of pupils who reside in the county and are enrolled:

(I) In a public school of the school district and are concurrently enrolled part-time in a program of distance education provided by another school district or a charter school , ~~[or receiving a portion of his or her instruction from a participating entity, as defined in NRS 353B.750,]~~ based on the average daily enrollment of those pupils during the quarter.

(II) In a charter school and are concurrently enrolled part-time in a program of distance education provided by a school district or another charter school , ~~[or receiving a portion of his or her instruction from a participating entity, as defined in NRS 353B.750,]~~ based on the average daily enrollment of those pupils during the quarter.

(4) The count of pupils not included under subparagraph (1), (2) or (3), who are receiving special education pursuant to the provisions of NRS 388.417 to 388.469, inclusive, and 388.5251 to 388.5267, inclusive, based on the average daily enrollment of those pupils during the quarter and excluding the count of pupils who have not attained the age of 5 years and who are receiving special education pursuant to NRS 388.435.

(5) Six-tenths the count of pupils who have not attained the age of 5 years and who are receiving special education pursuant to NRS 388.435, based on the average daily enrollment of those pupils during the quarter.

(6) The count of children detained in facilities for the detention of children, alternative programs and juvenile forestry camps receiving instruction pursuant to the provisions of

NRS 388.550, 388.560 and 388.570, based on the average daily enrollment of those pupils during the quarter.

(7) The count of pupils who are enrolled in classes for at least one semester pursuant to subsection 1 of NRS 388A.471, subsection 1 of NRS 388A.474, subsection 1 of NRS 392.074, or subsection 1 of NRS 388B.280 or any regulations adopted pursuant to NRS 388B.060 that authorize a child who is enrolled at a public school of a school district or a private school or a homeschooled child to participate in a class at an achievement charter school, based on the average daily enrollment of pupils during the quarter and expressed as a percentage of the total time services are provided to those pupils per school day in proportion to the total time services are provided during a school day to pupils who are counted pursuant to subparagraph (1).

(b) Adding the amounts computed in paragraph (a).

3. Except as otherwise provided in subsection 4, if the enrollment of pupils in a school district or a charter school that is located within the school district based on the average daily enrollment of pupils during the quarter of the school year is less than or equal to 95 percent of the enrollment of pupils in the same school district or charter school based on the average daily enrollment of pupils during the same quarter of the immediately preceding school year, the enrollment of pupils during the same quarter of the immediately preceding school year must be used for purposes of making the quarterly apportionments from the State Distributive School Account to that school district or charter school pursuant to NRS 387.124.

4. If the Department determines that a school district or charter school deliberately causes a decline in the enrollment of pupils in the school district or charter school to receive a higher apportionment pursuant to subsection 3, including, without limitation, by eliminating grades or moving into smaller facilities, the enrollment number from the current school year must be used for purposes of apportioning money from the State Distributive School Account to that school district or charter school pursuant to NRS 387.124.

5. The Department shall prescribe a process for reconciling the quarterly reports submitted pursuant to subsection 1 to account for pupils who leave the school district or a public school during the school year.

6. Pupils who are excused from attendance at examinations or have completed their work in accordance with the rules of the board of trustees must be credited with attendance during that period.

7. Pupils who are incarcerated in a facility or institution operated by the Department of Corrections must not be counted for the purpose of computing basic support pursuant to this section. The average daily attendance for such pupils must be reported to the Department of Education.

8. Pupils who are enrolled in courses which are approved by the Department as meeting the requirements for an adult to earn a high school diploma must not be counted for the purpose of computing basic support pursuant to this section.

Sec. 30.55. NRS 387.124 is hereby amended to read as follows:

387.124 Except as otherwise provided in this section and NRS 387.1241, 387.1242 and 387.528:

1. On or before August 1, November 1, February 1 and May 1 of each year, the Superintendent of Public Instruction shall apportion the State Distributive School Account in the State General Fund among the several county school districts, charter schools and university schools for profoundly gifted pupils in amounts approximating one-fourth of their respective yearly apportionments less any amount set aside as a reserve. Except as otherwise provided in NRS 387.1244, the apportionment to a school district, computed on a yearly basis, equals the difference between the basic support and the local funds available pursuant to NRS 387.163, minus all the funds attributable to pupils who reside in the county but attend a charter school, all the funds attributable to pupils who reside in the county and are enrolled full-time or part-time in a program of distance education provided by another school district or a charter school ~~[,]~~ ***and*** all the funds attributable to pupils who are enrolled in a university school for profoundly gifted pupils located in the county . ~~[and all the funds deposited in education savings accounts established on behalf of children who reside in the county pursuant to NRS 353B.700 to 353B.930, inclusive.]~~ No apportionment may be made to a school district if the amount of the local funds exceeds the amount of basic support.

2. Except as otherwise provided in NRS 387.1244, in addition to the apportionments made pursuant to this section, if a pupil is enrolled part-time in a program of distance education and part-time in a:

(a) Public school other than a charter school, an apportionment must be made to the school district in which the pupil resides. The school district in which the pupil resides shall allocate a percentage of the apportionment to the school district or charter school that

provides the program of distance education in the amount set forth in the agreement entered into pursuant to NRS 388.854.

(b) Charter school, an apportionment must be made to the charter school in which the pupil is enrolled. The charter school in which the pupil is enrolled shall allocate a percentage of the apportionment to the school district or charter school that provides the program of distance education in the amount set forth in the agreement entered into pursuant to NRS 388.858.

3. The Superintendent of Public Instruction shall apportion, on or before August 1 of each year, the money designated as the "Nutrition State Match" pursuant to NRS 387.105 to those school districts that participate in the National School Lunch Program, 42 U.S.C. §§ 1751 et seq. The apportionment to a school district must be directly related to the district's reimbursements for the Program as compared with the total amount of reimbursements for all school districts in this State that participate in the Program.

4. If the State Controller finds that such an action is needed to maintain the balance in the State General Fund at a level sufficient to pay the other appropriations from it, the State Controller may pay out the apportionments monthly, each approximately one-twelfth of the yearly apportionment less any amount set aside as a reserve. If such action is needed, the State Controller shall submit a report to the Office of Finance and the Fiscal Analysis Division of the Legislative Counsel Bureau documenting reasons for the action.

Sec. 30.6. NRS 388.850 is hereby amended to read as follows:

388.850 1. A pupil may enroll in a program of distance education unless:

(a) Pursuant to this section or other specific statute, the pupil is not eligible for enrollment or the pupil's enrollment is otherwise prohibited;

(b) The pupil fails to satisfy the qualifications and conditions for enrollment adopted by the State Board pursuant to NRS 388.874; or

(c) The pupil fails to satisfy the requirements of the program of distance education.

2. A child who is exempt from compulsory attendance and is enrolled in a private school pursuant to chapter 394 of NRS or is being homeschooled is not eligible to enroll in or otherwise attend a program of distance education, regardless of whether the child is otherwise eligible for enrollment pursuant to subsection 1.

3. ~~[An opt-in child who is exempt from compulsory attendance is not eligible to enroll in or otherwise attend a program of distance education, regardless of whether the child is otherwise eligible for enrollment pursuant to subsection 1, unless the opt-in child receives~~

~~only a portion of his or her instruction from a participating entity as authorized pursuant to NRS 353B.850.~~

~~4.~~] If a pupil who is prohibited from attending public school pursuant to NRS 392.264 enrolls in a program of distance education, the enrollment and attendance of that pupil must comply with all requirements of NRS 62F.100 to 62F.150, inclusive, and 392.251 to 392.271, inclusive.

Sec. 30.65. NRS 388A.471 is hereby amended to read as follows:

388A.471 1. Except as otherwise provided in subsection 2, upon the request of a parent or legal guardian of a child who is enrolled in a public school of a school district or a private school, or a parent or legal guardian of a homeschooled child , ~~[or opt-in child,]~~ the governing body of the charter school shall authorize the child to participate in a class that is not otherwise available to the child at his or her school or homeschool ~~[or from his or her participating entity, as defined in NRS 353B.750,]~~ or participate in an extracurricular activity at the charter school if:

(a) Space for the child in the class or extracurricular activity is available;

(b) The parent or legal guardian demonstrates to the satisfaction of the governing body that the child is qualified to participate in the class or extracurricular activity; and

(c) The child is ~~[:~~

~~(1) A]~~ *a* homeschooled child and a notice of intent of a homeschooled child to participate in programs and activities is filed for the child with the school district in which the child resides for the current school year pursuant to NRS 388D.070 . ~~[; or~~

~~(2) An opt-in child and a notice of intent of an opt-in child to participate in programs and activities is filed for the child with the school district in which the child resides for the current school year pursuant to NRS 388D.140.]~~

2. If the governing body of a charter school authorizes a child to participate in a class or extracurricular activity pursuant to subsection 1, the governing body is not required to provide transportation for the child to attend the class or activity. A charter school shall not authorize such a child to participate in a class or activity through a program of distance education provided by the charter school pursuant to NRS 388.820 to 388.874, inclusive.

3. The governing body of a charter school may revoke its approval for a child to participate in a class or extracurricular activity at a charter school pursuant to subsection 1 if the governing body determines that the child has failed to comply with applicable

statutes, or applicable rules and regulations. If the governing body so revokes its approval, neither the governing body nor the charter school is liable for any damages relating to the denial of services to the child.

4. The governing body of a charter school may, before authorizing a homeschooled child ~~[or opt-in child]~~ to participate in a class or extracurricular activity pursuant to subsection 1, require proof of the identity of the child, including, without limitation, the birth certificate of the child or other documentation sufficient to establish the identity of the child.

Sec. 30.7. NRS 388B.290 is hereby amended to read as follows:

388B.290 1. During the sixth year that a school operates as an achievement charter school, the Department shall evaluate the pupil achievement and school performance of the school. The Executive Director shall provide the Department with such information and assistance as the Department determines necessary to perform such an evaluation. If, as a result of such an evaluation, the Department determines:

(a) That the achievement charter school has made adequate improvement in pupil achievement and school performance, the governing body of the achievement charter school must decide whether to:

(1) Convert to a public school under the governance of the board of trustees of the school district in which the school is located;

(2) Seek to continue as a charter school subject to the provisions of chapter 388A of NRS by applying to the board of trustees of the school district in which the school is located, the State Public Charter School Authority or a college or university within the Nevada System of Higher Education to sponsor the charter school pursuant to NRS 388A.220; or

(3) Remain an achievement charter school for at least 6 more years.

(b) That the achievement charter school has not made adequate improvement in pupil achievement and school performance, the Department shall direct the Executive Director to notify the parent or legal guardian of each pupil enrolled in the achievement charter school that the achievement charter school has not made adequate improvement in pupil achievement and school performance. Such notice must include, without limitation, information regarding:

(1) Public schools which the pupil may be eligible to attend, including, without limitation, charter schools, programs of distance education offered pursuant to NRS 388.820 to 388.874, inclusive,

and alternative programs for the education of pupils at risk of dropping out of school pursuant to NRS 388.537;

(2) ~~[The opportunity for the parent to establish an education savings account pursuant to NRS 353B.850 and enroll the pupil in a private school, have the pupil become an opt in child or provide for the education of the pupil in any other manner authorized by NRS 353B.900;~~

~~(3)]~~ Any other alternatives for the education of the pupil that are available in this State; and

~~[(4)]~~ *(3)* The actions that may be considered by the Department with respect to the achievement charter school and the manner in which the parent may provide input.

2. Upon deciding that the achievement charter school has not made adequate improvement in pupil achievement and school performance pursuant to paragraph (b) of subsection 1, the Department must decide whether to:

(a) Convert the achievement charter school to a public school under the governance of the board of trustees of the school district in which the school is located; or

(b) Continue to operate the school as an achievement charter school for at least 6 more years.

3. If the Department decides to continue to operate a school as an achievement charter school pursuant to subsection 2, the Executive Director must:

(a) Terminate the contract with the charter management organization, educational management organization or other person that operated the achievement charter school;

(b) Enter into a contract with a different charter management organization, educational management organization or other person to operate the achievement charter school after complying with the provisions of NRS 388B.210;

(c) Require the charter management organization, educational management organization or other person with whom the Executive Director enters into a contract to operate the achievement charter school to appoint a new governing body of the achievement charter school in the manner provided pursuant to NRS 388B.220, and must not reappoint more than 40 percent of the members of the previous governing body; and

(d) Evaluate the pupil achievement and school performance of such a school at least each 3 years of operation thereafter.

4. If an achievement charter school is converted to a public school under the governance of the board of trustees of a school district pursuant to paragraph (a) of subsection 1, the board of

trustees must employ any teacher, administrator or paraprofessional who wishes to continue employment at the school and meets the requirements of chapter 391 of NRS to teach at the school. Any administrator or teacher employed at such a school who was employed by the board of trustees as a postprobationary employee before the school was converted to an achievement charter school and who wishes to continue employment at the school after it is converted back into a public school must be employed as a postprobationary employee.

5. If an achievement charter school becomes a charter school sponsored by the school district in which the charter school is located, the State Public Charter School Authority or a college or university within the Nevada System of Higher Education pursuant to paragraph (a) of subsection 1, the school is subject to the provisions of chapter 388A of NRS and the continued operation of the charter school in the building in which the school has been operating is subject to the provisions of NRS 388A.378.

6. As used in this section, "postprobationary employee" has the meaning ascribed to it in NRS 391.650.

Sec. 30.75. NRS 388D.270 is hereby amended to read as follows:

388D.270 1. A scholarship organization must:

(a) Be exempt from taxation pursuant to section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. § 501(c)(3).

(b) Not own or operate any school in this State, including, without limitation, a private school, which receives any grant money pursuant to the Nevada Educational Choice Scholarship Program.

(c) Accept donations from taxpayers and other persons and may also solicit and accept gifts and grants.

(d) Not expend more than 5 percent of the total amount of money accepted pursuant to paragraph (c) to pay its administrative expenses.

(e) Provide grants on behalf of pupils who are members of a household that has a household income which is not more than 300 percent of the federally designated level signifying poverty to allow those pupils to attend schools in this State chosen by the parents or legal guardians of those pupils, including, without limitation, private schools. The total amount of a grant provided by the scholarship organization on behalf of a pupil pursuant to this paragraph must not exceed $7,755 for Fiscal Year 2015-2016.

(f) Not limit to a single school the schools for which it provides grants.

(g) Except as otherwise provided in paragraph (e), not limit to specific pupils the grants provided pursuant to that paragraph.

2. The maximum amount of a grant provided by the scholarship organization pursuant to paragraph (e) of subsection 1 must be adjusted on July 1 of each year for the fiscal year beginning that day and ending June 30 in a rounded dollar amount corresponding to the percentage of increase in the Consumer Price Index (All Items) published by the United States Department of Labor for the preceding calendar year. On May 1 of each year, the Department of Education shall determine the amount of increase required by this subsection, establish the adjusted amounts to take effect on July 1 of that year and notify each scholarship organization of the adjusted amounts. The Department of Education shall also post the adjusted amounts on its Internet website.

3. A grant provided on behalf of a pupil pursuant to subsection 1 must be paid directly to the school chosen by the parent or legal guardian of the pupil.

4. A scholarship organization shall provide each taxpayer and other person who makes a donation, gift or grant of money to the scholarship organization pursuant to paragraph (c) of subsection 1 with an affidavit, signed under penalty of perjury, which includes, without limitation:

(a) A statement that the scholarship organization satisfies the requirements set forth in subsection 1; and

(b) The total amount of the donation, gift or grant made to the scholarship organization.

5. Each school in which a pupil is enrolled for whom a grant is provided by a scholarship organization shall maintain a record of the academic progress of the pupil. The record must be maintained in such a manner that the information may be aggregated and reported for all such pupils if reporting is required by the regulations of the Department of Education.

6. ***A scholarship organization shall not use a donation for which a taxpayer received a tax credit pursuant to NRS 363A.139 or 363B.119 to provide a grant pursuant to this section on behalf of a pupil unless the scholarship organization used a donation for which the taxpayer received a tax credit pursuant to NRS 363A.139 or 363B.119 to provide a grant pursuant to this section on behalf of the pupil for the immediately preceding school year or reasonably expects to be able to provide a grant pursuant to this section on behalf of the pupil in at least the same amount for each school year until the pupil graduates from high school. A scholarship organization that violates this subsection shall repay***

to the Department of Taxation the amount of the tax credit received by the taxpayer pursuant to NRS 363A.139 or 363B.119, as applicable.

7. The Department of Education:

(a) Shall adopt regulations prescribing the contents of and procedures for applications for grants provided pursuant to subsection 1.

(b) May adopt such other regulations as the Department determines necessary to carry out the provisions of this section.

~~[7.]~~ ***8.*** As used in this section, "private school" has the meaning ascribed to it in NRS 394.103.

Sec. 30.8. NRS 392.033 is hereby amended to read as follows:

392.033 1. The State Board shall adopt regulations which prescribe the courses of study required for promotion to high school, including, without limitation, English language arts, mathematics, science and social studies. The regulations may include the credits to be earned in each course.

2. Except as otherwise provided in subsection 4, the board of trustees of a school district shall not promote a pupil to high school if the pupil does not complete the course of study or credits required for promotion. The board of trustees of the school district in which the pupil is enrolled may provide programs of remedial study to complete the courses of study required for promotion to high school.

3. The board of trustees of each school district shall adopt a procedure for evaluating the course of study or credits completed by a pupil who transfers to a junior high or middle school from a junior high or middle school in this State or from a school outside of this State.

4. The board of trustees of each school district shall adopt a policy that allows a pupil who has not completed the courses of study or credits required for promotion to high school to be placed on academic probation and to enroll in high school. A pupil who is on academic probation pursuant to this subsection shall complete appropriate remediation in the subject areas that the pupil failed to pass. The policy must include the criteria for eligibility of a pupil to be placed on academic probation. A parent or guardian may elect not to place his or her child on academic probation but to remain in grade 8.

5. A homeschooled child ~~[or opt-in child]~~ who enrolls in a public high school shall, upon initial enrollment:

(a) Provide documentation sufficient to prove that the child has successfully completed the courses of study required for promotion to high school through an accredited program of homeschool study

recognized by the board of trustees of the school district . ~~[or from a participating entity, as applicable;]~~

(b) Demonstrate proficiency in the courses of study required for promotion to high school through an examination prescribed by the board of trustees of the school district; or

(c) Provide other proof satisfactory to the board of trustees of the school district demonstrating competency in the courses of study required for promotion to high school.

~~[6. As used in this section, "participating entity" has the meaning ascribed to it in NRS 353B.750.]~~

Sec. 30.85. NRS 392.070 is hereby amended to read as follows:

392.070 Attendance of a child required by the provisions of NRS 392.040 must be excused when:

1. The child is enrolled in a private school pursuant to chapter 394 of NRS; ***or***

2. A parent of the child chooses to provide education to the child and files a notice of intent to homeschool the child with the superintendent of schools of the school district in which the child resides in accordance with NRS 388D.020 . ~~[; or~~

~~3. The child is an opt in child and notice of such has been provided to the school district in which the child resides or the charter school in which the child was previously enrolled, as applicable, in accordance with NRS 388D.110.]~~

Sec. 30.9. NRS 392.072 is hereby amended to read as follows:

392.072 1. The board of trustees of each school district shall provide programs of special education and related services for homeschooled children. The programs of special education and related services required by this section must be made available:

(a) Only if a child would otherwise be eligible for participation in programs of special education and related services pursuant to NRS 388.417 to 388.469, inclusive, or NRS 388.5251 to 388.5267, inclusive;

(b) In the same manner that the board of trustees provides, as required by 20 U.S.C. § 1412, for the participation of pupils with disabilities who are enrolled in private schools within the school district voluntarily by their parents or legal guardians; and

(c) In accordance with the same requirements set forth in 20 U.S.C. § 1412 which relate to the participation of pupils with disabilities who are enrolled in private schools within the school district voluntarily by their parents or legal guardians.

2. The programs of special education and related services required by subsection 1 may be offered at a public school or another location that is appropriate.

3. The board of trustees of a school district may, before providing programs of special education and related services to a homeschooled child ~~[or opt-in child]~~ pursuant to subsection 1, require proof of the identity of the child, including, without limitation, the birth certificate of the child or other documentation sufficient to establish the identity of the child.

4. The Department shall adopt such regulations as are necessary for the boards of trustees of school districts to provide the programs of special education and related services required by subsection 1.

5. As used in this section, "related services" has the meaning ascribed to it in 20 U.S.C. § 1401.

Sec. 30.93. NRS 392.074 is hereby amended to read as follows:

392.074 1. Except as otherwise provided in subsection 1 of NRS 392.072 for programs of special education and related services, upon the request of a parent or legal guardian of a child who is enrolled in a private school or a parent or legal guardian of a homeschooled child , ~~[or opt-in child,]~~ the board of trustees of the school district in which the child resides shall authorize the child to participate in any classes and extracurricular activities, excluding sports, at a public school within the school district if:

(a) Space for the child in the class or extracurricular activity is available;

(b) The parent or legal guardian demonstrates to the satisfaction of the board of trustees that the child is qualified to participate in the class or extracurricular activity; and

(c) If the child is ~~[:~~

~~(1) A]~~ *a* homeschooled child, a notice of intent of a homeschooled child to participate in programs and activities is filed for the child with the school district for the current school year pursuant to NRS 388D.070 . ~~[; or~~

~~(2) An opt-in child, a notice of intent of an opt-in child to participate in programs and activities is filed for the child with the school district for the current school year pursuant to NRS 388D.140.]~~

↪ If the board of trustees of a school district authorizes a child to participate in a class or extracurricular activity, excluding sports, pursuant to this subsection, the board of trustees is not required to provide transportation for the child to attend the class or activity. A

homeschooled child ~~[or opt-in child]~~ must be allowed to participate in interscholastic activities and events governed by the Nevada Interscholastic Activities Association pursuant to chapter 385B of NRS and interscholastic activities and events, including sports, pursuant to subsection 3.

2. The board of trustees of a school district may revoke its approval for a pupil to participate in a class or extracurricular activity at a public school pursuant to subsection 1 if the board of trustees or the public school determines that the pupil has failed to comply with applicable statutes, or applicable rules and regulations of the board of trustees. If the board of trustees revokes its approval, neither the board of trustees nor the public school is liable for any damages relating to the denial of services to the pupil.

3. In addition to those interscholastic activities and events governed by the Nevada Interscholastic Activities Association pursuant to chapter 385B of NRS, a homeschooled child ~~[or opt-in child]~~ must be allowed to participate in interscholastic activities and events, including sports, if a notice of intent of a homeschooled child ~~[or opt-in child]~~ to participate in programs and activities is filed for the child with the school district for the current school year pursuant to NRS 388D.070 . ~~[or 388D.140, as applicable.]~~ A homeschooled child ~~[or opt-in child]~~ who participates in interscholastic activities and events at a public school pursuant to this subsection must participate within the school district of the child's residence through the public school which the child is otherwise zoned to attend. Any rules or regulations that apply to pupils enrolled in public schools who participate in interscholastic activities and events, including sports, apply in the same manner to homeschooled children ~~[and opt-in children]~~ who participate in interscholastic activities and events, including, without limitation, provisions governing:

(a) Eligibility and qualifications for participation;
(b) Fees for participation;
(c) Insurance;
(d) Transportation;
(e) Requirements of physical examination;
(f) Responsibilities of participants;
(g) Schedules of events;
(h) Safety and welfare of participants;
(i) Eligibility for awards, trophies and medals;
(j) Conduct of behavior and performance of participants; and
(k) Disciplinary procedures.

4. If a homeschooled child ~~[or opt in child]~~ participates in interscholastic activities and events pursuant to subsection 3:

(a) No challenge may be brought by the Association, a school district, a public school or a private school, a parent or guardian of a pupil enrolled in a public school or a private school, a pupil enrolled in a public school or a private school, or any other entity or person claiming that an interscholastic activity or event is invalid because the homeschooled child ~~[or opt in child]~~ is allowed to participate.

(b) Neither the school district nor a public school may prescribe any regulations, rules, policies, procedures or requirements governing the eligibility or participation of the homeschooled child ~~[or opt in child]~~ that are more restrictive than the provisions governing the eligibility and participation of pupils enrolled in public schools.

5. The board of trustees of a school district:

(a) May, before authorizing a homeschooled child ~~[or opt in child]~~ to participate in a class or extracurricular activity, excluding sports, pursuant to subsection 1, require proof of the identity of the child, including, without limitation, the birth certificate of the child or other documentation sufficient to establish the identity of the child.

(b) Shall, before allowing a homeschooled child ~~[or opt in child]~~ to participate in interscholastic activities and events governed by the Nevada Interscholastic Activities Association pursuant to chapter 385B of NRS and interscholastic activities and events pursuant to subsection 3, require proof of the identity of the child, including, without limitation, the birth certificate of the child or other documentation sufficient to establish the identity of the child.

Sec. 30.95. NRS 392.466 is hereby amended to read as follows:

392.466 1. Except as otherwise provided in this section, any pupil who commits a battery which results in the bodily injury of an employee of the school or who sells or distributes any controlled substance while on the premises of any public school, at an activity sponsored by a public school or on any school bus must, for the first occurrence, be suspended or expelled from that school, although the pupil may be placed in another kind of school, for at least a period equal to one semester for that school. For a second occurrence, the pupil must be permanently expelled from that school and:

(a) Enroll in a private school pursuant to chapter 394 of NRS ~~[, become an opt in child]~~ or be homeschooled; or

(b) Enroll in a program of independent study provided pursuant to NRS 389.155 for pupils who have been suspended or expelled

from public school or a program of distance education provided pursuant to NRS 388.820 to 388.874, inclusive, if the pupil qualifies for enrollment and is accepted for enrollment in accordance with the requirements of the applicable program.

2. Except as otherwise provided in this section, any pupil who is found in possession of a firearm or a dangerous weapon while on the premises of any public school, at an activity sponsored by a public school or on any school bus must, for the first occurrence, be expelled from the school for a period of not less than 1 year, although the pupil may be placed in another kind of school for a period not to exceed the period of the expulsion. For a second occurrence, the pupil must be permanently expelled from the school and:

(a) Enroll in a private school pursuant to chapter 394 of NRS ~~[, become an opt-in child]~~ or be homeschooled; or

(b) Enroll in a program of independent study provided pursuant to NRS 389.155 for pupils who have been suspended or expelled from public school or a program of distance education provided pursuant to NRS 388.820 to 388.874, inclusive, if the pupil qualifies for enrollment and is accepted for enrollment in accordance with the requirements of the applicable program.

3. Except as otherwise provided in this section, if a pupil is deemed a habitual disciplinary problem pursuant to NRS 392.4655, the pupil may be:

(a) Suspended from the school for a period not to exceed one school semester as determined by the seriousness of the acts which were the basis for the discipline; or

(b) Expelled from the school under extraordinary circumstances as determined by the principal of the school.

4. If the pupil is expelled, or the period of the pupil's suspension is for one school semester, the pupil must:

(a) Enroll in a private school pursuant to chapter 394 of NRS ~~[, become an opt-in child]~~ or be homeschooled; or

(b) Enroll in a program of independent study provided pursuant to NRS 389.155 for pupils who have been suspended or expelled from public school or a program of distance education provided pursuant to NRS 388.820 to 388.874, inclusive, if the pupil qualifies for enrollment and is accepted for enrollment in accordance with the requirements of the applicable program.

5. The superintendent of schools of a school district may, for good cause shown in a particular case in that school district, allow a modification to the suspension or expulsion requirement, as

applicable, of subsection 1, 2 or 3 if such modification is set forth in writing.

6. This section does not prohibit a pupil from having in his or her possession a knife or firearm with the approval of the principal of the school. A principal may grant such approval only in accordance with the policies or regulations adopted by the board of trustees of the school district.

7. Any pupil in grades 1 to 6, inclusive, except a pupil who has been found to have possessed a firearm in violation of subsection 2, may be suspended from school or permanently expelled from school pursuant to this section only after the board of trustees of the school district has reviewed the circumstances and approved this action in accordance with the procedural policy adopted by the board for such issues.

8. A pupil who is participating in a program of special education pursuant to NRS 388.419, other than a pupil who receives early intervening services, may, in accordance with the procedural policy adopted by the board of trustees of the school district for such matters, be:

(a) Suspended from school pursuant to this section for not more than 10 days. Such a suspension may be imposed pursuant to this paragraph for each occurrence of conduct proscribed by subsection 1.

(b) Suspended from school for more than 10 days or permanently expelled from school pursuant to this section only after the board of trustees of the school district has reviewed the circumstances and determined that the action is in compliance with the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400 et seq.

9. As used in this section:

(a) "Battery" has the meaning ascribed to it in paragraph (a) of subsection 1 of NRS 200.481.

(b) "Dangerous weapon" includes, without limitation, a blackjack, slungshot, billy, sand-club, sandbag, metal knuckles, dirk or dagger, a nunchaku or trefoil, as defined in NRS 202.350, a butterfly knife or any other knife described in NRS 202.350, a switchblade knife as defined in NRS 202.265, or any other object which is used, or threatened to be used, in such a manner and under such circumstances as to pose a threat of, or cause, bodily injury to a person.

(c) "Firearm" includes, without limitation, any pistol, revolver, shotgun, explosive substance or device, and any other item included

within the definition of a "firearm" in 18 U.S.C. § 921, as that section existed on July 1, 1995.

10. The provisions of this section do not prohibit a pupil who is suspended or expelled from enrolling in a charter school that is designed exclusively for the enrollment of pupils with disciplinary problems if the pupil is accepted for enrollment by the charter school pursuant to NRS 388A.453 or 388A.456. Upon request, the governing body of a charter school must be provided with access to the records of the pupil relating to the pupil's suspension or expulsion in accordance with applicable federal and state law before the governing body makes a decision concerning the enrollment of the pupil.

Sec. 31. 1. There is hereby appropriated from the State General Fund to the School Safety Account the following sums:

For the Fiscal Year 2019-2020 ..... $8,340,845
For the Fiscal Year 2020-2021 ..... $8,404,930

2. The Department of Education shall transfer from the appropriation made by subsection 1 to provide grants utilizing a competitive grant process based on demonstrated need, within the limits of legislative appropriation, to school districts and to charter schools for school safety facility improvements.

3. Any remaining balance of the appropriation made by subsection 1 for Fiscal Year 2019-2020 must be added to the money appropriated for Fiscal Year 2020-2021 and may be expended as that money is expended. Any remaining balance of the appropriation made by subsection 1 for Fiscal Year 2020-2021, including any such money added from the previous fiscal year, must not be committed for expenditure after June 30, 2021, and must be reverted to the State General Fund on or before September 17, 2021.

Secs. 32-36. (Deleted by amendment.)

Sec. 36.5. 1. There is hereby appropriated from the State General Fund to the Account for Programs for Innovation and the Prevention of Remediation created by NRS 387.1247 the following sums:

For the Fiscal Year 2019-2020 ..... $35,081,155
For the Fiscal Year 2020-2021 ..... $36,848,070

2. The Department of Education shall transfer the sums of money identified in this subsection from the Account for Programs for Innovation and the Prevention of Remediation to school districts for block grants for the purpose of providing supplemental support to the operation of the school districts. The amount to be transferred for the fiscal year shown is:

	2019-2020	2020-2021
Carson City School District	$631,574	$663,384
Churchill County School District	255,461	268,328
Clark County School District	25,892,878	27,197,012
Douglas County School District	458,566	481,662
Elko County School District	772,986	811,919
Esmeralda County School District	5,551	5,831
Eureka County School District	21,379	22,456
Humboldt County School District	273,189	286,949
Lander County School District	78,860	82,832
Lincoln County School District	76,533	80,388
Lyon County School District	681,887	716,231
Mineral County School District	42,868	45,027
Nye County School District	410,922	431,619
Pershing County School District	53,244	55,925
Storey County School District	34,229	35,953
Washoe County School District	5,294,592	5,561,262
White Pine County School District	96,435	101,292

3. Any remaining balance of the transfers made by subsection 2 for Fiscal Year 2019-2020 must be added to the money transferred for Fiscal Year 2020-2021 and may be expended as that money is expended. Any remaining balance of the transfers made by subsection 2 for Fiscal Year 2020-2021, including any such money added from the previous fiscal year, must be used for the purpose identified in subsection 2 and does not revert to the State General Fund.

Sec. 37. 1. The Legislature hereby finds and declares that the purpose and intent of this act is to maintain and continue the existing legally operative rates of the taxes imposed pursuant to NRS 363A.130 and 363B.110, at 2 percent and 1.475 percent, respectively, without any changes or reductions in the rates of those taxes pursuant to NRS 360.203, as that section existed before the effective date of this act, for any fiscal year beginning on or after July 1, 2015.

2. Notwithstanding any other provisions of law, in order to accomplish and carry out the purpose and intent of this act:

(a) Any determinations or decisions made or actions taken before the effective date of this section by the Department of Taxation pursuant to NRS 360.203, as that section existed before the effective date of this section:

(1) Are superseded, abrogated and nullified by the provisions of this act; and

(2) Have no legal force and effect; and

(b) The Department shall not, under any circumstances, apply or use those determinations, decisions or actions as a basis, cause or reason to reduce the rates of the taxes imposed pursuant to NRS 363A.130 and 363B.110 for any fiscal year beginning on or after July 1, 2015.

Sec. 38. (Deleted by amendment.)

Sec. 39. NRS 360.203 is hereby repealed.

Sec. 39.5. NRS 219A.050, 353B.700, 353B.710, 353B.720, 353B.730, 353B.740, 353B.750, 353B.760, 353B.770, 353B.820, 353B.850, 353B.860, 353B.870, 353B.880, 353B.900, 353B.910, 353B.920, 353B.930, 388D.100, 388D.110, 388D.120, 388D.130 and 388D.140 are hereby repealed.

Sec. 40. 1. This section and sections 2, 3, 37 and 39 of this act become effective upon passage and approval.

2. Sections 2.5, 3.5, 30.1 to 31, inclusive, 36.5 and 39.5 of this act become effective on July 1, 2019.

20 ~~~~ 19

EXHIBIT E

Assembly Bill No. 458–Committee on Education

CHAPTER.....

AN ACT relating to taxation; revising provisions governing the amount of credits the Department of Taxation is authorized to approve against the modified business tax for taxpayers who donate money to a scholarship organization; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Under existing law, financial institutions, mining businesses and other employers are required to pay an excise tax (the modified business tax) on wages paid by them. (NRS 363A.130, 363B.110) Existing law establishes a credit against the modified business tax equal to an amount which is approved by the Department of Taxation and which must not exceed the amount of any donation of money made by a taxpayer to a scholarship organization that provides grants on behalf of pupils who are members of a household with a household income of not more than 300 percent of the federally designated level signifying poverty to allow those pupils to attend schools in this State, including private schools, chosen by the parents or legal guardians of those pupils. (NRS 363A.139, 363B.119, 388D.270) Under existing law, the Department: (1) is required to approve or deny applications for the tax credit in the order in which the applications are received by the Department; and (2) is authorized to approve applications for each fiscal year until the amount of the tax credits approved for the fiscal year is the amount authorized by statute for that fiscal year. The amount of credits authorized for each fiscal year is equal to 110 percent of the amount authorized for the immediately preceding fiscal year, not including certain additional tax credits authorized for Fiscal Year 2017-2018. For Fiscal Year 2017-2018, the amount of credits authorized which are relevant for calculating the credits authorized in subsequent fiscal years is $6,050,000. Thus, for Fiscal Year 2018-2019, the amount of credits authorized is $6,655,000, plus any remaining amount of tax credits carried forward from the additional credit authorization made for Fiscal Year 2017-2018. (NRS 363A.139, 363B.119)

This bill eliminates the annual 110 percent increase in the amount of credits authorized and, instead, provides that the amount of credits authorized for each fiscal year is a total of $6,655,000, plus any remaining amount of tax credits carried forward from the additional credit authorization made for Fiscal Year 2017-2018.

EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets [~~omitted material~~] is material to be omitted.

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

Section 1. NRS 363A.139 is hereby amended to read as follows:

363A.139 1. Any taxpayer who is required to pay a tax pursuant to NRS 363A.130 may receive a credit against the tax otherwise due for any donation of money made by the taxpayer to a scholarship organization in the manner provided by this section.

2. To receive the credit authorized by subsection 1, a taxpayer who intends to make a donation of money to a scholarship organization must, before making such a donation, notify the scholarship organization of the taxpayer's intent to make the donation and to seek the credit authorized by subsection 1. A scholarship organization shall, before accepting any such donation, apply to the Department of Taxation for approval of the credit authorized by subsection 1 for the donation. The Department of Taxation shall, within 20 days after receiving the application, approve or deny the application and provide to the scholarship organization notice of the decision and, if the application is approved, the amount of the credit authorized. Upon receipt of notice that the application has been approved, the scholarship organization shall provide notice of the approval to the taxpayer who must, not later than 30 days after receiving the notice, make the donation of money to the scholarship organization. If the taxpayer does not make the donation of money to the scholarship organization within 30 days after receiving the notice, the scholarship organization shall provide notice of the failure to the Department of Taxation and the taxpayer forfeits any claim to the credit authorized by subsection 1.

3. The Department of Taxation shall approve or deny applications for the credit authorized by subsection 1 in the order in which the applications are received.

4. Except as otherwise provided in subsection 5, the Department of Taxation may, for each fiscal year, approve applications for the credit authorized by subsection 1 until the total amount of the credits authorized by subsection 1 and approved by the Department of Taxation pursuant to this subsection ***and subsection 4 of NRS 363B.119*** is ~~[~~:

~~(a) For Fiscal Year 2015-2016, $5,000,000;~~

~~(b) For Fiscal Year 2016-2017, $5,500,000; and~~

~~(c) For each succeeding fiscal year, an amount equal to 110 percent of the amount authorized for the immediately preceding fiscal year.~~

~~➥]~~ ***$6,655,000.*** The amount of any credit which is forfeited pursuant to subsection 2 must not be considered in calculating the amount of credits authorized for any fiscal year.

5. In addition to the amount of credits authorized by subsection 4 for Fiscal Year 2017-2018, the Department of Taxation may approve applications for the credit authorized by subsection 1 for that fiscal year until the total amount of the credits authorized by subsection 1 and approved by the Department of Taxation pursuant

to this subsection and subsection 5 of NRS 363B.119 is $20,000,000. The provisions of ~~[paragraph (c) of]~~ subsection 4 do not apply to the amount of credits authorized by this subsection and the amount of credits authorized by this subsection must not be considered when determining the amount of credits authorized for a fiscal year pursuant to ~~[that paragraph.]~~ ***subsection 4.*** If, in Fiscal Year 2017-2018, the amount of credits authorized by subsection 1 and approved pursuant to this subsection is less than $20,000,000, the remaining amount of credits pursuant to this subsection must be carried forward and made available for approval during subsequent fiscal years until the total amount of credits authorized by subsection 1 and approved pursuant to this subsection is equal to $20,000,000. The amount of any credit which is forfeited pursuant to subsection 2 must not be considered in calculating the amount of credits authorized pursuant to this subsection.

6. If a taxpayer applies to and is approved by the Department of Taxation for the credit authorized by subsection 1, the amount of the credit provided by this section is equal to the amount approved by the Department of Taxation pursuant to subsection 2, which must not exceed the amount of the donation made by the taxpayer to a scholarship organization. The total amount of the credit applied against the taxes described in subsection 1 and otherwise due from a taxpayer must not exceed the amount of the donation.

7. If the amount of the tax described in subsection 1 and otherwise due from a taxpayer is less than the credit to which the taxpayer is entitled pursuant to this section, the taxpayer may, after applying the credit to the extent of the tax otherwise due, carry the balance of the credit forward for not more than 5 years after the end of the calendar year in which the donation is made or until the balance of the credit is applied, whichever is earlier.

8. As used in this section, "scholarship organization" has the meaning ascribed to it in NRS 388D.260.

Sec. 2. NRS 363B.119 is hereby amended to read as follows:

363B.119 1. Any taxpayer who is required to pay a tax pursuant to NRS 363B.110 may receive a credit against the tax otherwise due for any donation of money made by the taxpayer to a scholarship organization in the manner provided by this section.

2. To receive the credit authorized by subsection 1, a taxpayer who intends to make a donation of money to a scholarship organization must, before making such a donation, notify the scholarship organization of the taxpayer's intent to make the donation and to seek the credit authorized by subsection 1. A scholarship organization shall, before accepting any such donation,

apply to the Department of Taxation for approval of the credit authorized by subsection 1 for the donation. The Department of Taxation shall, within 20 days after receiving the application, approve or deny the application and provide to the scholarship organization notice of the decision and, if the application is approved, the amount of the credit authorized. Upon receipt of notice that the application has been approved, the scholarship organization shall provide notice of the approval to the taxpayer who must, not later than 30 days after receiving the notice, make the donation of money to the scholarship organization. If the taxpayer does not make the donation of money to the scholarship organization within 30 days after receiving the notice, the scholarship organization shall provide notice of the failure to the Department of Taxation and the taxpayer forfeits any claim to the credit authorized by subsection 1.

3. The Department of Taxation shall approve or deny applications for the credit authorized by subsection 1 in the order in which the applications are received.

4. Except as otherwise provided in subsection 5, the Department of Taxation may, for each fiscal year, approve applications for the credit authorized by subsection 1 until the total amount of the credits authorized by subsection 1 and approved by the Department of Taxation pursuant to this subsection ***and subsection 4 of NRS 363A.139*** is ~~[~~:

~~(a) For Fiscal Year 2015-2016, $5,000,000;~~

~~(b) For Fiscal Year 2016-2017, $5,500,000; and~~

~~(c) For each succeeding fiscal year, an amount equal to 110 percent of the amount authorized for the immediately preceding fiscal year.~~

~~➥]~~ ***$6,655,000.*** The amount of any credit which is forfeited pursuant to subsection 2 must not be considered in calculating the amount of credits authorized for any fiscal year.

5. In addition to the amount of credits authorized by subsection 4 for Fiscal Year 2017-2018, the Department of Taxation may approve applications for the credit authorized by subsection 1 for that fiscal year until the total amount of the credits authorized by subsection 1 and approved by the Department of Taxation pursuant to this subsection and subsection 5 of NRS 363A.139 is $20,000,000. The provisions of ~~[paragraph (c) of]~~ subsection 4 do not apply to the amount of credits authorized by this subsection and the amount of credits authorized by this subsection must not be considered when determining the amount of credits authorized for a fiscal year pursuant to ~~[that paragraph.]~~ ***subsection 4.*** If, in Fiscal

Year 2017-2018, the amount of credits authorized by subsection 1 and approved pursuant to this subsection is less than $20,000,000, the remaining amount of credits pursuant to this subsection must be carried forward and made available for approval during subsequent fiscal years until the total amount of credits authorized by subsection 1 and approved pursuant to this subsection is equal to $20,000,000. The amount of any credit which is forfeited pursuant to subsection 2 must not be considered in calculating the amount of credits authorized pursuant to this subsection.

6. If a taxpayer applies to and is approved by the Department of Taxation for the credit authorized by subsection 1, the amount of the credit provided by this section is equal to the amount approved by the Department of Taxation pursuant to subsection 2, which must not exceed the amount of the donation made by the taxpayer to a scholarship organization. The total amount of the credit applied against the taxes described in subsection 1 and otherwise due from a taxpayer must not exceed the amount of the donation.

7. If the amount of the tax described in subsection 1 and otherwise due from a taxpayer is less than the credit to which the taxpayer is entitled pursuant to this section, the taxpayer may, after applying the credit to the extent of the tax otherwise due, carry the balance of the credit forward for not more than 5 years after the end of the calendar year in which the donation is made or until the balance of the credit is applied, whichever is earlier.

8. As used in this section, "scholarship organization" has the meaning ascribed to it in NRS 388D.260.

Sec. 3. This act becomes effective upon passage and approval for the purpose of adopting regulations and performing any other administrative tasks that are necessary to carry out the provisions of this act, and on July 1, 2019, for all other purposes.

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Institute for Justice, and that on the 10th day of July, 2020, I caused to be served, via the Court's electronic filing service, a true and correct copy of the foregoing **JOINT APPENDIX, VOLUME II** to the following parties:

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/s/ Claire Purple
An Employee of INSTITUTE FOR JUSTICE

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,

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,

Respondents,

Supreme Court Case No. 81281

On Appeal from a Final Judgment of the District Court for Clark County, Nevada, Case No. A-19-800267-C, Hon. Rob Bare

Joint Appendix, Volume III

and

THE LEGISLATURE OF THE STATE OF NEVADA,

Respondent-Intervenors.

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JOINT APPENDIX INDEX

TAB 9

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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. DEPARTMENT OF EDUCATION; et al.,

Defendants,

and

THE LEGISLATURE OF THE STATE OF NEVADA,

Intervenor-Defendant.

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

Hearing Requested

INTERVENOR-DEFENDANT NEVADA LEGISLATURE'S MOTION FOR SUMMARY JUDGMENT

MOTION FOR SUMMARY JUDGMENT

Intervenor-Defendant Legislature of the State of Nevada (Legislature), by and through its counsel the Legal Division of the Legislative Counsel Bureau under NRS 218F.720, hereby files this Motion for Summary Judgment pursuant NRCP 56 and EDCR 2.20. The Legislature's Motion for Summary Judgment is based upon the attached Memorandum of Points and Authorities, all pleadings, documents and exhibits on file in this case and any oral arguments the Court may allow.

The Legislature requests that the Court enter a final judgment in favor of the Legislature and all other Defendants on all causes of action and claims for relief alleged in Plaintiffs' Complaint filed on August 15, 2019, because: (1) Plaintiffs' state constitutional claims present only pure issues of law that require no factual development, so there are no genuine issues or disputes as to any material fact; and (2) AB 458 is constitutional as a matter of law, so the Legislature and all other Defendants are entitled to summary judgment on Plaintiffs' state constitutional claims as a matter of law.[1]

MEMORANDUM OF POINTS AND AUTHORITIES

I. Statement of the case and material facts.

A. Parties and claims.

In their complaint, Plaintiffs challenge the constitutionality of Assembly Bill No. 458 (AB 458) of the 2019 legislative session, 2019 Nev. Stat., ch. 366, at 2295-99.[2] (*Compl. at 1.*) Plaintiffs allege that AB 458 was a bill which created, generated, or increased public revenue and was subject to the two-thirds majority requirement in Article 4, Section 18(2) of the Nevada Constitution ("two-thirds requirement"). (*Compl. at 1, 5-6, 13.*) The two-thirds requirement provides in relevant part that:

---

[1] It is well settled that if a plaintiff's claims fail as a matter of law on a motion for summary judgment, all defendants are entitled to a final judgment in their favor on those claims, regardless of whether they joined in the motion. See Lewis v. Lynn, 236 F.3d 766, 768 (5th Cir. 2001); True the Vote v. Hosemann, 43 F.Supp.3d 693, 708 n.59 (S.D. Miss. 2014).

[2] AB 458 is reproduced in the Addendum after the Memorandum of Points and Authorities.

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

Nev. Const. art. 4, § 18(2).

Based on the two-thirds requirement, Plaintiffs allege that AB 458 is unconstitutional because the Senate passed the bill by a majority of all the members elected to the Senate, instead of a two-thirds majority of all the members elected to the Senate. (*Compl. at 1, 5-6, 13.*) Plaintiffs ask for a declaration that AB 458 is unconstitutional in violation of Article 4, Section 18(2), and Plaintiffs also ask for an injunction against its future enforcement. (*Compl. at 13-14.*)

Plaintiffs filed their complaint against the State of Nevada ex rel. the Department of Education, the executive head of the Department of Education, the Department of Taxation, the members of the Nevada Tax Commission and the Executive Director of the Department of Taxation ("Executive Defendants"). (*Compl. at 3-4.*) On October 9, 2019, the Court granted the Legislature's Motion to Intervene as an Intervenor-Defendant. The Legislature sought intervention to defend the constitutionality of AB 458 and the Legislature's reasonable interpretation of the two-thirds requirement, especially because "[i]n choosing this interpretation, the Legislature acted on Legislative Counsel's opinion that this is a reasonable construction of the provision . . . and the Legislature is entitled to deference in its counseled selection of this interpretation." Nev. Mining Ass'n v. Erdoes, 117 Nev. 531, 540 (2001).

B. AB 458 and its statutory amendments to the Modified Business Tax.

AB 458 involves Nevada's payroll taxes—more commonly known as the Modified Business Tax or MBT—imposed on certain financial institutions, mining companies and other business entities that engage in business activities in Nevada. NRS Chapters 363A-363B. For the financial institutions and mining companies subject to the MBT, the existing computation base for the taxes is calculated by multiplying a tax rate of 2 percent by the amount of the wages, as defined under Nevada's labor laws,

paid by the financial institution or mining company during each calendar quarter with respect to employment in connection with its business activities. NRS 363A.130. For the other business entities subject to the MBT, the existing computation base for the taxes is calculated by multiplying a tax rate of 1.475 percent by the amount of the wages, as defined under Nevada's labor laws but excluding the first $50,000 thereof, paid by the business entity during each calendar quarter with respect to employment in connection with its business activities. NRS 363B.110.

Under the MBT, after the amount of the taxpayer's liability for the taxes is calculated under the existing computation base, the taxpayer may qualify for certain tax credits against its tax liability for making donations to registered scholarship organizations operating under the Nevada Educational Choice Scholarship Program ("scholarship program"), which is administered by the Department of Education and Department of Taxation. NRS 363A.139, 363B.119 & 388D.250-388D.280; NAC 388D.010-388D.130. The registered scholarship organizations distribute scholarships in the form of grants to schools to allow children of certain low-income families that meet the requirements for the scholarship grants to attend schools in Nevada chosen by their parents or legal guardians, including, without limitation, private schools. Id.

AB 458 made statutory amendments to the amount of tax credits that the Department of Taxation would have been authorized to approve under the scholarship program in future fiscal years pursuant to subsection 4 of NRS 363A.139 and 363B.119. However, when the Legislature passed AB 458 during the 2019 legislative session, those potential future tax credits were not legally operative and binding yet because they would not lawfully go into effect and become legally operative and binding until the commencement of the fiscal year on July 1, 2019. Because those potential future tax credits were not legally operative and binding when the Legislature passed AB 458, this case involves several well-established principles of law governing the Legislature's power of controlling the public purse and the use of public funds for each fiscal year. See State of Nev. Employees Ass'n v. Daines, 108 Nev. 15, 21

(1992) ("[I]t is well established that the power of controlling the public purse lies within legislative, not executive authority.").

Under the Nevada Constitution, the state government operates on a fiscal year commencing on July 1 of each year. Nev. Const. art. 9, §§ 1-2. When the Legislature holds its regular biennial legislative session beginning on the first Monday of February of each odd-numbered year, the Legislature must enact legislation providing for public revenues to defray the estimated expenses of the state government for the next two fiscal years of the following biennium, which begins on July 1 after the legislative session. Nev. Const. art. 4, § 2 & art. 9, §§ 1-3. However, the Nevada Constitution places restrictions on the Legislature's power to commit or bind public funds for each fiscal year, and the Legislature cannot enact statutory provisions committing or binding future Legislatures to make successive appropriations or expenditures of public funds in future fiscal years, unless the Legislature complies with certain constitutional requirements. Nev. Const. art. 9, §§ 2-3; Employers Ins. Co. v. State Bd. of Exam'rs, 117 Nev. 249, 254-58 (2001); Morris v. Bd. of Regents, 97 Nev. 112, 114-15 (1981).

Furthermore, when the Legislature enacts legislation concerning public funds, it cannot—through the enactment of an ordinary statute—bind or limit the legislative power of future Legislatures. See Fletcher v. Peck, 10 U.S. 87, 135 (1810) ("[O]ne legislature cannot abridge the powers of a succeeding legislature. The correctness of this principle, so far as respects general legislation, can never be controverted."); United States v. Winstar Corp., 518 U.S. 839, 872 (1996) ("[O]ne legislature may not bind the legislative authority of its successors."). As explained by the U.S. Supreme Court:

> Every succeeding legislature possesses the same jurisdiction and power with respect to [public laws] as its predecessors. The latter have the same power of repeal and modification which the former had of enactment, neither more nor less. All occupy, in this respect, a footing of perfect equality.

Newton v. Mahoning Cnty. Comm'rs, 100 U.S. 548, 559 (1879).

Finally, it is unlawful for any state officer or agency to bind or attempt to bind the state government—or any fund or department thereof—in any amount in excess of the specific amount provided by law for each fiscal year. NRS 353.260(2). Therefore, when the Legislature authorizes a state officer or agency to bind the state government—or any fund or department thereof—in any amount for a particular fiscal year, the Legislature's statutory authorization is not legally operative and binding until the commencement of that fiscal year on July 1.

In this case, under the scholarship program, the amount of tax credits that the Department of Taxation is authorized to approve each fiscal year for qualifying taxpayers is governed by subsections 4 and 5 of NRS 363A.139 and 363B.119 ("subsection 4 credits" and "subsection 5 credits"). During the 2019 legislative session, the Legislature amended the subsection 4 credits in AB 458, and it amended the subsection 5 credits in Senate Bill No. 551 (SB 551), 2019 Nev. Stat., ch. 537, §§ 2.5 & 3.5, at 3273-77.

Under the statutory subsections, the total amount of subsection 4 credits that the Department of Taxation is authorized to approve each fiscal year is calculated separately from the total amount of subsection 5 credits that the Department of Taxation is authorized to approve each fiscal year. Id. However, for purposes of determining whether tax credits are available for qualifying taxpayers for a particular fiscal year, the Department of Taxation aggregates the two total amounts together in order to determine the overall pool of tax credits that are available for qualifying taxpayers for that particular fiscal year. As a result, when qualifying taxpayers apply for tax credits under the scholarship program, they do not apply to receive either subsection 4 credits or subsection 5 credits specifically. Instead, they apply to receive tax credits generally from the overall pool of tax credits that are available for qualifying taxpayers for that particular fiscal year, regardless of the statutory subsection that is source of the credits.

At the time of passage of AB 458, the Department of Taxation was authorized to approve subsection 4 credits in the amount of **$6,655,000** for the fiscal year beginning on July 1, 2018 (Fiscal

Year 2018-2019). Legislative Counsel's Digest, AB 458, 2019 Nev. Stat., ch. 366, at 2295-96. Before the Legislature passed AB 458, the amount of subsection 4 credits that the Department of Taxation would have been authorized to approve under the scholarship program for the next fiscal year beginning on July 1, 2019 (Fiscal Year 2019-2020)—and for other future fiscal years—would have increased by 10 percent at the beginning of each fiscal year. Id. However, when the Legislature passed AB 458, those potential future increases in subsection 4 credits were not legally operative and binding yet because they would not lawfully go into effect and become legally operative and binding until the beginning of the fiscal year on July 1, 2019, and the beginning of each fiscal year thereafter.

Consequently, after the passage of AB 458, the amount of subsection 4 credits—**$6,655,000**—that the Department of Taxation was authorized to approve for the fiscal year beginning on July 1, 2018 (Fiscal Year 2018-2019) did not change and was not reduced by AB 458. Instead, that amount—**$6,655,000**—remained exactly the same after the passage of AB 458 for the next fiscal year beginning on July 1, 2019 (Fiscal Year 2019-2020). Moreover, that amount—**$6,655,000**—will remain exactly the same for each fiscal year thereafter, unless a future Legislature changes that amount. Thus, by eliminating the potential future increases in subsection 4 credits before they became legally operative and binding, the Legislature did not change—but maintained—the existing legally operative amount of subsection 4 credits at **$6,655,000**, which is the amount that was legally in effect before the passage of AB 458 and which is the amount that is now legally in effect after the passage of AB 458.

C. Legislative Counsel's legal opinion.

Before the Legislature passed AB 458, the Legislative Counsel—pursuant to her statutory duties under NRS 218F.710—provided a written legal opinion on May 8, 2019, to members of the Majority and Minority Leadership in both Houses of the Legislature regarding the applicability of the two-thirds requirement to potential legislation. (*Leg.'s Ex. A.*) In the legal opinion, the Legislative Counsel was asked whether the two-thirds requirement applies to a bill which reduces or eliminates available tax

exemptions or tax credits applicable to existing state taxes. Id. In answering that legal question, the Legislative Counsel stated that in the absence of any controlling Nevada case law, the legal question must be addressed by: (1) applying several well-established rules of construction followed by Nevada's appellate courts; (2) examining contemporaneous extrinsic evidence of the purpose and intent of the two-thirds requirement when it was considered by the Legislature in 1993 and presented to the voters in 1994 and 1996; and (3) considering case law interpreting similar constitutional provisions from other jurisdictions for guidance in this area of the law. Id. After discussing and analyzing these authorities, the Legislative Counsel concluded that "Nevada's two-thirds majority requirement does not apply to a bill which reduces or eliminates available tax exemptions or tax credits applicable to existing state taxes." Id. Thus, in enacting AB 458, "the Legislature acted on Legislative Counsel's opinion that this is a reasonable construction of the provision . . . and the Legislature is entitled to deference in its counseled selection of this interpretation." Nev. Mining, 117 Nev. at 540.

II. Standards for reviewing motions for summary judgment.

A party is entitled to summary judgment under NRCP 56 when the submissions in the record "demonstrate that no genuine issue of material fact exists, and the moving party is entitled to judgment as a matter of law." Wood v. Safeway, 121 Nev. 724, 731 (2005). The purpose of granting summary judgment "is to avoid a needless trial when an appropriate showing is made in advance that there is no genuine issue of fact to be tried, and the movant is entitled to judgment as a matter of law." McDonald v. D.P. Alexander, 121 Nev. 812, 815 (2005) (quoting Coray v. Hom, 80 Nev. 39, 40-41 (1964)). As a general rule, when a plaintiff pleads claims that a state statute is unconstitutional, the plaintiff's claims present only issues of law which are matters purely for the Court to decide and which may be decided on summary judgment where no genuine issues of material fact exist and the record is adequate for consideration of the constitutional issues presented. See Flamingo Paradise Gaming v. Chanos, 125 Nev. 502, 506-09 (2009) (affirming district court's summary judgment regarding constitutionality of a

statute and stating that "[t]he determination of whether a statute is constitutional is a question of law."); Collins v. Union Fed. Sav. & Loan, 99 Nev. 284, 294-95 (1983) (holding that a constitutional claim may be decided on summary judgment where no genuine issues of material fact exist and the record is adequate for consideration of the constitutional issues presented).

III. Standards for reviewing the constitutionality of statutes.

In reviewing the constitutionality of statutes, the Court must presume the statutes are constitutional, and "[i]n case of doubt, every possible presumption will be made in favor of the constitutionality of a statute, and courts will interfere only when the Constitution is clearly violated." List v. Whisler, 99 Nev. 133, 137 (1983). The presumption places a heavy burden on the challenger to make "a clear showing that the statute is unconstitutional." Id. at 138. As a result, the Court must not invalidate a statute on constitutional grounds unless the statute's invalidity appears "beyond a reasonable doubt." Cauble v. Beemer, 64 Nev. 77, 101 (1947); State ex rel. Lewis v. Doron, 5 Nev. 399, 408 (1870) ("[E]very statute is to be upheld, unless plainly and without reasonable doubt in conflict with the Constitution.").

Furthermore, it is a fundamental rule of constitutional review that "the judiciary will not declare an act void because it disagrees with the wisdom of the Legislature." Anthony v. State, 94 Nev. 337, 341 (1978). Thus, in reviewing the constitutionality of statutes, the Court must not be concerned with the wisdom or policy of the statutes because "[q]uestions relating to the policy, wisdom, and expediency of the law are for the people's representatives in the legislature assembled, and not for the courts to determine." Worthington v. Dist. Ct., 37 Nev. 212, 244 (1914).

IV. Rules of construction for constitutional provisions.

The Nevada Supreme Court has long held that the rules of statutory construction also govern the interpretation of constitutional provisions, including provisions approved by the voters through a ballot initiative. See Lorton v. Jones, 130 Nev. 51, 56-57 (2014) (applying the rules of statutory construction

to constitutional provisions approved by the voters through a ballot initiative); State ex rel. Wright v. Dovey, 19 Nev. 396, 399 (1887) ("In construing constitutions and statutes, the first and last duty of courts is to ascertain the intention of the convention and legislature; and in doing this they must be governed by well-settled rules, applicable alike to the construction of constitutions and statutes.").

When applying the rules of construction to constitutional provisions approved by the voters through a ballot initiative, the primary task of the court is to ascertain the intent of the drafters and the voters and to adopt an interpretation that best captures their objective. Nev. Mining, 117 Nev. at 531. To ascertain the intent of the drafters and the voters, the court will first examine the language of the constitutional provision to determine whether it has a plain and ordinary meaning. Miller v. Burk, 124 Nev. 579, 590 (2008). If the constitutional language is clear on its face and is not susceptible to any ambiguity, uncertainty or doubt, the court will generally give the constitutional language its plain and ordinary meaning, unless doing so would violate the spirit of the provision or would lead to an absurd or unreasonable result. Miller, 124 Nev. at 590-91; Nev. Mining, 117 Nev. at 542 & n.29.

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

Furthermore, even when there is some ambiguity, uncertainty or doubt as to the meaning of a

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

For example, under the South Dakota Constitution, the South Dakota Legislature may pass its general appropriations bill to fund the operating expenses of state government by a majority of all the members elected to each House, but the final passage of any special appropriations bills to authorize funding for other purposes requires "a two-thirds vote of all the members of each branch of the Legislature." S.D. Const. art. III, § 18, art. XII, § 2. In interpreting this two-thirds majority requirement, the South Dakota Supreme Court has determined that the requirement must not be extended by construction or inference to include situations not clearly within its terms. Apa v. Butler, 638 N.W.2d 57, 69-70 (S.D. 2001). As further explained by the court:

> [P]etitioners strongly urged during oral argument that the challenged appropriations from the [special funds] must be special appropriations because it took a two-thirds majority vote of each House of the legislature to create the two special funds in the first instance. Petitioners correctly pointed out that allowing money from the two funds to be reappropriated in the general appropriations bill would allow the legislature to undo by a simple majority vote what it took a two-thirds majority to create. On that basis, petitioners invite this Court to read a two-thirds vote requirement into the Constitution for the amendment or repeal of any special continuing appropriations measure. This we cannot do.
>
> Our Constitution must be construed by its plain meaning: "If the words and language of the provision are unambiguous, 'the language in the constitution must be applied as it reads.'" Cid v. S.D. Dep't of Social Servs., 598 N.W.2d 887, 890 (S.D. 1999). Here, the

constitutional two-thirds voting requirement for appropriations measures is only imposed on the *passage* of a special appropriation. See S.D. Const. art. XII, § 2. There is no constitutional requirement for a two-thirds vote on the repeal or amendment of an existing special appropriation, not to mention a continuing special appropriation. Generally:

> [s]pecial provisions in the constitution as to the number of votes required for the passage of acts of a particular nature . . . are not extended by construction or inference to include situations not clearly within their terms. Accordingly, a special provision regulating the number of votes necessary for the passage of bills of a certain character does not apply to the repeal of laws of this character, or to an act which only amends them.

Apa, 638 N.W.2d at 69-70 (quoting 82 C.J.S. Statutes § 39 (1999) (republished as 82 C.J.S. Statutes § 52 (Westlaw 2019)).

Lastly, in matters involving state constitutional law, the Nevada Supreme Court is the final interpreter of the meaning of the Nevada Constitution. Nevadans for Nev. v. Beers, 122 Nev. 930, 943 n.20 (2006) ("A well-established tenet of our legal system is that the judiciary is endowed with the duty of constitutional interpretation."); Guinn v. Legislature (Guinn II), 119 Nev. 460, 471 (2003) (describing the Nevada Supreme Court's justices "as the ultimate custodians of constitutional meaning."). Nevertheless, even though the final power to decide the meaning of the Nevada Constitution ultimately rests with the judiciary, "[i]n the performance of assigned constitutional duties each branch of the Government must initially interpret the Constitution, and the interpretation of its powers by any branch is due great respect from the others." United States v. Nixon, 418 U.S. 683, 703 (1974).

Accordingly, the Nevada Supreme Court has recognized that a reasonable construction of a constitutional provision by the Legislature should be given great weight. State ex rel. Coffin v. Howell, 26 Nev. 93, 104-05 (1901); State ex rel. Cardwell v. Glenn, 18 Nev. 34, 43-46 (1883). This is particularly true when a constitutional provision concerns the passage of legislation. Id. Thus, when construing a constitutional provision, "although the action of the legislature is not final, its decision upon this point is to be treated by the courts with the consideration which is due to a co-ordinate department of the state government, and in case of a reasonable doubt as to the meaning of the words,

the construction given to them by the legislature ought to prevail." Dayton Gold & Silver Mining Co. v. Seawell, 11 Nev. 394, 399-400 (1876).

The weight given to the Legislature's construction of a constitutional provision involving legislative procedure is of particular force when the meaning of the constitutional provision is subject to any uncertainty, ambiguity or doubt. Nev. Mining, 117 Nev. at 539-40. Under such circumstances, the Legislature may rely on an opinion of the Legislative Counsel which interprets the constitutional provision, and "the Legislature is entitled to deference in its counseled selection of this interpretation." Id. at 540. For example, when the meaning of the term "midnight Pacific standard time"—as formerly used in the constitutional provision limiting legislative sessions to 120 days—was subject to uncertainty, ambiguity and doubt following the 2001 legislative session, the Nevada Supreme Court explained that the Legislature's interpretation of the constitutional provision was entitled to deference because "[i]n choosing this interpretation, the Legislature acted on Legislative Counsel's opinion that this is a reasonable construction of the provision. We agree that it is, and the Legislature is entitled to deference in its counseled selection of this interpretation." Id.

Consequently, in determining whether the two-thirds requirement applies to a particular bill, the Legislature has the power to interpret the two-thirds requirement—in the first instance—as a reasonable and necessary corollary power to the exercise of its expressly granted and exclusive constitutional power to enact laws by the passage of bills. See Nev. Const. art. 4, § 23 (providing that "no law shall be enacted except by bill."); State ex rel. Torreyson v. Grey, 21 Nev. 378, 380-84 (1893) (discussing the power of the Legislature to interpret constitutional provisions governing legislative procedure). Moreover, because the two-thirds requirement involves the exercise of the Legislature's lawmaking power, any uncertainty, ambiguity or doubt regarding the application of the two-thirds requirement must be resolved in favor of the Legislature's lawmaking power and against restrictions on that power. See Platz, 60 Nev. at 308 (stating that the language of the Nevada Constitution "must be strictly construed in

favor of the power of the legislature to enact the legislation under it.").

Finally, when the Legislature exercises its power to interpret the two-thirds requirement in the first instance, the Legislature may resolve any uncertainty, ambiguity or doubt regarding the application of the two-thirds requirement by following an opinion of the Legislative Counsel which interprets the constitutional provision, and the judiciary will typically afford the Legislature deference in its counseled selection of that interpretation. Nev. Mining, 117 Nev. at 40.

V. Argument.

A. The Legislature could reasonably conclude that AB 458 was not subject to the two-thirds requirement because the bill did not change—but maintained—the existing legally operative amount of subsection 4 credits at $6,655,000, which is the amount that was legally in effect before the passage of AB 458 and which is the amount that is now legally in effect after the passage of AB 458.

Based on the plain language in Article 4, Section 18(2), the two-thirds requirement applies to a bill which "creates, generates, or increases any public revenue in any form." The two-thirds requirement, however, does not provide any definitions to assist the reader in applying the terms "creates, generates, or increases." Therefore, in the absence of any constitutional definitions, those terms must be given their ordinary and commonly understood meanings.

As explained by the Nevada Supreme Court, "[w]hen a word is used in a statute or constitution, it is supposed it is used in its ordinary sense, unless the contrary is indicated." Ex parte Ming, 42 Nev. 472, 492 (1919); Seaborn v. Wingfield, 56 Nev. 260, 267 (1935) (stating that a word or term "appearing in the constitution must be taken in its general or usual sense."). To arrive at the ordinary and commonly understood meaning of the constitutional language, the court will usually rely upon dictionary definitions because those definitions reflect the ordinary meanings that are commonly ascribed to words and terms. See Rogers v. Heller, 117 Nev. 169, 173 & n.8 (2001); Cunningham v. State, 109 Nev. 569, 571 (1993). Therefore, unless it is clear that the drafters of a constitutional provision intended for a term to be given a technical meaning, the court has emphasized that "[t]he

Constitution was written to be understood by the voters; its words and phrases were used in their normal and ordinary as distinguished from technical meaning." Strickland v. Waymire, 126 Nev. 230, 234 (2010) (quoting Dist. of Columbia v. Heller, 554 U.S. 570, 576 (2008)).

Accordingly, in interpreting the two-thirds requirement, the terms "creates, generates, or increases" must be given their normal and ordinary meanings that are commonly ascribed to those terms. The common dictionary meaning of the term "create" is to "bring into existence" or "produce." Webster's New Collegiate Dictionary 304 (9th ed. 1991). The common dictionary meaning of the term "generate" is also to "bring into existence" or "produce." Id. at 510. Finally, the common dictionary meaning of the term "increase" is to "make greater" or "enlarge." Id. at 611.

Based on the normal and ordinary meanings of the terms "creates, generates, or increases," the Legislature could reasonably conclude that the two-thirds requirement applies to a bill which directly brings into existence, produces or enlarges public revenue in the first instance by imposing new or increased state taxes. However, when a bill does not impose new or increased state taxes but simply maintains the existing "computation bases" or statutory formulas currently in effect for existing state taxes, the Legislature could reasonably conclude that the two-thirds requirement **does not** apply to the bill because it does not bring into existence, produce or enlarge any public revenue in any form.

Given its plain language, the two-thirds requirement applies to a bill which makes "changes in the **computation bases** for taxes, fees, assessments and rates." Nev. Const. art. 4, § 18(2) (emphasis added). Based on its normal and ordinary meaning, a "computation base" is a formula that consists of "a number that is multiplied by a rate or [from] which a percentage or fraction is calculated." Webster's New Collegiate Dictionary 133 & 271 (9th ed. 1991) (defining the terms "computation" and "base"). In other words, a "computation base" is a formula which consists of a base number—such as an amount of money—and a number serving as a multiplier—such as a percentage or fraction—that is used to calculate the product of those two numbers.

By applying the normal and ordinary meaning of the term "computation base," the Legislature could reasonably conclude that the two-thirds requirement applies to a bill which directly changes the statutory computation bases—that is, the statutory formulas—used for calculating existing state taxes, so that the revised statutory formulas directly bring into existence, produce or enlarge public revenue in the first instance because the existing statutory base numbers or the existing statutory multipliers are changed by the bill in a manner that creates, generates, or increases public revenue. However, when a bill does not change—but maintains—the existing statutory base numbers and the existing statutory multipliers currently in effect for the existing statutory formulas, the Legislature could reasonably conclude that the bill **does not** create, generate or increase any public revenue in any form because the existing "computation bases" currently in effect are not changed by the bill.

In this case, the Legislature could reasonably conclude that AB 458 did not create, generate or increase any public revenue in any form because the bill did not change—but maintained—the existing legally operative amount of subsection 4 credits at **$6,655,000**, which is the amount that was legally in effect before the passage of AB 458 and which is the amount that is now legally in effect after the passage of AB 458.

At the time of passage of AB 458, the Department of Taxation was authorized to approve subsection 4 credits in the amount of **$6,655,000** for the fiscal year beginning on July 1, 2018 (Fiscal Year 2018-2019). Legislative Counsel's Digest, AB 458, 2019 Nev. Stat., ch. 366, at 2295-96. Before the Legislature passed AB 458, the amount of subsection 4 credits that the Department of Taxation would have been authorized to approve under the scholarship program for the next fiscal year beginning on July 1, 2019 (Fiscal Year 2019-2020)—and for other future fiscal years—would have increased by 10 percent at the beginning of each fiscal year. Id. However, when the Legislature passed AB 458, those potential future increases in subsection 4 credits were not legally operative and binding yet because they would not lawfully go into effect and become legally operative and binding until the beginning of the

fiscal year on July 1, 2019, and the beginning of each fiscal year thereafter.

It is well established that "[t]he existence of a law, and the time when it shall take effect, are two separate and distinct things. The law exists from the date of approval, but its operation [may be] postponed to a future day." People ex rel. Graham v. Inglis, 43 N.E. 1103, 1104 (Ill. 1896). Thus, because the Legislature has the power to postpone the operation of a statute until a later time, it may enact a statute that has both an effective date and a later operative date. 82 C.J.S. Statutes § 549 (Westlaw 2019). Under such circumstances, the effective date is the date upon which the statute becomes an existing law, but the later operative date is the date upon which the requirements of the statute will actually become legally binding. 82 C.J.S. Statutes § 549 (Westlaw 2019); Preston v. State Bd. of Equal., 19 P.3d 1148, 1167 (Cal. 2001). When a statute has both an effective date and a later operative date, the statute must be understood as speaking from its later operative date when it actually becomes legally binding and not from its earlier effective date when it becomes an existing law but does not have any legally binding requirements yet. 82 C.J.S. Statutes § 549 (Westlaw 2019); Longview Co. v. Lynn, 108 P.2d 365, 373 (Wash. 1940). Consequently, until the statute reaches its later operative date, the statute is not legally operative and binding yet, and the statute does not confer any presently existing and enforceable legal rights or benefits under its provisions. Id.; Levinson v. City of Kansas City, 43 S.W.3d 312, 316-18 (Mo. Ct. App. 2001).

Therefore, when the Legislature passed AB 458, the potential future increases in subsection 4 credits were not legally operative and binding yet because they would not lawfully go into effect and become legally operative and binding until the beginning of the fiscal year on July 1, 2019, and the beginning of each fiscal year thereafter. Consequently, after the passage of AB 458, the amount of subsection 4 credits—**$6,655,000**—that the Department of Taxation was authorized to approve for the fiscal year beginning on July 1, 2018 (Fiscal Year 2018-2019) did not change and was not reduced by AB 458. Instead, that amount—**$6,655,000**—remained exactly the same after the passage of AB 458 for

the next fiscal year beginning on July 1, 2019 (Fiscal Year 2019-2020). Moreover, that amount—**$6,655,000**—will remain exactly the same for each fiscal year thereafter, unless a future Legislature changes that amount. Thus, by eliminating the potential future increases in subsection 4 credits before they became legally operative and binding, the Legislature did not change—but maintained—the existing legally operative amount of subsection 4 credits at **$6,655,000**.

Accordingly, the Legislature could reasonably conclude that AB 458 did not create, generate or increase any public revenue in any form because the bill did not change—but maintained—the existing legally operative amount of subsection 4 credits at **$6,655,000**, which is the amount that was legally in effect before the passage of AB 458 and which is the amount that is now legally in effect after the passage of AB 458. Under such circumstances, "the Legislature is entitled to deference in its counseled selection of this interpretation." Nev. Mining, 117 Nev. at 540. Therefore, because the Legislature could reasonably conclude that AB 458 was not subject to the two-thirds requirement, the Legislature and all other Defendants are entitled to summary judgment on Plaintiffs' state constitutional claims as a matter of law.

B. Even assuming that AB 458 changed or reduced the amount of subsection 4 credits, the Legislature could reasonably conclude that the two-thirds requirement does not apply to a bill which reduces available tax credits applicable to existing state taxes because such a reduction does not change the existing "computation bases" or statutory formulas used to calculate the underlying state taxes to which the credits are applicable.

The plain language in Article 4, Section 18(2) expressly states that the two-thirds requirement applies to changes in "computation bases," but it is silent with regard to changes in tax exemptions or tax credits. Nevertheless, under long-standing legal principles, it is well established that tax exemptions or tax credits are not part of the "computation bases" or statutory formulas used to calculate the underlying taxes to which the exemptions or credits are applicable. Instead, tax exemptions or tax credits apply only after: (1) the underlying taxes have been calculated using the existing "computation bases" or statutory formulas; and (2) the taxpayer properly and timely claims the tax exemptions or tax

credits as a statutory exception to liability for the amount of the taxes. See City of Largo v. AHF-Bay Fund, LLC, 215 So.3d 10, 14-15 (Fla. 2017); State v. Allred, 195 P.2d 163, 167-170 (Ariz. 1948); Rutgers Ch. of Delta Upsilon Frat. v. City of New Brunswick, 28 A.2d 759, 760-61 (N.J. 1942); Chesney v. Byram, 101 P.2d 1106, 1110-12 (Cal. 1940). As explained by the Missouri Supreme Court:

> The burden is on the taxpayer to establish that property is entitled to be exempt. An exemption from taxation can be waived. Until the exempt status is established the property is subject to taxation even though the facts would have justified the exempt status if they had been presented for a determination of that issue.

State ex rel. Council Apts., Inc. v. Leachman, 603 S.W.2d 930, 931 (Mo. 1980) (citations omitted). As a result, if the taxpayer fails to properly and timely claim the tax exemptions or tax credits, the taxpayer is liable for the amount of the taxes. See State Tax Comm'n v. Am. Home Shield of Nev., Inc., 127 Nev. 382, 386-87 (2011) (holding that a taxpayer that erroneously made tax payments on "exempt services" was not entitled to claim a refund after the 1-year statute of limitations on refund claims expired).

Consequently, given these long-standing legal principles, the Legislature could reasonably conclude that the two-thirds requirement **does not** apply to a bill which reduces or eliminates available tax exemptions or tax credits applicable to existing state taxes because such a reduction or elimination does not change the existing "computation bases" or statutory formulas used to calculate the underlying state taxes to which the exemptions or credits are applicable.

In this case, under the MBT, the subsection 4 credits are not part of the existing "computation bases" or statutory formulas used to calculate the amount of the tax liability to which the credits are applicable. NRS 363A.130 & 363B.110. Instead, before a taxpayer may qualify for subsection 4 credits, the Department of Taxation must first calculate the amount of the taxpayer's liability for the MBT under the existing "computation bases" or statutory formulas. Id. Thereafter, the taxpayer may apply for the subsection 4 credits, but the taxpayer is not eligible to receive the subsection 4 credits unless the application is approved by the Department of Taxation. NRS 363A.139 & 363B.119. If the

taxpayer fails to properly and timely apply for the subsection 4 credits, the taxpayer is not eligible to receive the subsection 4 credits, and the taxpayer is liable for the amount of the taxes.

Thus, because the subsection 4 credits are not part of the existing "computation bases" or statutory formulas used to calculate the amount of the tax liability to which the credits are applicable, the Legislature could reasonably conclude that AB 458 was not subject to the two-thirds requirement because AB 458 does not change the existing "computation bases" or statutory formulas used to calculate the underlying state taxes to which the subsection 4 credits are applicable. Under such circumstances, "the Legislature is entitled to deference in its counseled selection of this interpretation." Nev. Mining, 117 Nev. at 540. Therefore, because the Legislature could reasonably conclude that AB 458 was not subject to the two-thirds requirement, the Legislature and all other Defendants are entitled to summary judgment on Plaintiffs' state constitutional claims as a matter of law.

C. Contemporaneous extrinsic evidence of the purpose and intent of the two-thirds requirement supports the Legislature's reasonable conclusion that AB 458 was not subject to the two-thirds requirement.

When interpreting constitutional provisions approved by the voters through a ballot initiative, the court may consider contemporaneous extrinsic evidence of the purpose and intent of the constitutional provisions that was available when the initiative was presented to the voters for approval. 42 Am. Jur. 2d Initiative & Referendum § 49 (Westlaw 2019) ("To the extent possible, when interpreting a ballot initiative, courts attempt to place themselves in the position of the voters at the time the initiative was placed on the ballot and try to interpret the initiative using the tools available to citizens at that time."). The court may find contemporaneous extrinsic evidence of intent from the legislative history surrounding the proposal and approval of the ballot measure. See Ramsey v. City of N. Las Vegas, 133 Nev. Adv. Op. 16, 392 P.3d 614, 617-19 (2017). The court also may find contemporaneous extrinsic evidence of intent from statements made by proponents and opponents of the ballot measure. See Guinn II, 119 Nev. at 471-72. Finally, the court may find contemporaneous extrinsic evidence of intent from

the ballot materials provided to the voters, such as the question, explanation and arguments for and against passage included in the sample ballots sent to the voters. See Nev. Mining, 117 Nev. at 539; Pellegrini v. State, 117 Nev. 860, 876-77 (2001).

Nevada's voters approved the two-thirds requirement at the general elections in 1994 and 1996. When the ballot initiative was presented to the voters, one of the primary sponsors of the initiative was former Assemblyman Jim Gibbons. See Guinn II, 119 Nev. at 471-72 (discussing the two-thirds requirement and describing Assemblyman Gibbons as "the initiative's prime sponsor"). During the 1993 legislative session, Assemblyman Gibbons sponsored Assembly Joint Resolution No. 21 (AJR 21), which proposed adding a two-thirds requirement, but Assemblyman Gibbons was not successful in obtaining its passage. Legislative History of AJR 21, 67th Leg. (Nev. LCB Research Library 1993) (https://www.leg.state.nv.us/Division/Research/Library/LegHistory/LHs/1993/AJR21,1993.pdf).[3]

Nevertheless, because Assemblyman Gibbons' legislative testimony on AJR 21 in 1993 provides some contemporaneous extrinsic evidence of the purpose and intent of the two-thirds majority requirement, the Nevada Supreme Court has reviewed and considered that testimony when discussing the two-thirds majority requirement that was ultimately approved by the voters in 1994 and 1996. Guinn II, 119 Nev. at 472. In his legislative testimony on AJR 21 in 1993, Assemblyman Gibbons stated that the two-thirds requirement was modeled on similar constitutional provisions in other states, including Arizona, Arkansas, California, Colorado, Delaware, Florida, Louisiana, Mississippi, Oklahoma and South Dakota. Legislative History of AJR 21, supra (Hearing on AJR 21 before Assembly Comm. on Taxation, 67th Leg., at 11-13 (Nev. May 4, 1993)). Assemblyman Gibbons testified that the two-thirds majority requirement would "require a two-thirds majority vote in each house of the legislature to increase certain existing taxes or to impose certain new taxes." Id. However, Assemblyman Gibbons also stated that the two-thirds majority requirement "would not impair any

[3] The Court may take judicial notice of the legislative history as a public record. Jory v. Bennight, 91 Nev. 763, 766 (1975); Fierle v. Perez, 125 Nev. 728, 737-38 n.6 (2009).

existing revenues." Id. Instead, Assemblyman Gibbons indicated that the two-thirds majority requirement "would bring greater stability to Nevada's tax systems, while still allowing the flexibility to meet real fiscal needs" because "Mr. Gibbons thought it would not be difficult to obtain a two-thirds majority if the need for **new revenues** was clear and convincing." Id. (emphasis added).

In addition to Assemblyman Gibbons' legislative testimony on AJR 21 in 1993, the ballot materials presented to the voters in 1994 and 1996 also provide some contemporaneous extrinsic evidence of the purpose and intent of the two-thirds requirement. Guinn, 119 Nev. at 471-72. The ballot materials informed the voters that the two-thirds requirement would make it more difficult for the Legislature to enact bills "raising" or "increasing" taxes and that "[i]t may require state government to prioritize its spending and economize rather than turning to **new sources** of revenue." Nev. Ballot Questions 1994, Question No. 11, at 1 (Nev. Sec'y of State 1994) (emphasis added) (https://www.leg.state.nv.us/Division/Research/VoteNV/BallotQuestions/1994.pdf).[4]

Finally, based on Assemblyman Gibbons' legislative testimony on AJR 21 in 1993 and the ballot materials presented to the voters in 1994 and 1996, the Nevada Supreme Court has described the purpose and intent of the two-thirds requirement as follows:

> The supermajority requirement was intended to make it more difficult for the Legislature to pass *new* taxes, hopefully encouraging efficiency and effectiveness in government. Its proponents argued that the tax restriction might also encourage state government to prioritize its spending and economize rather than explore *new* sources of revenue.

Guinn II, 119 Nev. at 471 (emphasis added).

Thus, there is contemporaneous extrinsic evidence that the two-thirds requirement was intended to apply to a bill which directly brings into existence, produces or enlarges public revenue in the first instance by raising "new taxes" or "new revenues" or by increasing "existing taxes." However, the contemporaneous extrinsic evidence also indicates that the two-thirds requirement was not intended to

[4] The Court may take judicial notice of the ballot materials as public records. Jory v. Bennight, 91 Nev. 763, 766 (1975); Fierle v. Perez, 125 Nev. 728, 737-38 n.6 (2009).

"impair any existing revenues." Id. Furthermore, there is nothing in the contemporaneous extrinsic evidence to indicate that the two-thirds requirement was intended to apply to a bill which does not change—but maintains—the existing computation bases currently in effect for existing state taxes. The absence of such contemporaneous extrinsic evidence is consistent with the fact that: (1) such a bill does not raise new state taxes and revenues because it maintains the existing state taxes and revenues currently in effect; and (2) such a bill does not increase the existing state taxes and revenues currently in effect—but maintains them in their current state under the law—because the existing computation bases currently in effect are not changed by the bill. Finally, there is nothing in the contemporaneous extrinsic evidence to indicate that the two-thirds requirement was intended to apply to a bill which reduces or eliminates available tax exemptions or tax credits.

Accordingly, the Legislature could reasonably conclude that AB 458 did not create, generate or increase any public revenue in any form because the bill did not change—but maintained—the existing legally operative amount of subsection 4 credits at **$6,655,000**, which is the amount that was legally in effect before the passage of AB 458 and which is the amount that is now legally in effect after the passage of AB 458. Under such circumstances, "the Legislature is entitled to deference in its counseled selection of this interpretation." Nev. Mining, 117 Nev. at 540. Therefore, because the Legislature could reasonably conclude that AB 458 was not subject to the two-thirds requirement, the Legislature and all other Defendants are entitled to summary judgment on Plaintiffs' state constitutional claims as a matter of law.

D. Cases from other states interpreting similar supermajority requirements support the Legislature's reasonable conclusion that AB 458 was not subject to the two-thirds requirement.

Nevada's two-thirds requirement was modeled on constitutional provisions from other states. Legislative History of AJR 21, supra (Hearing on AJR 21 before Assembly Comm. on Taxation, 67th Leg., at 12-13 (Nev. May 4, 1993)). As confirmed by Assemblyman Gibbons:

> Mr. Gibbons explained AJR 21 was modeled on constitutional provisions which were in effect in a number of other states. Some of the provisions were adopted recently in response to a growing concern among voters about increasing tax burdens and some of the other provisions dated back to earlier times.

Id. at 12.

Under the rules of construction, "[w]hen Nevada legislation is patterned after a federal statute or the law of another state, it is understood that 'the courts of the adopting state usually follow the construction placed on the statute in the jurisdiction of its inception.'" Advanced Sports Info. v. Novotnak, 114 Nev. 336, 340 (1998) (quoting Sec. Inv. Co. v. Donnelley, 89 Nev. 341, 347 n.6 (1973)). Thus, if a provision in the Nevada Constitution is modeled on a similar constitutional provision "from a sister state, it is presumably adopted with the construction given it by the highest court of the sister state." State ex rel. Harvey v. Second Jud. Dist. Ct., 117 Nev. 754, 763 (2001) ("[S]ince Nevada relied upon the California Constitution as a basis for developing the Nevada Constitution, it is appropriate for us to look to the California Supreme Court's interpretation of the [similar] language in the California Constitution.").

Consequently, in interpreting and applying Nevada's two-thirds requirement, it is appropriate to consider case law from the other states where courts have interpreted similar supermajority requirements that served as the model for Nevada's two-thirds requirement. Furthermore, in considering that case law, it must be presumed that the drafters and voters intended for Nevada's two-thirds requirement to be interpreted in a manner that adopts and follows the judicial interpretations placed on the similar supermajority requirements by the courts from those other states. Based on those judicial interpretations, courts have consistently held that similar supermajority requirements do not apply to bills which reduce or eliminate available tax exemptions or tax credits.

Unlike the supermajority requirements in other state constitutions, the Louisiana Constitution expressly provides that its supermajority requirement applies to "a repeal of an existing tax exemption."

La. Const. art. VII, § 2. Specifically, the Louisiana Constitution states:

> The levy of a new tax, an increase in an existing tax, or **a repeal of an existing tax exemption** shall require the enactment of a law by two-thirds of the elected members of each house of the legislature.

La. Const. art. VII, § 2 (emphasis added).

In determining the scope of Louisiana's supermajority requirement, the Louisiana Court of Appeals explained that the supermajority requirement did not apply to legislation which suspended a tax exemption—but did not repeal the exemption—because "[a] suspension (which is time-limited) of an exemption is not the same thing as a permanent repeal." La. Chem. Ass'n v. State ex rel. La. Dep't of Revenue, 217 So.3d 455, 462-63 (La. Ct. App. 2017), *writ of review denied*, 227 So.3d 826 (La. 2017). Furthermore, the court rejected the argument that because the supermajority requirement applied to the prior legislation that enacted the underlying tax levy for which the exemption was granted, the supermajority requirement by necessary implication also had to be applied to any subsequent legislation that suspended the tax exemption. Id. In rejecting that argument, the court stated:

> The levy of the initial tax, preceding the decision to grant an exemption, is the manner in which the Legislature raises revenue. **Since 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 (emphasis added).

In 1992, the voters of Oklahoma approved a state constitutional provision imposing a three-fourths supermajority requirement on the Oklahoma Legislature that applies to "[a]ll bills for raising revenue" or "[a]ny revenue bill." Okla. Const. art. V, § 33. In addition, Oklahoma has a state constitutional provision, known as an "Origination Clause," which provides that "[a]ll bills for raising revenue" must originate in the lower house of the Oklahoma Legislature. Id. The Oklahoma Supreme Court has adopted the same interpretation for the term "bills for raising revenue" with regard to both state constitutional provisions. Okla. Auto. Dealers Ass'n v. State ex rel. Okla. Tax Comm'n, 401 P.3d 1152,

1158 n.35 (Okla. 2017). In relevant part, Oklahoma's constitutional provisions state:

> A. **All bills for raising revenue** shall originate in the House of Representatives. The Senate may propose amendments to revenue bills.
>
> * * *
>
> D. **Any revenue bill** originating in the House of Representatives may become law without being submitted to a vote of the people of the state if such bill receives the approval of three-fourths (3/4) of the membership of the House of Representatives and three-fourths (3/4) of the membership of the Senate and is submitted to the Governor for appropriate action. * * *

Okla. Const. art. V, § 33 (emphasis added).

In Okla. Auto. Dealers, the Oklahoma Supreme Court was presented with the "question of whether a measure revoking an exemption from an **already levied** tax is a 'revenue bill' subject to Article V, Section 33's requirements." 401 P.3d at 1153 (emphasis added). The court held that the bill was not a bill for raising revenue that was subject to Oklahoma's supermajority requirement because: (1) the bill did not "levy a tax in the strict sense of the word"; and (2) the "removal of an exemption from an **already levied** tax is different from levying a tax in the first instance." Id. at 1153-54 (emphasis added).

At issue in the Oklahoma case was House Bill 2433 of the 2017 legislative session, which removed a long-standing exemption from the state's sales tax for automobiles that were otherwise subject to the state's excise tax. The Oklahoma Supreme Court explained the effect of H.B. 2433 as follows:

> In 1933, the Legislature levied a sales tax on all tangible personal property—including automobiles—and that sales tax has remained part of our tax code ever since. In 1935, however, the Legislature added an exemption for automobile sales in the sales-tax provisions, so that automobiles were subject to only an automobile excise tax from that point forward. H.B. 2433 revokes part of that sales tax exemption so that sales of automobiles are once again subject to the sales tax, but only a 1.25% sales tax. Sales of automobiles remain exempt from the remainder of the sales tax levy. H.B. 2433 does not, however, levy any new sales or excise tax, as the text of the measure and related provisions demonstrate.
>
> For example, the sales tax levy can be found in 68 Okla. Stat. § 1354, imposing a tax upon "the gross receipts or gross proceeds of each sale" of tangible personal property and other specifically enumerated items. The last amendment increasing the sales tax levy was in

> 1989, when the rate was raised to 4.5%. Nothing in H.B. 2433 amends the sales tax levy contained in section 1354; the rate remains 4.5%. Likewise, the levy of the motor vehicle excise tax is found in 68 Okla. Stat. § 2103. That levy has not been increased since 1985, and nothing in H.B. 2433 amends the levy contained in section 2103. **Both before and after the enactment of H.B. 2433, the levy remains the same:** every new vehicle is subject to an excise tax at 3.25% of its value, and every used vehicle is subject to an excise tax of $20.00 on the first $1,500.00 or less of its value plus 3.25% of its remaining value, if any.

Okla. Auto. Dealers, 401 P.3d at 1154-55 (emphasis added and footnotes omitted).

In determining that H.B. 2433 was not a bill for raising revenue that was subject to Oklahoma's supermajority requirement, the Oklahoma Supreme Court stated that:

> At bottom, Petitioners' argument is that H.B. 2433 must be a revenue bill because it causes people to have to pay more taxes. But 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." . . . **Yet, despite their common effect (causing someone to have to pay a tax they previously didn't have to pay), removing an exemption and levying a new tax are distinct as a matter of fact and law. Our Constitution's restrictions on the enactment of revenue bills are aimed only at those bills that actually levy a tax.** The policy underlying those restrictions is not undercut in an instance such as this, because the original levies of the sales tax on automobile sales were subject to Article V, Section 33's restrictions.

Okla. Auto. Dealers, 401 P.3d at 1158 (emphasis added).

In 1996, the voters of Oregon approved a state constitutional provision imposing a three-fifths supermajority requirement on the Oregon Legislature, which provides that "[t]hree-fifths of all members elected to each House shall be necessary to pass **bills for raising revenue**." Or. Const. art. IV, § 25 (emphasis added). In addition, Oregon has a state constitutional provision, known as an "Origination Clause," which provides that "**bills for raising revenue** shall originate in the House of Representatives." Or. Const. art. IV, § 18 (emphasis added). The Oregon Supreme Court has adopted the same interpretation for the term "bills for raising revenue" with regard to both state constitutional provisions. Bobo v. Kulongoski, 107 P.3d 18, 24 (Or. 2005).

In determining the scope of Oregon's constitutional provisions for "bills for raising revenue," the Oregon Supreme Court has adopted a two-part test that is similar to the two-part test followed by the Oklahoma Supreme Court. Bobo, 107 P.3d at 24. In particular, the Oregon Supreme Court has stated:

> Considering the wording of [each constitutional provision], its history, and the case law surrounding it, we conclude that the question whether a bill is a "bill for raising revenue" entails two issues. The first is whether the bill collects or brings money into the treasury. If it does not, that is the end of the inquiry. If a bill does bring money into the treasury, the remaining question is whether *the bill possesses the essential features of a bill levying a tax.*

Id. (emphasis added).

In applying its two-part test in Bobo, the court observed that "not every statute that brought money into the treasury was a 'bill for raising revenue' within the meaning of [the constitutional provisions]." Bobo, 107 P.3d at 24. Instead, the court found that the constitutional provisions applied only to the specific types of bills that the framers had in mind—"bills to levy taxes and similar exactions." Id. at 23. Based on the normal and ordinary meanings commonly ascribed to the terms "raise" and "revenue" in the constitutional provisions, the court reached the following conclusions:

> We draw two tentative conclusions from those terms. First, a bill will "raise" revenue only if it "collects" or "brings in" money to the treasury. Second, not every bill that collects or brings in money to the treasury is a "bil[l] for raising revenue." Rather, the definition of "revenue" suggests that the framers had a specific type of bill in mind—*bills to levy taxes and similar exactions.*

Id. (emphasis added).

In City of Seattle v. Or. Dep't of Revenue, 357 P.3d 979, 980 (Or. 2015), the plaintiff claimed that the Oregon Legislature's passage of Senate Bill 495, which eliminated a tax exemption benefitting out-of-state municipalities that had certain electric utility facilities in Oregon, violated Oregon's Origination Clause because S.B. 495 was a bill for raising revenue that did not originate in the Oregon House of Representatives. However, the Oregon Supreme Court held that S.B. 495's elimination of the tax exemption did not make it a "bill for raising revenue" that was subject to Oregon's Origination Clause. Id. at 985-88.

After applying its two-part test from Bobo, the Oregon Supreme Court determined that S.B. 495 was not a bill for raising revenue because by "declaring that a property interest held by taxpayers previously exempt from taxation is now subject to taxation, the legislature did not levy a tax." City of Seattle, 357 P.3d at 987. The court rejected the taxpayers' argument that S.B. 495 was a bill for raising revenue because "the burden of increased taxes falls solely on the newly-taxed entities." Id. at 988. Instead, the court found that:

> We think, however, taxpayers' argument misses the mark because it focuses exclusively on the revenue effect of S.B. 495. As we stated in Bobo, the revenue effect of a bill, in and of itself, does not determine if the bill is a "bill[] for raising revenue." 107 P.3d at 24 ("If a bill does bring money into the treasury, the remaining question is whether the bill possesses the essential features of a bill levying a tax."). As we have explained, S.B. 495 repeals taxpayers' tax exemption as out-of-state municipal corporations and places taxpayers on the same footing as domestic electric cooperatives. The bill does not directly levy a tax on taxpayers.

Id. (footnotes omitted).

Based on the cases from the other states, the Legislature could reasonably interpret Nevada's two-thirds requirement in a manner that adopts and follows the judicial interpretations placed on the similar supermajority requirements from those other states. Under those judicial interpretations, the Legislature could reasonably conclude that Nevada's two-thirds requirement **does not** apply to a bill which reduces or eliminates available tax exemptions or tax credits, and "the Legislature is entitled to deference in its counseled selection of this interpretation." Nev. Mining, 117 Nev. at 540. Therefore, because the Legislature could reasonably conclude that AB 458 was not subject to the two-thirds requirement, the Legislature and all other Defendants are entitled to summary judgment on Plaintiffs' state constitutional claims as a matter of law.

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CONCLUSION AND AFFIRMATION

Based on the foregoing, the Legislature requests that the Court enter an order granting the Legislature's Motion for Summary Judgment and granting a final judgment in favor of the Legislature and all other Defendants on all causes of action and claims for relief alleged in Plaintiffs' Complaint filed on August 15, 2019.

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

DATED: This **14th** day of February, 2020.

Respectfully submitted,

BRENDA J. ERDOES
Legislative Counsel

By: /s/ Kevin C. Powers
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ADDENDUM

Assembly Bill No. 458–Committee on Education

CHAPTER 366

[Approved: June 3, 2019]

AN ACT relating to taxation; revising provisions governing the amount of credits the Department of Taxation is authorized to approve against the modified business tax for taxpayers who donate money to a scholarship organization; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Under existing law, financial institutions, mining businesses and other employers are required to pay an excise tax (the modified business tax) on wages paid by them. (NRS 363A.130, 363B.110) Existing law establishes a credit against the modified business tax equal to an amount which is approved by the Department of Taxation and which must not exceed the amount of any donation of money made by a taxpayer to a scholarship organization that provides grants on behalf of pupils who are members of a household with a household income of not more than 300 percent of the federally designated level signifying poverty to allow those pupils to attend schools in this State, including private schools, chosen by the parents or legal guardians of those pupils. (NRS 363A.139, 363B.119, 388D.270) Under existing law, the Department: (1) is required to approve or deny applications for the tax credit in the order in which the applications are received by the Department; and (2) is authorized to approve applications for each fiscal year until the amount of the tax credits approved for the fiscal year is the amount authorized by statute for that fiscal year. The amount of credits authorized for each fiscal year is equal to 110 percent of the amount authorized for the immediately preceding fiscal year, not including certain additional tax credits authorized for Fiscal Year 2017-2018. For Fiscal Year 2017-2018, the amount of credits authorized which are relevant for calculating the credits authorized in subsequent fiscal years is $6,050,000. Thus, for Fiscal Year 2018-2019, the amount of credits authorized is $6,655,000, plus any remaining amount of tax credits carried forward from the additional credit authorization made for Fiscal Year 2017-2018. (NRS 363A.139, 363B.119)

This bill eliminates the annual 110 percent increase in the amount of credits authorized and, instead, provides that the amount of credits authorized for each fiscal year is a total of $6,655,000, plus any remaining amount of tax credits carried forward from the additional credit authorization made for Fiscal Year 2017-2018.

EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets [~~omitted material~~] is material to be omitted.

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

Section 1. NRS 363A.139 is hereby amended to read as follows:

363A.139 1. Any taxpayer who is required to pay a tax pursuant to NRS 363A.130 may receive a credit against the tax otherwise due for any donation of money made by the taxpayer to a scholarship organization in the manner provided by this section.

2. To receive the credit authorized by subsection 1, a taxpayer who intends to make a donation of money to a scholarship organization must, before making such a donation, notify the scholarship organization of the taxpayer's intent to make the donation and to seek the credit authorized by subsection 1. A scholarship organization shall, before accepting any such donation, apply to the Department of Taxation for approval of the credit authorized by subsection 1 for the

donation. The Department of Taxation shall, within 20 days after receiving the application, approve or deny the application and provide to the scholarship organization notice of the decision and, if the application is approved, the amount of the credit authorized. Upon receipt of notice that the application has been approved, the scholarship organization shall provide notice of the approval to the taxpayer who must, not later than 30 days after receiving the notice, make the donation of money to the scholarship organization. If the taxpayer does not make the donation of money to the scholarship organization within 30 days after receiving the notice, the scholarship organization shall provide notice of the failure to the Department of Taxation and the taxpayer forfeits any claim to the credit authorized by subsection 1.

3. The Department of Taxation shall approve or deny applications for the credit authorized by subsection 1 in the order in which the applications are received.

4. Except as otherwise provided in subsection 5, the Department of Taxation may, for each fiscal year, approve applications for the credit authorized by subsection 1 until the total amount of the credits authorized by subsection 1 and approved by the Department of Taxation pursuant to this subsection ***and subsection 4 of NRS 363B.119*** is ~~[:~~

~~(a) For Fiscal Year 2015-2016, $5,000,000;~~

~~(b) For Fiscal Year 2016-2017, $5,500,000; and~~

~~(c) For each succeeding fiscal year, an amount equal to 110 percent of the amount authorized for the immediately preceding fiscal year.~~

~~➥]~~ ***$6,655,000.*** The amount of any credit which is forfeited pursuant to subsection 2 must not be considered in calculating the amount of credits authorized for any fiscal year.

5. In addition to the amount of credits authorized by subsection 4 for Fiscal Year 2017-2018, the Department of Taxation may approve applications for the credit authorized by subsection 1 for that fiscal year until the total amount of the credits authorized by subsection 1 and approved by the Department of Taxation pursuant to this subsection and subsection 5 of NRS 363B.119 is $20,000,000. The provisions of ~~[paragraph (c) of]~~ subsection 4 do not apply to the amount of credits authorized by this subsection and the amount of credits authorized by this subsection must not be considered when determining the amount of credits authorized for a fiscal year pursuant to ~~[that paragraph.]~~ ***subsection 4.*** If, in Fiscal Year 2017-2018, the amount of credits authorized by subsection 1 and approved pursuant to this subsection is less than $20,000,000, the remaining amount of credits pursuant to this subsection must be carried forward and made available for approval during subsequent fiscal years until the total amount of credits authorized by subsection 1 and approved pursuant to this subsection is equal to $20,000,000. The amount of any credit which is forfeited pursuant to subsection 2 must not be considered in calculating the amount of credits authorized pursuant to this subsection.

6. If a taxpayer applies to and is approved by the Department of Taxation for the credit authorized by subsection 1, the amount of the credit provided by this section is equal to the amount approved by the Department of Taxation pursuant to subsection 2, which must not exceed the amount of the donation made by the taxpayer to a scholarship organization. The total amount of the credit applied against the taxes described in subsection 1 and otherwise due from a taxpayer must not exceed the amount of the donation.

7. If the amount of the tax described in subsection 1 and otherwise due from a taxpayer is less than the credit to which the taxpayer is entitled pursuant to this section, the taxpayer may, after applying the credit to the extent of the tax otherwise due, carry the balance of the credit forward for not more than 5 years after the end of the calendar year in which the donation is made or until the balance of the credit is applied, whichever is earlier.

8. As used in this section, "scholarship organization" has the meaning ascribed to it in NRS 388D.260.

Sec. 2. NRS 363B.119 is hereby amended to read as follows:

363B.119 1. Any taxpayer who is required to pay a tax pursuant to NRS 363B.110 may receive a credit against the tax otherwise due for any donation of money made by the taxpayer to a scholarship organization in the manner provided by this section.

2. To receive the credit authorized by subsection 1, a taxpayer who intends to make a donation of money to a scholarship organization must, before making such a donation, notify the scholarship organization of the taxpayer's intent to make the donation and to seek the credit authorized by subsection 1. A scholarship organization shall, before accepting any such donation, apply to the Department of Taxation for approval of the credit authorized by subsection 1 for the donation. The Department of Taxation shall, within 20 days after receiving the application, approve or deny the application and provide to the scholarship organization notice of the decision and, if the application is approved, the amount of the credit authorized. Upon receipt of notice that the application has been approved, the scholarship organization shall provide notice of the approval to the taxpayer who must, not later than 30 days after receiving the notice, make the donation of money to the scholarship organization. If the taxpayer does not make the donation of money to the scholarship organization within 30 days after receiving the notice, the scholarship organization shall provide notice of the failure to the Department of Taxation and the taxpayer forfeits any claim to the credit authorized by subsection 1.

3. The Department of Taxation shall approve or deny applications for the credit authorized by subsection 1 in the order in which the applications are received.

4. Except as otherwise provided in subsection 5, the Department of Taxation may, for each fiscal year, approve applications for the credit authorized by subsection 1 until the total amount of the credits authorized by subsection 1 and approved by the Department of Taxation pursuant to this subsection ***and subsection 4 of NRS 363A.139*** is ~~[:~~

~~(a) For Fiscal Year 2015-2016, $5,000,000;~~

~~(b) For Fiscal Year 2016-2017, $5,500,000; and~~

~~(c) For each succeeding fiscal year, an amount equal to 110 percent of the amount authorized for the immediately preceding fiscal year.~~

~~.]~~ ***$6,655,000.*** The amount of any credit which is forfeited pursuant to subsection 2 must not be considered in calculating the amount of credits authorized for any fiscal year.

5. In addition to the amount of credits authorized by subsection 4 for Fiscal Year 2017-2018, the Department of Taxation may approve applications for the credit authorized by subsection 1 for that fiscal year until the total amount of the credits authorized by subsection 1 and approved by the Department of Taxation pursuant to this subsection and subsection 5 of NRS 363A.139 is $20,000,000. The provisions of ~~[paragraph (c) of]~~ subsection 4 do not apply to the amount of credits authorized by this subsection and the amount of credits authorized by this subsection must not be considered when determining the amount of credits authorized for a fiscal year pursuant to ~~[that paragraph.]~~ ***subsection 4.*** If, in Fiscal Year 2017-2018, the amount of credits authorized by subsection 1 and approved pursuant to this subsection is less than $20,000,000, the remaining amount of credits pursuant to this subsection must be carried forward and made available for approval during subsequent fiscal years until the total amount of credits authorized by subsection 1 and approved pursuant to this subsection is equal to $20,000,000. The amount of any credit which is forfeited pursuant to subsection 2 must not be considered in calculating the amount of credits authorized pursuant to this subsection.

6. If a taxpayer applies to and is approved by the Department of Taxation for the credit authorized by subsection 1, the amount of the credit provided by this section is equal to the amount approved by the Department of Taxation pursuant to subsection 2, which must not exceed the amount of the donation made by the taxpayer to a scholarship organization. The total amount

of the credit applied against the taxes described in subsection 1 and otherwise due from a taxpayer must not exceed the amount of the donation.

7. If the amount of the tax described in subsection 1 and otherwise due from a taxpayer is less than the credit to which the taxpayer is entitled pursuant to this section, the taxpayer may, after applying the credit to the extent of the tax otherwise due, carry the balance of the credit forward for not more than 5 years after the end of the calendar year in which the donation is made or until the balance of the credit is applied, whichever is earlier.

8. As used in this section, "scholarship organization" has the meaning ascribed to it in NRS 388D.260.

Sec. 3. This act becomes effective upon passage and approval for the purpose of adopting regulations and performing any other administrative tasks that are necessary to carry out the provisions of this act, and on July 1, 2019, for all other purposes.

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Nevada Legislative Counsel Bureau, Legal Division, and that on the **14th** day of February, 2020, pursuant to NRCP 5(b), I served a true and correct copy of Intervenor-Defendant Nevada Legislature's Motion for Summary Judgment, by means of the Eighth Judicial District Court's electronic filing system, directed to the following:

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/s/ Kevin C. Powers
An Employee of the Legislative Counsel Bureau

LEGISLATURE'S

EXHIBIT A

DECL
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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. DEPARTMENT OF EDUCATION; et al.,

Defendants,

and

THE LEGISLATURE OF THE STATE OF NEVADA,

Intervenor-Defendant.

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

DECLARATION OF BRENDA J. ERDOES, ESQ., IN HER OFFICIAL CAPACITY AS THE LEGISLATIVE COUNSEL AND CHIEF OF THE LEGAL DIVISION OF THE LEGISLATIVE COUNSEL BUREAU OF THE STATE OF NEVADA

DECLARATION

STATE OF NEVADA)
) **ss.**
COUNTY OF CARSON)

Pursuant to NRS 53.045, Brenda J. Erdoes, Esq., declares under penalty of perjury under the law of the State of Nevada that the following is true and correct:

1. This declaration is made pursuant to NRCP 56, EDCR 2.20 and EDCR 2.21 in the case of *Morency, et al. v. State of Nevada ex rel. Department of Education, et al.*, Case No. A-19-800267-C, Eighth Judicial District Court, Clark County, Nevada, on behalf of Defendants State of Nevada ex rel. Department of Education, et al. ("State Defendants"), and Intervenor-Defendant Legislature of the State of Nevada ("Legislature"), and this declaration pertains to the respective Motions for Summary Judgment filed by the State Defendants and the Legislature.

2. I have personal knowledge of the matters set forth in this declaration, and I am competent to testify regarding the matters set forth in this declaration.

3. I am an attorney admitted to practice law in the State of Nevada, and I am a licensed member of the State Bar of Nevada.

4. Pursuant to Nevada's laws and rules governing the Legislative Department of the State Government ("Legislative Department"), I am the Legislative Counsel of the State of Nevada appointed pursuant to NRS 218F.100, and I am the Chief of the Legal Division of the Legislative Counsel Bureau ("LCB Legal") pursuant to that statute.

5. Pursuant to Nevada's laws and rules governing the Legislative Department, LCB Legal is the legal agency for the Legislative Department, and LCB Legal, in its official capacity, serves as the legal counsel and legal adviser for the Legislature as an organizational client and for all members of the Legislature in their official capacity when they are acting as duly authorized constituents of the Legislature as an organizational client.

6. Pursuant to Nevada's laws and rules governing the Legislative Department, LCB Legal has the following statutory duties, among others:

(a) Pursuant to NRS 218D.050(3), LCB Legal "shall provide the Legislature with legal, technical and other appropriate services concerning any legislative measure properly before the Legislature or any committee of the Legislature for consideration."

(b) Pursuant to NRS 218D.110(1), LCB Legal "shall assist Legislators in the drafting of the legislative measures which they are authorized to request, including, without limitation, drafting them in proper form and furnishing the Legislators with the fullest information upon all matters within the scope of the Legislative Counsel's duties."

(c) Pursuant to NRS 218F.710(2), LCB Legal "[u]pon the request of any member or committee of the Legislature or the Legislative Commission . . . shall give an opinion in writing upon any question of law, including existing law and suggested, proposed and pending legislation which has become a matter of public record."

7. Pursuant to Nevada's laws and rules governing the Legislative Department, the officers and employees of the Legislative Counsel Bureau have the following statutory duties, among others, to keep certain matters confidential:

(a) Pursuant to NRS 218F.150(1), the officers and employees of the Legislative Counsel Bureau shall not "disclose to any person outside the Legislative Counsel Bureau the nature or content of any matter entrusted to the Legislative Counsel Bureau, and such matter is confidential and privileged and is not subject to discovery or subpoena, unless the person entrusting the matter to the Legislative Counsel Bureau requests or consents to the disclosure."

(b) Pursuant to NRS 218F.150(3), "[t]he nature and content of any work produced by the officers and employees of the Legal Division and the Fiscal Analysis Division and any matter entrusted to those officers and employees to produce such work are confidential and privileged and are not subject to

discovery or subpoena."

8. This declaration concerns a written legal opinion, attached to this declaration, that was given by LCB Legal pursuant to NRS 218F.710 to members of the Majority and Minority Leadership in both Houses of the Legislature on May 8, 2019, during the 80th Session of the Legislature, regarding the applicability of the two-thirds majority requirement in Article 4, Section 18(2) of the Nevada Constitution to potential legislation ("legal opinion").

9. After the legal opinion was given by LCB Legal to members of the Majority and Minority Leadership in both Houses of the Legislature on May 8, 2019, the legal opinion appeared on one or more forums accessible to the general public, including, without limitation, on the Internet websites of news-gathering organizations; therefore, it must be presumed that:

(a) One or more requesters of the legal opinion consented to the public disclosure of the legal opinion; and

(b) The legal opinion is no longer confidential pursuant to NRS 218F.150.

10. Pursuant to Nevada's laws and rules governing the Legislative Department, in my official capacity as the Legislative Counsel and Chief of LCB Legal, I am authorized to make the following certification, and I hereby certify that the legal opinion attached to this declaration:

(a) Was given by LCB Legal to members of the Majority and Minority Leadership in both Houses of the Legislature on May 8, 2019, and is an official record kept by LCB Legal in the performance of its official duties for the Legislative Department; and

(b) Is a true and correct copy of the legal opinion as kept by LCB Legal as an official record in the performance of its official duties for the Legislative Department.

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Pursuant to NRS 53.045, I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

EXECUTED ON: This 6TH day of February, 2020.

By: _____

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May 8, 2019

Legislative Leadership
Legislative Building
401 S. Carson Street
Carson City, NV 89701

Dear Legislative Leadership:

You have asked this office several legal questions relating to the two-thirds majority requirement in Article 4, Section 18(2) of the Nevada Constitution, which provides in relevant part that:

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

Nev. Const. art. 4, § 18(2).[1]

First, you have asked whether the two-thirds majority requirement applies to a bill which extends until a later date—or 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. Second, you have asked whether the two-thirds majority requirement applies to a bill which reduces or eliminates available tax exemptions or tax credits applicable to existing state taxes.

[1] Article 4, Section 18(2) uses the inclusive phrase "taxes, fees, assessments and rates." However, for ease of discussion in this letter, we will use the term "state taxes" to serve in the place of the inclusive phrase "taxes, fees, assessments and rates."

In response to your questions, we first provide pertinent background information regarding Nevada's constitutional requirements for the final passage of bills by the Legislature. Following that, we provide a detailed and comprehensive legal discussion of the relevant authorities that support our legal opinions regarding the application of Nevada's two-thirds majority requirement to your specific legal questions. Finally, we note that the legal opinions expressed in this letter are limited solely to the application of Nevada's two-thirds majority requirement to the specific types of bills directly discussed in this letter. We do not express any other legal opinions in this letter concerning the application of Nevada's two-thirds majority requirement to any other types of bills that are not directly discussed in this letter.

BACKGROUND

1. Purpose and intent of Nevada's original constitutional majority requirement for the final passage of bills.

When the Nevada Constitution was framed in 1864, the Framers debated whether the Legislature should be authorized to pass bills by a simple majority of a quorum under the traditional parliamentary rule or whether the Legislature should be required to meet a greater threshold for the final passage of bills. See Andrew J. Marsh, Official Report of the Debates and Proceedings of the Nevada State Constitutional Convention of 1864, at 143-45 (1866).

Under the traditional parliamentary rule, if a quorum of members is present in a legislative house, a simple majority of the quorum is sufficient for the final passage of bills by the house, unless a constitutional provision establishes a different requirement. See Mason's Manual of Legislative Procedure § 510 (2010). This traditional parliamentary rule is followed by each House of Congress, which may pass bills by a simple majority of a quorum. United States v. Ballin, 144 U.S. 1, 6 (1892) ("[A]t the time this bill passed the house there was present a majority, a quorum, and the house was authorized to transact any and all business. It was in a condition to act on the bill if it desired."); 1 Thomas M. Cooley, Constitutional Limitations 291 (8th ed. 1927).

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

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

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

2. Purpose and intent of Nevada's two-thirds majority requirement for the final passage of bills which create, generate or increase any public revenue in any form.

At the general elections in 1994 and 1996, Nevada's voters approved constitutional amendments to Article 4, Section 18 that were proposed by a ballot initiative pursuant to Article 19, Section 2 of the Nevada Constitution. The amendments provide that:

> Except as otherwise provided in subsection 3, an affirmative vote of not fewer than *two-thirds of the members elected to each House* is necessary to pass a bill or joint resolution which *creates, generates, or increases any public revenue in any form*, including but not limited to taxes, fees, assessments and rates, or changes in the computation bases for taxes, fees, assessments and rates.

Nev. Const. art. 4, § 18(2) (emphasis added). The amendments also include an exception in subsection 3, which provides that "*[a] majority of all of the members elected to each House* may refer any measure which creates, generates, or increases any revenue in any form to the people of the State at the next general election." Nev. Const. art. 4, § 18(3) (emphasis added).

Under the two-thirds majority requirement, if a bill "creates, generates, or increases any public revenue in any form," the Senate may pass the bill only with an affirmative vote of at

least 14 of its 21 members, and the Assembly may pass the bill only with an affirmative vote of at least 28 of its 42 members. However, if the two-thirds majority requirement does not apply to the bill, the Senate and Assembly may pass the bill by a constitutional majority in each House.

When the ballot initiative adding the two-thirds majority requirement to the Nevada Constitution was presented to the voters in 1994 and 1996, one of the primary sponsors of the initiative was former Assemblyman Jim Gibbons. See Guinn v. Legislature (Guinn II), 119 Nev. 460, 471-72 (2003) (discussing the two-thirds majority requirement and describing Assemblyman Gibbons as "the initiative's prime sponsor").[2] During the 1993 Legislative Session, Assemblyman Gibbons sponsored Assembly Joint Resolution No. 21 (A.J.R. 21), which proposed adding a two-thirds majority requirement to Article 4, Section 18(2), but Assemblyman Gibbons was not successful in obtaining its passage. See Legislative History of A.J.R. 21, 67th Leg. (Nev. LCB Research Library 1993).[3] Nevertheless, because Assemblyman Gibbons' legislative testimony on A.J.R. 21 in 1993 provides some contemporaneous extrinsic evidence of the purpose and intent of the two-thirds majority requirement, the Nevada Supreme Court has reviewed and considered that testimony when discussing the two-thirds majority requirement that was ultimately approved by the voters in 1994 and 1996. Guinn II, 119 Nev. at 472.

In his legislative testimony on A.J.R. 21 in 1993, Assemblyman Gibbons stated that the two-thirds majority requirement was modeled on similar constitutional provisions in other states, including Arizona, Arkansas, California, Colorado, Delaware, Florida, Louisiana, Mississippi, Oklahoma and South Dakota. Legislative History of A.J.R. 21, supra (Hearing on A.J.R. 21 Before Assembly Comm. on Taxation, 67th Leg., at 11-13 (Nev. May 4, 1993)). Assemblyman Gibbons testified that the two-thirds majority requirement would "require a two-thirds majority vote in each house of the legislature to increase certain existing taxes or to impose certain new taxes." Id. However, Assemblyman Gibbons also stated that the two-thirds majority requirement "would not impair any existing revenues." Id. Instead, Assemblyman Gibbons indicated that the two-thirds majority requirement "would bring greater stability to Nevada's tax systems, while still allowing the flexibility to meet real fiscal

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[2] In Guinn v. Legislature, the Nevada Supreme Court issued two reported opinions—Guinn I and Guinn II—that discussed the two-thirds majority requirement. Guinn v. Legislature (Guinn I), 119 Nev. 277 (2003), *opinion clarified on denial of reh'g*, Guinn v. Legislature (Guinn II), 119 Nev. 460 (2003). In 2006, the court overruled certain portions of its Guinn I opinion. Nevadans for Nev. v. Beers, 122 Nev. 930, 944 (2006). However, even though the court overruled certain portions of its Guinn I opinion, the court has not overruled any portion of its Guinn II opinion, which remains good law.

[3] Available at: https://www.leg.state.nv.us/Division/Research/Library/LegHistory/LHs/1993/AJR21,1993.pdf.

needs" because "Mr. Gibbons thought it would not be difficult to obtain a two-thirds majority if the need for *new revenues* was clear and convincing." Id. (emphasis added). In particular, Assemblyman Gibbons testified as follows:

> James A. Gibbons, Assembly District 25, spoke as the prime sponsor of A.J.R. 21 which proposed to amend the Nevada Constitution to *require a two-thirds majority vote in each house of the legislature to increase certain existing taxes or to impose certain new taxes.*
>
> * * *
>
> Mr. Gibbons stressed A.J.R. 21 amended the Nevada Constitution to require bills providing for a general tax increase be passed by a two-thirds majority of both houses of the legislature. The resolution would apply to property taxes, sales and use taxes, business taxes based on income, receipts, assets, capital stock or number of employees, taxes on net proceeds of mines and taxes on liquor and cigarettes.
>
> *Mr. Gibbons explained A.J.R. 21 was modeled on constitutional provisions which were in effect in a number of other states.* Some of the provisions were adopted recently in response to a growing concern among voters about increasing tax burdens and some of the other provisions dated back to earlier times.
>
> * * *
>
> Mr. Gibbons believed a provision requiring an extraordinary majority was a device used to hedge or protect certain laws which he believed should not be lightly changed. A.J.R. 21 would ensure greater stability and preserve certain statutes from the constant tinkering of transient majorities.
>
> Mr. Gibbons addressed some of the anticipated objections. Some will claim A.J.R. 21 would deprive the state of revenues necessary to provide essential state services. Mr. Gibbons conveyed that was not the case. A.J.R. 21 *would not impair any existing revenues.* It was not a tax rollback and did not impose rigid caps on taxes or spending. *Mr. Gibbons thought it would not be difficult to obtain a two-thirds majority if the need for new revenues was clear and convincing.* A.J.R. 21 would not hamstring state government or prevent state government from responding to legitimate fiscal emergencies.
>
> * * *
>
> Mr. Gibbons concluded by saying the measure did not propose government do less, but actually A.J.R. 21 could permit government to do more. A.J.R. 21 was a

> simple moderate measure that *would bring greater stability to Nevada's tax systems, while still allowing the flexibility to meet real fiscal needs.* Mr. Gibbons urged the committee's approval of A.J.R. 21.

Legislative History of A.J.R. 21, supra (Hearing on A.J.R. 21 Before Assembly Comm. on Taxation, 67th Leg., at 11-13 (Nev. May 4, 1993) (emphasis added)).

In addition to Assemblyman Gibbons' legislative testimony on A.J.R. 21 in 1993, the ballot materials presented to the voters in 1994 and 1996 also provide some contemporaneous extrinsic evidence of the purpose and intent of the two-thirds majority requirement. Guinn, 119 Nev. at 471-72. The ballot materials informed the voters that the two-thirds majority requirement would make it more difficult for the Legislature to enact bills "raising" or "increasing" taxes and that "[i]t may require state government to prioritize its spending and economize rather than turning to *new sources* of revenue." Nev. Ballot Questions 1994, Question No. 11, at 1 (Nev. Sec'y of State 1994) (emphasis added). In particular, the ballot materials stated as follows:

> **ARGUMENTS FOR PASSAGE**
>
> Proponents argue that one way to control the raising of taxes is to require more votes in the legislature before a measure increasing taxes could be passed; therefore, a smaller number of legislators could prevent the raising of taxes. This could limit increases in taxes, fees, assessments and assessment rates. A broad consensus of support from the entire state would be needed to pass these increases. It may be more difficult for special interest groups to get increases they favor. *It may require state government to prioritize its spending and economize rather than turning to new sources of revenue.* The legislature, by simple majority vote, could ask for the people to vote on any increase.
>
> **ARGUMENTS AGAINST PASSAGE**
>
> Opponents argue that a special interest group would only need a small minority of legislators to defeat any proposed revenue measure. Also a minority of legislators could band together to defeat a tax increase in return for a favorable vote on other legislation. Legislators act responsibly regarding increases in taxes since they are accountable to the public to get re-elected. If this amendment is approved, the state could impose unfunded mandates upon local governments. As a tourism based economy with a tremendous population growth, Nevada must remain flexible to change the tax base, if needed. Nevada should continue to operate by majority rule as the Nevada Constitution now provides.

Nev. Ballot Questions 1994, Question No. 11, at 1 (Nev. Sec'y of State 1994) (emphasis added).

Finally, based on Assemblyman Gibbons' legislative testimony on A.J.R. 21 in 1993 and the ballot materials presented to the voters in 1994 and 1996, the Nevada Supreme Court has described the purpose and intent of the two-thirds majority requirement as follows:

> The supermajority requirement was intended to make it more difficult for the Legislature to pass *new* taxes, hopefully encouraging efficiency and effectiveness in government. Its proponents argued that the tax restriction might also encourage state government to prioritize its spending and economize rather than explore *new* sources of revenue.

Guinn II, 119 Nev. at 471 (emphasis added).

With this background information in mind, we turn next to discussing your specific legal questions.

DISCUSSION

You have asked several legal questions relating to the two-thirds majority requirement in Article 4, Section 18(2). First, you have asked whether the two-thirds majority requirement applies to a bill which extends until a later date—or 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. Second, you have asked whether the two-thirds majority requirement applies to a bill which reduces or eliminates available tax exemptions or tax credits applicable to existing state taxes.

To date, there are no reported cases from Nevada's appellate courts addressing these legal questions. In the absence of any controlling Nevada case law, we must address these legal questions by: (1) applying several well-established rules of construction followed by Nevada's appellate courts; (2) examining contemporaneous extrinsic evidence of the purpose and intent of the two-thirds majority requirement when it was considered by the Legislature in 1993 and presented to the voters in 1994 and 1996; and (3) considering case law interpreting similar constitutional provisions from other jurisdictions for guidance in this area of the law.

We begin by discussing the rules of construction for constitutional provisions approved by the voters through a ballot initiative. Following that discussion, we answer each of your specific legal questions.

1. Rules of construction for constitutional provisions approved by the voters through a ballot initiative.

The Nevada Supreme Court has long held that the rules of statutory construction also govern the interpretation of constitutional provisions, including provisions approved by the

voters through a ballot initiative. See Lorton v. Jones, 130 Nev. 51, 56-57 (2014) (applying the rules of statutory construction to the constitutional term-limit provisions approved by the voters through a ballot initiative). As stated by the court:

> In construing constitutions and statutes, the first and last duty of courts is to ascertain the intention of the convention and legislature; and in doing this they must be governed by well-settled rules, applicable alike to the construction of constitutions and statutes.

State ex rel. Wright v. Dovey, 19 Nev. 396, 399 (1887). Thus, when applying the rules of construction to constitutional provisions approved by the voters through a ballot initiative, the primary task of the court is to ascertain the intent of the drafters and the voters and to adopt an interpretation that best captures their objective. Nev. Mining Ass'n v. Erdoes, 117 Nev. 531, 538 (2001).

To ascertain the intent of the drafters and the voters, the court will first examine the language of the constitutional provision to determine whether it has a plain and ordinary meaning. Miller v. Burk, 124 Nev. 579, 590 (2008). If the constitutional language is clear on its face and is not susceptible to any ambiguity, uncertainty or doubt, the court will generally give the constitutional language its plain and ordinary meaning, unless doing so would violate the spirit of the provision or would lead to an absurd or unreasonable result. Miller, 124 Nev. at 590-91; Nev. Mining Ass'n, 117 Nev. at 542 & n.29.

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

Furthermore, even when there is some ambiguity, uncertainty or doubt as to the meaning of a constitutional provision, that ambiguity, uncertainty or doubt must be resolved in favor of the Legislature and its general power to enact legislation. When the Nevada Constitution imposes limitations upon the Legislature's power, those limitations "are to be strictly construed, and are not to be given effect as against the general power of the legislature, unless such limitations clearly inhibit the act in question." In re Platz, 60 Nev. 296, 308 (1940) (quoting Baldwin v. State, 3 S.W. 109, 111 (Tex. Ct. App. 1886)). As a result, the language of the Nevada Constitution "must be strictly construed in favor of the

power of the legislature to enact the legislation under it." Id. Therefore, even when a constitutional provision imposes restrictions and limitations upon the Legislature's power, those "[r]estrictions and limitations are not extended to include matters not covered." City of Los Angeles v. Post War Pub. Works Rev. Bd., 156 P.2d 746, 754 (Cal. 1945).

For example, under the South Dakota Constitution, the South Dakota Legislature may pass its general appropriations bill to fund the operating expenses of state government by a majority of all the members elected to each House, but the final passage of any special appropriations bills to authorize funding for other purposes requires "a two-thirds vote of all the members of each branch of the Legislature." S.D. Const. art. III, § 18, art. XII, § 2. In interpreting this two-thirds majority requirement, the South Dakota Supreme Court has determined that the requirement must not be extended by construction or inference to include situations not clearly within its terms. Apa v. Butler, 638 N.W.2d 57, 69-70 (S.D. 2001). As further explained by the court:

> [P]etitioners strongly urged during oral argument that the challenged appropriations from the [special funds] must be special appropriations because it took a two-thirds majority vote of each House of the legislature to create the two special funds in the first instance. Petitioners correctly pointed out that allowing money from the two funds to be reappropriated in the general appropriations bill would allow the legislature to undo by a simple majority vote what it took a two-thirds majority to create. On that basis, petitioners invite this Court to read a two-thirds vote requirement into the Constitution for the amendment or repeal of any special continuing appropriations measure. This we cannot do.
>
> Our Constitution must be construed by its plain meaning: "If the words and language of the provision are unambiguous, 'the language in the constitution must be applied as it reads.'" Cid v. S.D. Dep't of Social Servs., 598 N.W.2d 887, 890 (S.D. 1999). Here, the constitutional two-thirds voting requirement for appropriations measures is only imposed on the *passage* of a special appropriation. See S.D. Const. art. XII, § 2. There is no constitutional requirement for a two-thirds vote on the repeal or amendment of an existing special appropriation, not to mention a continuing special appropriation. Generally:
>
> > [s]pecial provisions in the constitution as to the number of votes required for the passage of acts of a particular nature . . . are not extended by construction or inference to include situations not clearly within their terms. Accordingly, a special provision regulating the number of votes necessary for the passage of bills of a certain character does not apply to the repeal of laws of this character, or to an act which only amends them.

Apa, 638 N.W.2d at 69-70 (quoting 82 C.J.S. Statutes § 39 (1999) (republished as 82 C.J.S. Statutes § 52 (Westlaw 2019)).

Lastly, in matters involving state constitutional law, the Nevada Supreme Court is the final arbiter or interpreter of the meaning of the Nevada Constitution. Nevadans for Nev. v. Beers, 122 Nev. 930, 943 n.20 (2006) ("A well-established tenet of our legal system is that the judiciary is endowed with the duty of constitutional interpretation."); Guinn II, 119 Nev. at 471 (describing the Nevada Supreme Court and its justices "as the ultimate custodians of constitutional meaning."). Nevertheless, even though the final power to decide the meaning of the Nevada Constitution ultimately rests with the judiciary, "[i]n the performance of assigned constitutional duties each branch of the Government must initially interpret the Constitution, and the interpretation of its powers by any branch is due great respect from the others." United States v. Nixon, 418 U.S. 683, 703 (1974).

Accordingly, the Nevada Supreme Court has recognized that a reasonable construction of a constitutional provision by the Legislature should be given great weight. State ex rel. Coffin v. Howell, 26 Nev. 93, 104-05 (1901); State ex rel. Cardwell v. Glenn, 18 Nev. 34, 43-46 (1883). This is particularly true when a constitutional provision concerns the passage of legislation. Id. Thus, when construing a constitutional provision, "although the action of the legislature is not final, its decision upon this point is to be treated by the courts with the consideration which is due to a co-ordinate department of the state government, and in case of a reasonable doubt as to the meaning of the words, the construction given to them by the legislature ought to prevail." Dayton Gold & Silver Mining Co. v. Seawell, 11 Nev. 394, 399-400 (1876).

The weight given to the Legislature's construction of a constitutional provision involving legislative procedure is of particular force when the meaning of the constitutional provision is subject to any uncertainty, ambiguity or doubt. Nev. Mining Ass'n, 117 Nev. at 539-40. Under such circumstances, the Legislature may rely on an opinion of the Legislative Counsel which interprets the constitutional provision, and "the Legislature is entitled to deference in its counseled selection of this interpretation." Id. at 540. For example, when the meaning of the term "midnight Pacific standard time," as formerly used in the constitutional provision limiting legislative sessions to 120 days, was subject to uncertainty, ambiguity and doubt following the 2001 Legislative Session, the Nevada Supreme Court explained that the Legislature's interpretation of the constitutional provision was entitled to deference because "[i]n choosing this interpretation, the Legislature acted on Legislative Counsel's opinion that this is a reasonable construction of the provision. We agree that it is, and the Legislature is entitled to deference in its counseled selection of this interpretation." Id.

Consequently, in determining whether the two-thirds majority requirement applies to a particular bill, the Legislature has the power to interpret Article 4, Section 18(2), in the first instance, as a reasonable and necessary corollary power to the exercise of its expressly granted and exclusive constitutional power to enact laws by the passage of bills. See Nev. Const. art. 4, § 23 (providing that "no law shall be enacted except by bill."); State ex rel. Torreyson v. Grey, 21 Nev. 378, 380-84 (1893) (discussing the power of the Legislature to

interpret constitutional provisions governing legislative procedure). Moreover, because Article 4, Section 18(2) involves the exercise of the Legislature's lawmaking power, any uncertainty, ambiguity or doubt regarding the application of the two-thirds majority requirement must be resolved in favor of the Legislature's lawmaking power and against restrictions on that power. See Platz, 60 Nev. at 308 (stating that the language of the Nevada Constitution "must be strictly construed in favor of the power of the legislature to enact the legislation under it."). As further explained by the Nevada Supreme Court:

> Briefly stated, legislative power is the power of law-making representative bodies to frame and enact laws, and to amend or repeal them. This power is indeed very broad, and, except where limited by Federal or State Constitutional provisions, that power is practically absolute. Unless there are specific constitutional limitations to the contrary, statutes are to be construed in favor of the legislative power.

Galloway v. Truesdell, 83 Nev. 13, 20 (1967).

Finally, when the Legislature exercises its power to interpret Article 4, Section 18(2) in the first instance, the Legislature may resolve any uncertainty, ambiguity or doubt regarding the application of the two-thirds majority requirement by following an opinion of the Legislative Counsel which interprets the constitutional provision, and the judiciary will typically afford the Legislature deference in its counseled selection of that interpretation. With these rules of construction as our guide, we must apply them in the same manner as Nevada's appellate courts to answer each of your specific legal questions.

2. Does the two-thirds majority requirement apply to a bill which extends until a later date—or 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?

Under the rules of construction, we must start by examining the plain language of the two-thirds majority requirement in Article 4, Section 18(2), which provides in relevant part that:

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

Nev. Const. art. 4, § 18(2) (emphasis added).

Based on its plain language, the two-thirds majority requirement applies to a bill which "creates, generates, or increases any public revenue in any form." The two-thirds majority requirement, however, does not provide any definitions to assist the reader in applying the terms "creates, generates, or increases." Therefore, in the absence of any constitutional definitions, we must give those terms their ordinary and commonly understood meanings.

As explained by the Nevada Supreme Court, "[w]hen a word is used in a statute or constitution, it is supposed it is used in its ordinary sense, unless the contrary is indicated." Ex parte Ming, 42 Nev. 472, 492 (1919); Seaborn v. Wingfield, 56 Nev. 260, 267 (1935) (stating that a word or term "appearing in the constitution must be taken in its general or usual sense."). To arrive at the ordinary and commonly understood meaning of the constitutional language, the court will usually rely upon dictionary definitions because those definitions reflect the ordinary meanings that are commonly ascribed to words and terms. See Rogers v. Heller, 117 Nev. 169, 173 & n.8 (2001); Cunningham v. State, 109 Nev. 569, 571 (1993). Therefore, unless it is clear that the drafters of a constitutional provision intended for a term to be given a technical meaning, the court has emphasized that "[t]he Constitution was written to be understood by the voters; its words and phrases were used in their normal and ordinary as distinguished from technical meaning." Strickland v. Waymire, 126 Nev. 230, 234 (2010) (quoting Dist. of Columbia v. Heller, 554 U.S. 570, 576 (2008)).

Accordingly, in interpreting the two-thirds majority requirement, we must review the normal and ordinary meanings commonly ascribed to the terms "creates, generates, or increases" in Article 4, Section 18(2). The common dictionary meaning of the term "create" is to "bring into existence" or "produce." Webster's New Collegiate Dictionary 304 (9th ed. 1991). The common dictionary meaning of the term "generate" is also to "bring into existence" or "produce." Id. at 510. Finally, the common dictionary meaning of the term "increase" is to "make greater" or "enlarge." Id. at 611.

Based on the normal and ordinary meanings of the terms "creates, generates, or increases" as used in Article 4, Section 18(2), we believe that the two-thirds majority requirement applies to a bill which directly brings into existence, produces or enlarges public revenue in the first instance by imposing new or increased state taxes. However, when a bill does not impose new or increased state taxes but simply maintains the existing "computation bases" currently in effect for *existing* state taxes, we do not believe that the two-thirds majority requirement applies to the bill.

Given the plain language in Article 4, Section 18(2), the two-thirds majority requirement applies to a bill which makes "changes in the *computation bases* for taxes, fees, assessments and rates." Nev. Const. art. 4, § 18(2) (emphasis added). Based on its normal and ordinary meaning, a "computation base" is a formula that consists of "a number that is multiplied by a rate or [from] which a percentage or fraction is calculated." Webster's New Collegiate Dictionary 133 & 271 (9th ed. 1991) (defining the terms "computation" and "base"). In other words, a "computation base" is a formula which consists of a base number,

such as an amount of money, and a number serving as a multiplier, such as a percentage or fraction, that is used to calculate the product of those two numbers.

By applying the normal and ordinary meaning of the term "computation base," we believe that the two-thirds majority requirement applies to a bill which directly changes the statutory computation bases—that is, the statutory formulas—used for calculating existing state taxes, so that the revised statutory formulas directly bring into existence, produce or enlarge public revenue in the first instance because the existing statutory base numbers or the existing statutory multipliers are changed by the bill in a manner that "creates, generates, or increases any public revenue." Nev. Const. art. 4, § 18(2). However, when a bill does not change—but maintains—the existing statutory base numbers and the existing statutory multipliers currently in effect for the existing statutory formulas, we do not believe that the bill "creates, generates, or increases any public revenue" within the meaning, purpose and intent of the two-thirds majority requirement because the existing "computation bases" currently in effect are not changed by the bill. Id.

Accordingly, to answer your first question, we must determine whether a bill which extends until a later date—or revises or eliminates—a future decrease in or future expiration of existing state taxes would be considered a bill which *changes* or one which *maintains* the existing computation bases currently in effect for the existing state taxes. In order to make this determination, we must consider several well-established rules of construction governing statutes that are not legally operative and binding yet.

It is well established that "[t]he existence of a law, and the time when it shall take effect, are two separate and distinct things. The law exists from the date of approval, but its operation [may be] postponed to a future day." People ex rel. Graham v. Inglis, 43 N.E. 1103, 1104 (Ill. 1896). Thus, because the Legislature has the power to postpone the operation of a statute until a later time, it may enact a statute that has both an effective date and a later operative date. 82 C.J.S. Statutes § 549 (Westlaw 2019). Under such circumstances, the effective date is the date upon which the statute becomes an existing law, but the later operative date is the date upon which the requirements of the statute will actually become legally binding. 82 C.J.S. Statutes § 549 (Westlaw 2019); Preston v. State Bd. of Equal., 19 P.3d 1148, 1167 (Cal. 2001). When a statute has both an effective date and a later operative date, the statute must be understood as speaking from its later operative date when it actually becomes legally binding and not from its earlier effective date when it becomes an existing law but does not have any legally binding requirements yet. 82 C.J.S. Statutes § 549 (Westlaw 2019); Longview Co. v. Lynn, 108 P.2d 365, 373 (Wash. 1940). Consequently, until the statute reaches its later operative date, the statute is not legally operative and binding yet, and the statute does not confer any presently existing and enforceable legal rights or benefits under its provisions. Id.; Levinson v. City of Kansas City, 43 S.W.3d 312, 316-18 (Mo. Ct. App. 2001).

Consequently, if an existing statute provides for a future decrease in or future expiration of existing state taxes, that future decrease or expiration is not legally operative and binding yet, and the statute does not confer any presently existing and enforceable legal rights or benefits under its provisions to that future decrease or expiration. Because such a future decrease or expiration is not legally operative and binding yet, we believe that the two-thirds majority requirement does not apply to a bill which extends until a later date—or revises or eliminates—the future decrease or expiration because such a bill does not change—but maintains—the existing computation bases currently in effect for the existing state taxes.

We find support for our interpretation of the plain language in Article 4, Section 18(2) from the contemporaneous extrinsic evidence of the purpose and intent of the two-thirds majority requirement when it was considered by the Legislature in 1993 and presented to the voters in 1994 and 1996.

When interpreting constitutional provisions approved by the voters through a ballot initiative, the court may consider contemporaneous extrinsic evidence of the purpose and intent of the constitutional provisions that was available when the initiative was presented to the voters for approval. See 42 Am. Jur. 2d Initiative & Referendum § 49 (Westlaw 2019) ("To the extent possible, when interpreting a ballot initiative, courts attempt to place themselves in the position of the voters at the time the initiative was placed on the ballot and try to interpret the initiative using the tools available to citizens at that time."). However, even though the court may consider contemporaneous extrinsic evidence of intent, the court will not consider post-enactment statements, affidavits or testimony from sponsors regarding their intent. See A-NLV Cab Co. v. State Taxicab Auth., 108 Nev. 92, 95-96 (1992) (holding that the court will not consider post-enactment statements, affidavits or testimony from legislators as a means of establishing their legislative intent, and any such materials are inadmissible in evidence as a matter of law); Alaskans for a Common Language, Inc. v. Kritz, 170 P.3d 183, 193 (Alaska 2007) ("Because we must construe an initiative by looking to the materials considered by the voters themselves, we cannot rely on affidavits of the sponsors' intent."); 42 Am. Jur. 2d Initiative & Referendum § 49 (Westlaw 2019).

The court may find contemporaneous extrinsic evidence of intent from the legislative history surrounding the proposal and approval of the ballot measure. See Ramsey v. City of N. Las Vegas, 133 Nev. Adv. Op. 16, 392 P.3d 614, 617-19 (2017). The court also may find contemporaneous extrinsic evidence of intent from statements made by proponents and opponents of the ballot measure. See Guinn II, 119 Nev. at 471-72. Finally, the court may find contemporaneous extrinsic evidence of intent from the ballot materials provided to the voters, such as the question, explanation and arguments for and against passage included in the sample ballots sent to the voters. See Nev. Mining Ass'n, 117 Nev. at 539; Pellegrini v. State, 117 Nev. 860, 876-77 (2001).

As discussed previously, based on the legislative testimony surrounding A.J.R. 21 in 1993 and the ballot materials presented to the voters in 1994 and 1996, there is

contemporaneous extrinsic evidence that the two-thirds majority requirement was intended to apply to a bill which directly brings into existence, produces or enlarges public revenue in the first instance by raising "new taxes" or "new revenues" or by increasing "existing taxes." Legislative History of A.J.R. 21, supra (Hearing on A.J.R. 21 Before Assembly Comm. on Taxation, 67th Leg., at 11-13 (Nev. May 4, 1993)); Nev. Ballot Questions 1994, Question No. 11, at 1 (Nev. Sec'y of State 1994). However, the contemporaneous extrinsic evidence also indicates that the two-thirds majority requirement was not intended to "impair any existing revenues." Id.

Furthermore, there is nothing in the contemporaneous extrinsic evidence to indicate that the two-thirds majority requirement was intended to apply to a bill which does not change—but maintains—the existing computation bases currently in effect for existing state taxes. We believe that the absence of such contemporaneous extrinsic evidence is consistent with the fact that: (1) such a bill does not raise new state taxes and revenues because it maintains the existing state taxes and revenues currently in effect; and (2) such a bill does not increase the existing state taxes and revenues currently in effect—but maintains them in their current state under the law—because the existing computation bases currently in effect are not changed by the bill.

Finally, we find support for our interpretation of the plain language in Article 4, Section 18(2) based on the case law interpreting similar constitutional provisions from other jurisdictions. As discussed previously, the two-thirds majority requirement in the Nevada Constitution was modeled on constitutional provisions from other states. Legislative History of A.J.R. 21, supra (Hearing on A.J.R. 21 Before Assembly Comm. on Taxation, 67th Leg., at 12-13 (Nev. May 4, 1993)). As confirmed by Assemblyman Gibbons:

> Mr. Gibbons explained A.J.R. 21 was modeled on constitutional provisions which were in effect in a number of other states. Some of the provisions were adopted recently in response to a growing concern among voters about increasing tax burdens and some of the other provisions dated back to earlier times.

Id. at 12.

Under the rules of construction, "[w]hen Nevada legislation is patterned after a federal statute or the law of another state, it is understood that 'the courts of the adopting state usually follow the construction placed on the statute in the jurisdiction of its inception.'" Advanced Sports Info. v. Novotnak, 114 Nev. 336, 340 (1998) (quoting Sec. Inv. Co. v. Donnelley, 89 Nev. 341, 347 n.6 (1973)). Thus, if a provision in the Nevada Constitution is modeled on a similar constitutional provision "from a sister state, it is presumably adopted with the construction given it by the highest court of the sister state." State ex rel. Harvey v. Second Jud. Dist. Ct., 117 Nev. 754, 763 (2001) ("[S]ince Nevada relied upon the California Constitution as a basis for developing the Nevada Constitution, it is appropriate for us to look

to the California Supreme Court's interpretation of the [similar] language in the California Constitution.").

Consequently, in interpreting and applying Nevada's two-thirds majority requirement, it is appropriate to consider case law from the other states where courts have interpreted the similar supermajority requirements that served as the model for Nevada's two-thirds majority requirement. Furthermore, in considering that case law, we must presume that the drafters and voters intended for Nevada's two-thirds majority requirement to be interpreted in a manner that adopts and follows the judicial interpretations placed on the similar supermajority requirements by the courts from those other states.

In 1992, the voters of Oklahoma approved a state constitutional provision imposing a three-fourths supermajority requirement on the Oklahoma Legislature that applies to "[a]ll bills for raising revenue" or "[a]ny revenue bill." Okla. Const. art. V, § 33. In addition, Oklahoma has a state constitutional provision, known as an "Origination Clause," which provides that "[a]ll bills for raising revenue" must originate in the lower house of the Oklahoma Legislature. Id. The Oklahoma Supreme Court has adopted the same interpretation for the term "bills for raising revenue" with regard to both state constitutional provisions. Okla. Auto. Dealers Ass'n v. State ex rel. Okla. Tax Comm'n, 401 P.3d 1152, 1158 n.35 (Okla. 2017). In relevant part, Oklahoma's constitutional provisions state:

> A. *All bills for raising revenue* shall originate in the House of Representatives. The Senate may propose amendments to revenue bills.
>
> * * *
>
> D. *Any revenue bill* originating in the House of Representatives may become law without being submitted to a vote of the people of the state if such bill receives the approval of three-fourths (3/4) of the membership of the House of Representatives and three-fourths (3/4) of the membership of the Senate and is submitted to the Governor for appropriate action. * * *

Okla. Const. art. V, § 33 (emphasis added).

In Fent v. Fallin, 345 P.3d 1113, 1114-15 (Okla. 2014), the petitioner claimed that Oklahoma's supermajority requirement applied to a bill which modified Oklahoma's income tax rates even though the effect of the modifications did not increase revenue. The bill included provisions "deleting expiration date of specified tax rate levy." Id. at 1116 n.6. The Oklahoma Supreme Court held that the supermajority requirement did not apply to the bill. Id. at 1115-18. In discussing the purpose and intent of Oklahoma's supermajority requirement for "bills for raising revenue," the court found that:

> [T]he ballot title reveals that the measure was aimed only at bills "intended to raise revenue" and "revenue raising bills." The plain, popular, obvious and natural meaning of "raise" in this context is "increase." This plain and popular meaning was expressed in the public theme and message of the proponents of this amendment: "No New Taxes Without a Vote of the People."
>
> Reading the ballot title and text of the provision together reveals the 1992 amendment had two primary purposes. First, the amendment has the effect of limiting the generation of State revenue to existing revenue measures. Second, the amendment requires future bills "intended to raise revenue" to be approved by either a vote of the people or a three-fourths majority in both houses of the Legislature.

Id. at 1117.

Based on the purpose and intent of Oklahoma's supermajority requirement for "bills for raising revenue," the court determined that "[n]othing in the ballot title or text of the provision reveals any intent to bar or restrict the Legislature from amending the existing revenue measures, so long as such statutory amendments do not 'raise' or increase the tax burden." Id. at 1117-18. Given that the bill at issue in Fent included provisions "deleting expiration date of specified tax rate levy," we must presume the court concluded that those provisions of the bill did not result in an increase in the tax burden that triggered the supermajority requirement even though those provisions of the bill eliminated the future expiration of existing state taxes.

In Naifeh v. State ex rel. Okla. Tax Comm'n, 400 P.3d 759, 761 (Okla. 2017), the petitioners claimed that Oklahoma's supermajority requirement applied to a bill which was intended to "generate approximately $225 million per year in new revenue for the State through a new $1.50 assessment on each pack of cigarettes." The state argued that the supermajority requirement did not apply to the cigarette-assessment bill because it was a regulatory measure, not a revenue measure. Id. at 766. In particular, the state contended that: (1) the primary purposes of the bill were to reduce the incidence of smoking and compensate the state for the harms caused by smoking; (2) any raising of revenue by the bill was merely incidental to those purposes; and (3) the bill did not levy a tax, but rather assessed a regulatory fee whose proceeds would be used to offset the costs of State-provided healthcare for those who smoke, even though most of the revenue generated by the bill was not earmarked for that purpose. Id. at 766-68.

The Oklahoma Supreme Court held that the supermajority requirement applied to the cigarette-assessment bill because the text of the bill "conclusively demonstrate[d] that the primary operation and effect of the measure [was] to raise *new* revenue to support state government." Id. at 766 (emphasis added). In reaching its holding, the court reiterated the two-part test that it uses to determine whether a bill is subject to Oklahoma's supermajority

requirement for "bills for raising revenue." Id. at 765. Under the two-part test, a bill is subject to the supermajority requirement if: (1) the principal object of the bill is to raise *new* revenue for the support of state government, as opposed to a bill under which revenue may incidentally arise; and (2) the bill levies a *new* tax in the strict sense of the word. Id. In a companion case, the court stated that it invalidated the cigarette-assessment bill because:

> [T]he cigarette measure fit squarely within our century-old test for "revenue bills," in that it both had the primary purpose of raising revenue for the support of state government *and* it levied a *new* tax in the strict sense of the word.

Okla. Auto. Dealers Ass'n, 401 P.3d at 1153 (emphasis added); accord Sierra Club v. State ex rel. Okla. Tax Comm'n, 405 P.3d 691, 694-95 (Okla. 2017).

In 1996, the voters of Oregon approved a state constitutional provision imposing a three-fifths supermajority requirement on the Oregon Legislature, which provides that "[t]hree-fifths of all members elected to each House shall be necessary to pass *bills for raising revenue*." Or. Const. art. IV, § 25 (emphasis added). In addition, Oregon has a state constitutional provision, known as an "Origination Clause," which provides that "*bills for raising revenue* shall originate in the House of Representatives." Or. Const. art. IV, § 18 (emphasis added). The Oregon Supreme Court has adopted the same interpretation for the term "bills for raising revenue" with regard to both state constitutional provisions. Bobo v. Kulongoski, 107 P.3d 18, 24 (Or. 2005).

In determining the scope of Oregon's constitutional provisions for "bills for raising revenue," the Oregon Supreme Court has adopted a two-part test that is similar to the two-part test followed by the Oklahoma Supreme Court. Bobo, 107 P.3d at 24. In particular, the Oregon Supreme Court has stated:

> Considering the wording of [each constitutional provision], its history, and the case law surrounding it, we conclude that the question whether a bill is a "bill for raising revenue" entails two issues. The first is whether the bill collects or brings money into the treasury. If it does not, that is the end of the inquiry. If a bill does bring money into the treasury, the remaining question is whether *the bill possesses the essential features of a bill levying a tax.*

Id. (emphasis added).

In applying its two-part test in Bobo, the court observed that "not every statute that brought money into the treasury was a 'bill for raising revenue' within the meaning of [the constitutional provisions]." Bobo, 107 P.3d at 24. Instead, the court found that the constitutional provisions applied only to the specific types of bills that the framers had in mind—"bills to levy taxes and similar exactions." Id. at 23. Based on the normal and

ordinary meanings commonly ascribed to the terms "raise" and "revenue" in the constitutional provisions, the court reached the following conclusions:

> We draw two tentative conclusions from those terms. First, a bill will "raise" revenue only if it "collects" or "brings in" money to the treasury. Second, not every bill that collects or brings in money to the treasury is a "bil[l] for raising revenue." Rather, the definition of "revenue" suggests that the framers had a specific type of bill in mind—*bills to levy taxes and similar exactions*.

Id. (emphasis added).

After considering the case law from Oklahoma and Oregon, we believe it is reasonable to interpret Nevada's two-thirds majority requirement in a manner that adopts and follows the judicial interpretations placed on the similar supermajority requirements by the courts from those states. Under those judicial interpretations, we believe that Nevada's two-thirds majority requirement does not apply to a bill unless it levies new or increased state taxes in the strict sense of the word or possesses the essential features of a bill that levies new or increased state taxes or similar exactions, "including but not limited to taxes, fees, assessments and rates, or changes in the computation bases for taxes, fees, assessments and rates." Nev. Const. art. 4, § 18(2).

Consequently, we believe that Nevada's two-thirds majority requirement does not apply to a bill which extends until a later date—or 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, because such a bill does not levy new or increased state taxes as described in the cases from Oklahoma and Oregon. Instead, because such a bill maintains the existing computation bases currently in effect for the existing state taxes, it is the opinion of this office that such a bill does not create, generate or increase any public revenue within the meaning, purpose and intent of Nevada's two-thirds majority requirement because the existing computation bases currently in effect are not changed by the bill.

3. Does the two-thirds majority requirement apply to a bill which reduces or eliminates available tax exemptions or tax credits applicable to existing state taxes?

As discussed previously, Article 4, Section 18(2) provides that the two-thirds majority requirement applies to a bill which "creates, generates, or increases any public revenue in any form, including but not limited to taxes, fees, assessments and rates, or *changes in the computation bases for taxes, fees, assessments and rates*." Nev. Const. art. 4, § 18(2) (emphasis added). Based on the plain language in Article 4, Section 18(2), we do not believe that the two-thirds majority requirement applies to a bill which reduces or eliminates available tax exemptions or tax credits applicable to existing state taxes because such a reduction or

elimination does not change the existing computation bases or statutory formulas used to calculate the underlying taxes to which the exemptions or credits are applicable.

The plain language in Article 4, Section 18(2) expressly states that the two-thirds majority requirement applies to changes in "computation bases," but it is silent with regard to changes in tax exemptions or tax credits. Nev. Const. art. 4, § 18(2). Nevertheless, under long-standing legal principles, it is well established that tax exemptions or tax credits are not part of the computation bases or statutory formulas used to calculate the underlying taxes to which the exemptions or credits are applicable. Instead, tax exemptions or tax credits apply only after the underlying taxes have been calculated using the computation bases or statutory formulas and the taxpayer properly and timely claims the tax exemptions or tax credits as a statutory exception to liability for the amount of the taxes. See City of Largo v. AHF-Bay Fund, LLC, 215 So.3d 10, 14-15 (Fla. 2017); State v. Allred, 195 P.2d 163, 167-170 (Ariz. 1948); Rutgers Ch. of Delta Upsilon Frat. v. City of New Brunswick, 28 A.2d 759, 760-61 (N.J. 1942); Chesney v. Byram, 101 P.2d 1106, 1110-12 (Cal. 1940). As explained by the Missouri Supreme Court:

> The burden is on the taxpayer to establish that property is entitled to be exempt. An exemption from taxation can be waived. Until the exempt status is established the property is subject to taxation even though the facts would have justified the exempt status if they had been presented for a determination of that issue.

State ex rel. Council Apts., Inc. v. Leachman, 603 S.W.2d 930, 931 (Mo. 1980) (citations omitted). As a result, if the taxpayer fails to properly and timely claim the tax exemptions or tax credits, the taxpayer is liable for the amount of the taxes. See State Tax Comm'n v. Am. Home Shield of Nev., Inc., 127 Nev. 382, 386-87 (2011) (holding that a taxpayer that erroneously made tax payments on "exempt services" was not entitled to claim a refund after the 1-year statute of limitations on refund claims expired).

Accordingly, based on the plain language in Article 4, Section 18(2), we do not believe that a bill which reduces or eliminates available tax exemptions or tax credits changes the computation bases used to calculate the underlying state taxes within the meaning, purpose and intent of the two-thirds majority requirement because the existing computation bases currently in effect are not changed by the bill. Furthermore, based on the legislative testimony surrounding A.J.R. 21 in 1993 and the ballot materials presented to the voters in 1994 and 1996, there is nothing in the contemporaneous extrinsic evidence to indicate that the two-thirds majority requirement was intended to apply to a bill which reduces or eliminates available tax exemptions or tax credits. Finally, based on the case law interpreting similar constitutional provisions from other jurisdictions, courts have consistently held that similar supermajority requirements do not apply to bills which reduce or eliminate available tax exemptions or tax credits.

Unlike the supermajority requirements in other state constitutions, the Louisiana Constitution expressly provides that its supermajority requirement applies to "a repeal of an existing tax exemption." La. Const. art. VII, § 2. Specifically, the Louisiana Constitution states:

> The levy of a new tax, an increase in an existing tax, or a repeal of an existing tax exemption shall require the enactment of a law by two-thirds of the elected members of each house of the legislature.

La. Const. art. VII, § 2.

In determining the scope of Louisiana's supermajority requirement, the Louisiana Court of Appeals explained that the supermajority requirement did not apply to legislation which suspended a tax exemption—but did not repeal the exemption—because "[a] suspension (which is time-limited) of an exemption is not the same thing as a permanent repeal." La. Chem. Ass'n v. State ex rel. La. Dep't of Revenue, 217 So.3d 455, 462-63 (La. Ct. App. 2017), *writ of review denied*, 227 So.3d 826 (La. 2017). Furthermore, the court rejected the argument that because the supermajority requirement applied to the prior legislation that enacted the underlying tax levy for which the exemption was granted, the supermajority requirement by necessary implication also had to be applied to any subsequent legislation that suspended the tax exemption. Id. In rejecting that argument, the court stated:

> The levy of the initial tax, preceding the decision to grant an exemption, is the manner in which the Legislature raises revenue. Since 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.

As discussed previously, Oklahoma's supermajority requirement applies to "[a]ll bills for raising revenue" or "[a]ny revenue bill." Okla. Const. art. V, § 33. In Okla. Auto. Dealers Ass'n v. State ex rel. Okla. Tax Comm'n, 401 P.3d 1152, 1153 (Okla. 2017), the Oklahoma Supreme Court was presented with the "question of whether a measure revoking an exemption from an *already levied* tax is a 'revenue bill' subject to Article V, Section 33's requirements." The court held that the bill was not a bill for raising revenue that was subject to Oklahoma's supermajority requirement because: (1) the bill did not "levy a tax in the strict sense of the word"; and (2) the "removal of an exemption from an *already levied* tax is different from levying a tax in the first instance." Id. at 1153-54.

At issue in the Oklahoma case was House Bill 2433 of the 2017 legislative session, which removed a long-standing exemption from the state's sales tax for automobiles that were otherwise subject to the state's excise tax. The Oklahoma Supreme Court explained the effect of H.B. 2433 as follows:

> In 1933, the Legislature levied a sales tax on all tangible personal property—including automobiles—and that sales tax has remained part of our tax code ever since. In 1935, however, the Legislature added an exemption for automobile sales in the sales-tax provisions, so that automobiles were subject to only an automobile excise tax from that point forward. H.B. 2433 revokes part of that sales tax exemption so that sales of automobiles are once again subject to the sales tax, but only a 1.25% sales tax. Sales of automobiles remain exempt from the remainder of the sales tax levy. H.B. 2433 does not, however, levy any new sales or excise tax, as the text of the measure and related provisions demonstrate.
>
> For example, the sales tax levy can be found in 68 Okla. Stat. § 1354, imposing a tax upon "the gross receipts or gross proceeds of each sale" of tangible personal property and other specifically enumerated items. The last amendment increasing the sales tax levy was in 1989, when the rate was raised to 4.5%. Nothing in H.B. 2433 amends the sales tax levy contained in section 1354; the rate remains 4.5%. Likewise, the levy of the motor vehicle excise tax is found in 68 Okla. Stat. § 2103. That levy has not been increased since 1985, and nothing in H.B. 2433 amends the levy contained in section 2103. *Both before and after the enactment of H.B. 2433, the levy remains the same:* every new vehicle is subject to an excise tax at 3.25% of its value, and every used vehicle is subject to an excise tax of $20.00 on the first $1,500.00 or less of its value plus 3.25% of its remaining value, if any.

Okla. Auto. Dealers Ass'n, 401 P.3d at 1154-55 (emphasis added and footnotes omitted).

In determining that H.B. 2433 was not a bill for raising revenue that was subject to Oklahoma's supermajority requirement, the Oklahoma Supreme Court stated that:

> At bottom, Petitioners' argument is that H.B. 2433 must be a revenue bill because it causes people to have to pay more taxes. But 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." . . . *Yet, despite their common effect (causing someone to have to pay a tax they previously didn't have to pay), removing an exemption and levying a new tax are distinct as a matter of fact and law. Our Constitution's restrictions on the enactment of revenue bills are aimed only at those bills that actually levy a tax.* The policy underlying those restrictions is not undercut in an instance such as this, because the original levies of the sales tax on automobile sales were subject to Article V, Section 33's restrictions.

Okla. Auto. Dealers Ass'n, 401 P.3d at 1158 (emphasis added).

As discussed previously, the Oregon Supreme Court has adopted the same interpretation for the term "bills for raising revenue" with regard to Oregon's supermajority requirement and its Origination Clause. Bobo v. Kulongoski, 107 P.3d 18, 24 (Or. 2005). In City of Seattle v. Or. Dep't of Revenue, 357 P.3d 979, 980 (Or. 2015), the plaintiff claimed that the Oregon Legislature's passage of Senate Bill 495, which eliminated a tax exemption benefitting out-of-state municipalities that had certain electric utility facilities in Oregon, violated Oregon's Origination Clause because S.B. 495 was a bill for raising revenue that did not originate in the Oregon House of Representatives. However, the Oregon Supreme Court held that S.B. 495's elimination of the tax exemption did not make it a "bill for raising revenue" that was subject to Oregon's Origination Clause. Id. at 985-88.

After applying its two-part test from Bobo, the Oregon Supreme Court determined that S.B. 495 was not a bill for raising revenue because by "declaring that a property interest held by taxpayers previously exempt from taxation is now subject to taxation, the legislature did not levy a tax." City of Seattle, 357 P.3d at 987. The court rejected the taxpayers' argument that S.B. 495 was a bill for raising revenue because "the burden of increased taxes falls solely on the newly-taxed entities." Id. at 988. Instead, the court found that:

> We think, however, taxpayers' argument misses the mark because it focuses exclusively on the revenue effect of S.B. 495. As we stated in Bobo, the revenue effect of a bill, in and of itself, does not determine if the bill is a "bill[] for raising revenue." 107 P.3d at 24 ("If a bill does bring money into the treasury, the remaining question is whether the bill possesses the essential features of a bill levying a tax."). As we have explained, S.B. 495 repeals taxpayers' tax exemption as out-of-state municipal corporations and places taxpayers on the same footing as domestic electric cooperatives. The bill does not directly levy a tax on taxpayers.

Id. (footnotes omitted).

After considering the case law from Oklahoma and Oregon, we believe it is reasonable to interpret Nevada's two-thirds majority requirement in a manner that adopts and follows the judicial interpretations placed on the similar supermajority requirements by the courts from those states. Under those judicial interpretations, we believe that Nevada's two-thirds majority requirement does not apply to a bill which reduces or eliminates available tax exemptions or tax credits because such a reduction or elimination does not change the existing computation bases or statutory formulas used to calculate the underlying state taxes to which the exemptions or credits are applicable. Consequently, it is the opinion of this office that Nevada's two-thirds majority requirement does not apply to a bill which reduces or eliminates available tax exemptions or tax credits applicable to existing state taxes.

CONCLUSION

It is the opinion of this office that Nevada's two-thirds majority requirement does not apply to a bill which extends until a later date—or 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, because such a bill does not change—but maintains—the existing computation bases currently in effect for the existing state taxes.

It also is the opinion of this office that Nevada's two-thirds majority requirement does not apply to a bill which reduces or eliminates available tax exemptions or tax credits applicable to existing state taxes, because such a reduction or elimination does not change the existing computation bases used to calculate the underlying state taxes to which the exemptions or credits are applicable.

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

Sincerely,

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TAB 10

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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, 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

CASE NO. A-19-800267-C

DEPT NO. XXXII

PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT

HEARING REQUESTED

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.

PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT

Plaintiffs hereby oppose Defendants Department of Education *et al.*'s (Executive Defendants) and Intervenor-Defendant Nevada Legislature's respective motions for summary judgment.

DATED this 6th day of March, 2020.

By /s/ Joshua A. House

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INTRODUCTION

A.B. 458 removed scholarship funding from low-income families and raised revenue for the state by increasing the amount of taxes certain Nevada taxpayers must pay. But article 4, section 18(2) of the Nevada Constitution requires that bills raising revenue, like A.B. 458, receive a two-thirds supermajority vote in each legislative house. A.B. 458 raised revenue by eliminating tax credits but did not receive a two-thirds supermajority in the Senate. Therefore, A.B. 458 is unconstitutional.

Defendants argue in their respective motions for summary judgment that A.B. 458's removal of tax credits did not require a supermajority vote. They are incorrect for three reasons.

First, by including bills that "create[], generate[], or increase[] any public revenue ***in any form***" (emphasis added), the plain text of article 4, section 18(2) unambiguously requires that tax-credit repeals receive a two-thirds supermajority vote. Given this unambiguous language, the conclusions of the Legislature's lawyers are not due any special deference. The Legislative Counsel Bureau's opinion ignored the provision's full text and focused solely on "computation bases." And contrary to the Legislature, other states also consider tax-credit repeals to be revenue-raising.

Second, the supermajority requirement's history shows that it was originally understood to apply to both new sources of revenue and changes in existing revenue sources. Defendants not only misinterpret this history; they also ignore binding Nevada Supreme Court authority that a provision's text—not the arguments for or against it as a ballot initiative—controls.

Third, Defendants' arguments that A.B. 458 does not in fact raise revenue miss the mark. The entire point of A.B. 458 was to boost Nevada general fund revenues. And it succeeded: Even if offset by additional tax credits provided in another bill for this biennium, A.B. 458 repeals tens of millions of tax credits over the following biennia.

For all of those reasons, and for the reasons stated in Plaintiffs' Motion for Summary Judgment, Defendants' motions should be denied and Plaintiffs' Motion should be granted.

LEGAL STANDARD

"Summary judgment is appropriate under NRCP 56 when the pleadings, depositions, answers to interrogatories, admissions, and affidavits, if any, that are properly before the court demonstrate that no genuine issue of material fact exists, and the moving party is entitled to judgment as a matter of law." *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005).[1]

Furthermore, "[t]axing statutes when of doubtful validity or effect must be construed in favor of the taxpayers." *Dep't of Taxation v. Visual Commc'ns, Inc.*, 108 Nev. 721, 725, 836 P.2d 1245, 1247 (1992) (internal quotation marks omitted); *see also Harrah's Operating Co. v. Dep't of Taxation*, 130 Nev. 129, 132, 321 P.3d 850, 852 (2014) ("[T]ax statutes are to be construed in favor of the taxpayer.").

[1] Based on Plaintiffs' comparison of Plaintiffs' Motion for Summary Judgment and Defendants' respective motions, there do not appear to be any genuine issues of material fact. Plaintiffs nevertheless reserve their right to challenge any factual disputes that arise before this Court's decision.

ARGUMENT

I. Nevada's Supermajority Provision Unambiguously Applies to Any Bill That "Creates, Generates, or Increases Any Public Revenue in Any Form," Which Includes the Tax-Credit Repeal Bill at Issue Here.

Defendants argue that A.B. 458 did not require a supermajority vote under the plain language of article 4, section 18(2). Exec. Br. 10–11; Leg. Br. 14–18. Defendants misread the supermajority provision in three ways.

First, the supermajority provision unambiguously applies to any bill that raises revenue "in any form." It is not limited to "taxes, fees, assessments, and rates." Nor is it limited to "new" revenues. Because A.B. 458 raised revenue and will continue to raise revenue in the future, as detailed below in Part III, it required a supermajority vote.

Second, the Legislative Counsel Bureau's interpretation of article 4, section 18(2) is not entitled to the sweeping deference suggested by Defendants. The Defendants ask this Court to abdicate its judicial duty and defer to an opinion by the Legislature's lawyers. In contrast, Nevada's voters, by ratifying article 4, section 18(2) through the initiative process, have tasked this Court with independently interpreting and enforcing the Constitution's limits on the legislative power.

Third, other states with similar supermajority provisions do in fact consider tax-credit repeals like A.B. 458 to be revenue-raising. While a few states' provisions only apply to bills that not only raise revenues but also impose new revenues, that is not the case under Nevada law, which does not limit the supermajority requirement to "new" revenue-raising measures.

A. Under basic dictionary definitions, a bill repealing tax credits is a bill that creates, generates, or increases revenue.

As Plaintiffs argued in their Motion for Summary Judgment, the plain text of article 4, section 18(2) applies to tax-credit repeals like A.B. 458. Pls.' MSJ 15–17. That is because article 4, section 18(2) requires a supermajority for any bill that "creates, generates, or increases ***any*** public revenue in ***any*** form." Nev. Const. art. 4, § 18(2) (emphasis added). Repealing tax credits increases public revenues, as Defendant Department of Taxation concluded in its fiscal note on A.B. 458: "The department has reviewed the bill and determined it would increase general fund revenue . . . ." Dep't of Tax'n, Fiscal Note on A.B. 458 (Nev. Apr. 4, 2019), https://www.leg.state.nv.us/Session/80th2019/FiscalNotes/9327.pdf (Fiscal Note).

The Executive Defendants begin their argument by misquoting the provision. Exec. Br. 3. They state that the supermajority requirement applies only if a bill "creates, generates, or increases taxes, fees, assessments and rates." *Id*. But that is only a partial definition. While it is true that the provision applies to "increases [in] taxes, fees, assessments and rates," it also says that it is "***not limited to***" the enumerated revenue types. *Id.* (emphasis added). Although repealing a tax credit does "generate[] or increase[] taxes," this Court need only find that A.B. 458 generates public revenue. In other words, if a bill raises revenue "in any form," Nev. Const. art. 4, § 18(2), which A.B. 458 does, it must receive a supermajority.

For similar reasons, the Legislature's reliance on "computation bases" is misplaced. *See* Leg. Br. 15–16. The Legislature is correct that

the provision includes "changes in . . . computation bases." Nev. Const. art. 4, § 18(2). But the Legislature is incorrect in suggesting that the provision is limited to those changes. The supermajority provision states that it applies to a bill that "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." *Id.* Changes in computation bases are but one form of revenue increase covered by article 4, section 18(2). Here, even if A.B. 458 does not affect "the statutory formula[] used for calculating existing state taxes," Leg. Br. 16, it still results in additional money being paid to the state. *See* Part III below. As the bill's sponsor put it, the tax credits allow private businesses to donate money to private charities that would "otherwise be in the General Fund." Minutes of S. Comm. on Revenue & Econ. Dev. at 3, 80th Leg. (Nev. May 2, 2019), https://www.leg.state.nv.us/Session/80th2019/Minutes/Senate/RED/Final/1120.pdf. Because A.B. 458 raises public revenues, Nevada's supermajority provision applies.

In fact, the Legislature's dictionary definitions support Plaintiffs' position. *See* Leg. Br. 15. As the Legislature notes, "[t]he common dictionary meaning of the term 'create' is to 'bring into existence,' or 'produce,'" "[t]he common dictionary meaning of the term 'generate' is also to 'bring into existence' or 'produce,'" and "the common dictionary meaning of the term 'increase' is to 'make greater' or 'enlarge.'" *Id.* Here, A.B. 458 creates, brings into existence, produces, makes greater, and enlarges public revenues. In the words of Defendant Department of Taxation, "it would ***increase*** general fund revenue." Fiscal Note, https://www.leg.state.nv.us/Session/80th2019/FiscalNotes/9327.pdf (emphasis added). The Legislature's dictionary definitions are right; its rhetorical

switch to "new . . . state taxes" and the technical definition of "computation bases" is not.

B. This Court must interpret and apply the Nevada Constitution, not defer to the Legislative Counsel Bureau's legal opinion.

Defendants argue that this Court should defer to the Legislative Counsel Bureau's interpretation of article 4, section 18(2). Exec. Br. 12–13; Leg. Br. 12–14. The Legislature argues that such deference means this Court should focus on what "the Legislature could reasonably conclude." Leg. Br. 18, 20, 23.

To the contrary, there is no reason for this Court to defer to what the Legislature's lawyers think the Legislature can do. As shown in Part I.A. above, there is no ambiguity in article 4, section 18(2). If a bill raises revenue, the supermajority provision applies to it. This lack of ambiguity distinguishes *Nevada Mining Ass'n v. Erdoes*, in which "Nevada's change from Pacific standard time to Pacific daylight saving time on the first Sunday of April, midway through the regular session, ***created an ambiguity*** in the deadline [for the session's end]." 117 Nev. 531, 539, 26 P.3d 753, 758 (2001) (emphasis added).

Nevada Mining is also distinguishable because the rule at issue was an arbitrary question of timekeeping (whether the session ended at midnight or one in the morning), not a substantive limitation on the power of the Legislature. As shown in Plaintiffs' Motion, the supermajority requirement was put in place precisely to limit the power of the Nevada Legislature to raise revenue. *See* Pls.' MSJ 18. "Our Constitution, even though being a 'living thing' and flexible, still has limitations upon the powers that the legislature can grant." *Galloway v.*

Truesdell, 83 Nev. 13, 27, 422 P.2d 237, 246 (1967). Because "the Legislature's authority . . . is constrained by [the] Nevada Constitution," the Nevada Supreme Court has reversed district court decisions that "extended unqualified deference to the Legislature's law-making authority." *Clean Water Coal. v. The M Resort, LLC*, 127 Nev. 301, 309, 255 P.3d 247, 253 (2011). Limitations on the Legislature's power cannot be undone by the Legislative Counsel Bureau. *Cf. We People Nev. v. Miller*, 124 Nev. 874, 891, 192 P.3d 1166, 1177 (2008) (deciding, contrary to Legislative Counsel Bureau's opinion, that Nevada Legislature set unconstitutional due dates for initiative signature gathering).

But even if the Legislative Counsel Bureau's interpretation deserved special deference, which it does not, its opinion on this matter did not actually analyze the question at issue. The Bureau's opinion, much like its brief, is focused on whether removing a tax credit meets the technical definition of a "change [in] the existing computation bases or statutory formulas." Leg. Br., Ex. A, Attach. 1, at 19–20. But, as shown above in Part I.A., the focus on computation bases is far too narrow given the breadth of article 4, section 18(2). Instead, the real question is whether A.B. 458 "creates, generates, or increases any public revenue." Nev. Const. art. 4, § 18(2). If it does, it required a supermajority vote. This Court cannot defer to an opinion that did not opine on the actual issue presented.

C. Other states consider tax-credit repeals to be revenue-raising.

Defendants argue that the text of Nevada's supermajority provision should be interpreted as other states have interpreted similar provisions. Exec. Br. 9; Leg. Br. 24. They then argue that this means tax-credit

repeals are not considered revenue-raising bills. Exec Br. 11–12; Leg. Br. 24–29. Their argument is wrong for two reasons. First, this argument ignores that Nevada's supermajority provision is uniquely broad. Second, it misstates the other states' law.

1. Nevada's provision is uniquely broad.

As Plaintiffs argued in their Motion, Nevada's supermajority provision is uniquely broad. *See* Pls.' MSJ 17–18 & n.69. Nevada's provision applies whenever a bill has the effect of raising revenue "in any form." Nev. Const. art. 4, § 18(2); *see* Max Minzner, *Entrenching Interests: State Supermajority Requirements to Raise Taxes*, 14 Akron Tax J. 43, 62 (1999) (stating Nevada's provision "look[s] only at the effect of tax changes: supermajority requirements apply to all legislation raising revenue"). In other words, in Nevada the inquiry ends as soon as the bill is found to have the effect of raising revenue—there are no additional conditions.

Nevada's supermajority provision is not limited to "new" revenues, as is the law in some other states. *See Okla. Auto. Dealers Ass'n v. State*, 401 P.3d 1152 (Okla. 2017) (holding that revenue bills must be levying new taxes); *see also TABOR Found. v. Reg'l Transp. Dist.*, 416 P.3d 101, 106 (Colo. 2018) (analyzing whether revenue was "new" before applying provision). Nevada law has no such requirement, and even by its terms applies to "changes" to existing revenues. Nev. Const. art. 4, § 18(2).

Nor does Nevada restrict the kind of revenue bills that require a supermajority. Article 4, section 18(2) requires a supermajority vote in each legislative house for bills that "create[], generate[], or increase[] ***any*** public revenue in ***any*** form." Nev. Const. art. 4, § 18 (emphasis added). As noted in Plaintiffs' Motion for Summary Judgment, article 4, section

18(2)'s "use of the word[] 'any'" means the provision must be construed broadly. *In re Opinion of the Justices*, 575 A.2d 1186, 1189 (Del. 1990); Pls.' MSJ 16. By its own terms, article 4, section 18(2) covers revenue increases beyond new taxes: "fees, assessments and rates, or changes in the computation bases for taxes, fees, assessments, and rates." Nev. Const. art. 4, § 18(2). And Nevada's provision states it is "not limited to" these categories. *Id.* Nevada's supermajority provision therefore differs from other states' provisions, like Oklahoma and Oregon, which categorically exclude some types of revenue, such as "fees" or "assessments." *See Calvey v. Daxon*, 997 P.2d 164, 170 (Okla. 2000) (excluding "fees" from the definition of a revenue bill); *City of Seattle v. Dep't of Revenue*, 357 P.3d 979, 988 (Or. 2015) (excluding "bills that collaterally provide for assessment"). Thus, Nevada's broad provision reaches types of revenue that are excluded by Oklahoma's and Oregon's narrower standards.

2. Even in states with narrower provisions, tax-credit repeals are considered revenue-raising.

Even though Nevada's provision is broader than other states' provisions, those other states still consider tax-credit or tax-exemption repeals to be revenue-raising. Arizona's requirement "appl[ies] to any act that provides for a net increase in state revenues in the form of . . . [a] reduction or elimination of a tax deduction, exemption, exclusion, credit or other tax exemption feature in computing tax liability." Ariz. Const. art. 9, § 22(B). Florida's requirement applies to the "decrease or eliminat[ion of] a state tax . . . exemption or credit." Fla. Const. art. 7, § 19(d)(2). And Louisiana's states that "repeal of an existing tax exemption shall require the enactment of a law by two-thirds of the

elected members of each house of the legislature." La. Const. art. 7, § 2.[2] In all these states—on which Nevada's provision was based—there is no question that repealing an exemption or credit requires a legislative supermajority.

Defendants focus their attention on Oklahoma and Oregon. Exec. Br. 12; Leg. 25–29.[3] But in both of those states, repealing tax credits or tax exemptions, as A.B. 458 does here, is considered revenue-raising. Those states have merely refused to apply their supermajority requirements to such repeals because of ***other*** state laws, not because the repeals do not raise revenue.

The Oklahoma Supreme Court stated that it "isn't seriously in doubt" that repealing exemptions increased state revenues. *Okla. Auto. Dealers*, 401 P.3d at 1155–56, 1158 ("Why does government seek to close loopholes in its tax code? To collect more tax revenue, of course."). Likewise, the Oregon Supreme Court has said that tax exemption repeals "do[] generate revenue—as [the bill] does indeed here." *City of Seattle*, 357 P.3d at 988.[4]

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[2] The Louisiana case cited by the Legislature is irrelevant because it discusses only whether the temporary suspension of a tax exemption is equivalent to a permanent repeal. *See La. Chem. Ass'n v. State*, 217 So. 3d 455, 462–63 (La. Ct. App. 2017). Here, A.B. 458's repeal is permanent. Also, as has been shown, Louisiana is not the only state with a provision explicitly including repeals.

[3] Executive Defendants also cite a South Dakota case. Exec. Br. 11 (citing *Apa v. Butler*, 638 N.W. 2d 57, 69–70 (S.D. 2001)). But that case has nothing to do with whether a bill raises revenue, as it concerns South Dakota's supermajority requirement for appropriations bills, not for revenue bills. S.D. Const. art. 12, § 2 ("All other appropriations . . . shall require a two-thirds vote of all the members of each branch of the Legislature.").

[4] Although *City of Seattle* concerned Oregon's origination clause, Oregon courts have applied that case's reasoning to Oregon's supermajority requirement. *See Boquist v. Dep't of Revenue*, No. TC 5332, 2019 WL 1314840, at *9 (Or. T.C. Mar. 21, 2019).

But despite finding tax-exemption repeals to be revenue-raising, both Oklahoma and Oregon courts refused to apply their constitutional requirements to tax exemptions. That is because those states' provisions are narrower than Nevada's and apply only to "new taxes." *Okla. Auto Dealers*, 401 P.3d at 1155. The Oklahoma Supreme Court applied an Oklahoma definition of "revenue bill" originating in "an unbroken line of decisions dating to near statehood," holding that revenue bills must levy new taxes. *Id.* at 1156. And in Oregon, the Supreme Court considered, after already determining that the bill raised revenue, whether the bill "possesse[d] the essential features of a bill levying a tax." *City of Seattle*, 357 P.3d at 987.

Therefore, as the Oregon Supreme Court "easily concluded," repeal of a tax exemption or credit brings "money into the treasury." *Boquist v. Dep't of Revenue*, No. TC 5332, 2019 WL 1314840, at *4 (Or. T.C. Mar. 21, 2019) (quoting *City of Seattle*, 357 P.3d at 986). A.B. 458, by bringing money into the Nevada treasury, should have received a two-thirds supermajority.

II. The History of Nevada's Supermajority Provision Shows That It Applies Both to New Revenues and to Changes in Existing Revenues.

Defendants argue that the history of Nevada's supermajority provision shows that it only applies to "new taxes," Exec. Br. 11, and that "the ballot materials presented to the voters" emphasized that the provision was targeted at "new sources of revenue," Leg. Br. 22.

Defendants are wrong that the provision's history shows that it is limited to new taxes. As Plaintiffs' Motion for Summary Judgment shows, the supermajority provision from the beginning was targeted at both new

taxes and changes in existing taxes, like tax-credit repeals. *See* Pls.' MSJ 17–18. The "bill explanation" of AJR 21—the resolution which referred the question to voters—stated that it "[p]roposes to amend Nevada [sic] constitution to require two-thirds majority of each house of legislature ***to increase certain existing taxes*** or impose certain new taxes." Leg. History of AJR 21, at *15, 67th Leg. (Nev. LCB Research Library 1993), https://www.leg.state.nv.us/Division/Research/Library/LegHistory/LHs/1993/AJR21,1993.pdf (emphasis added). And the ballot question posed to voters stated that the provision applied to bills that "generate[] or increase[] a tax, fee, assessment, rate, or ***any other form of public revenue***." Nev. Sec'y of State, Nev. Ballot Questions 1994, Question 11, at *26, https://www.leg.state.nv.us/Division/Research/VoteNV/BallotQuestions/1994.pdf (emphasis added). Increasing existing tax revenues, as A.B. 458 does, therefore requires a supermajority vote.

More importantly, Defendants' argument that this Court should focus on the arguments for or against the supermajority ballot initiative ignores the Nevada Supreme Court's holding in *Thomas v. Nevada Yellow Cab Corp.*, 130 Nev. 484, 327 P.3d 518 (2014). In *Thomas*, the Supreme Court considered whether Nevada's Minimum Wage Amendment—enacted by popular vote, like the supermajority provision here—applied to taxicab drivers. *Id.* at 486, 327 P.3d at 519. The question arose because Nevada's pre-existing statutory minimum wage exempted taxicab drivers. *Id.*, 327 P.3d at 520. The taxicab company's arguments focused on the ballot questions posed to voters and the alleged intent behind the provision. As the dissent noted, "the Amendment was only intended to raise the minimum wage amount, rather than abolish long-standing exemptions." *Id.* at 492, 327 P.3d at 523 (Parraguirre, J.,

dissenting). But the Supreme Court rejected such arguments, instead focusing on the text of the constitutional provision: "To seek the intent of the provision's drafters or to attempt to aggregate the intentions of Nevada's voters into some abstract general purpose underlying the Amendment, contrary to the intent expressed by the provision's clear textual meaning, is not the proper way to perform constitutional interpretation." *Id.* at 490, 327 P.3d at 522.

Here, this Court does not need to go beyond the clear text of this provision in order to discern its meaning. The issue turns not on statements by Nevada legislators or the ballot arguments presented to the voters. Instead, this case turns on whether A.B. 458 "creates, generates, or increases any public revenue in any form." As shown below in Part III, it does.

III. A.B. 458, by Repealing Automatic Tax Credits, Generates Additional Revenue for the State.

Defendants argue that A.B. 458 does not raise revenue and, therefore, that it did not require a supermajority vote. Exec. Br. 9–10; Leg. Br. 16–18. The Executive Defendants focus on the amount of tax credits repealed, and they argue that any revenues from A.B. 458 are offset by one-time tax credits granted by S.B. 551, another bill passed this session. Exec. Br. 6–7, 10. The Legislature, meanwhile, argues that A.B. 458 did not raise revenue because it repealed tax credits for the following fiscal year and did not, they contend, raise revenue in the fiscal year in which it was enacted. Leg. Br. 17–18.

Defendants are wrong because A.B. 458 does, in fact, increase state revenues. By repealing tax credits, A.B. 458 forces private businesses to pay more private money to the state. With the tax credits in place, those

businesses could spend it as they wish: by donating to private scholarship organizations. That is why the U.S. Supreme Court has held that tax-credit-eligible donations are private funds. *Ariz. Christian Sch. Tuition Org. v. Winn*, 563 U.S. 125, 144 (2011); *see also* Pls.' MSJ 16 & n.68. Removing credits forces businesses to give their private funds to the government. That raises government revenues.

Raising Nevada's general fund revenues was the entire point behind A.B. 458. The bill's sponsor cited budgetary concerns in the bill's defense, stating that, without the tax credits, more money would "otherwise be in the General Fund" and that the Legislature has "an obligation to fund our budget responsibly." Minutes of S. Comm. on Revenue & Econ. Dev. at 3–4, 80th Leg. (May 2, 2019), https:// www.leg.state.nv.us/Session/80th2019/Minutes/Senate/RED/Final/ 1120.pdf. Defendant Nevada Department of Taxation labeled A.B. 458 as a "revenue" item and "reviewed the bill and determined it would increase general fund revenue." Fiscal Note, https:// www.leg.state.nv.us/Session/ 80th2019/FiscalNotes/9327.pdf. In the Senate, A.B. 458 was referred to the "revenue and economic development" committee. *See generally* Minutes of S. Comm. on Revenue & Econ. Dev. (May 2, 2019). As the Nevada Supreme Court has held, "when it appears from the Act itself that revenue is its main objective, and the amount of the tax supports that theory, the enactment is a revenue measure." *Clean Water Coal.*, 127 Nev. at 316, 255 P.3d at 258.

The Executive Defendants' reliance on S.B. 551, another bill passed last year, is misplaced. The Legislature cannot "save" an unconstitutionally passed bill by passing another bill. If the original bill was not passed constitutionally, it is not law and has no effect: "When a

statute 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, 686, 765 P.2d 1162, 1163–64 (1988); *State v. Malone*, 68 Nev. 32, 43, 231 P.2d 599, 602 (1951) ("It is elementary that an unconstitutional law is no law at all."). If a bill was unconstitutional the day it was passed, it has no effect, and therefore cannot become constitutional later. A.B. 458, having never received sufficient votes, "is therefore a nullity." *State v. City of Oak Creek*, 182 N.W.2d 481, 494 (Wis. 1971) (holding tax assessment bill did not satisfy procedural requirements).

Under the Constitution, the correct unit of analysis is the particular bill at issue, A.B. 458. Nevada's Constitution asks whether a particular bill received a two-thirds majority. The plain text does not say "bills" or "group of bills," but rather "a bill." "[A]n 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 . . . ." Nev. Const. art. 4, § 18(2) (emphasis added). If a bill does not receive the necessary votes, it does not ever become law.

But even if A.B. 458 and S.B. 551 are considered together for purposes of article 4, section 18—which they should not be—it would still be true that A.B. 458 increases revenues. The table provided by the Executive Defendants is helpful:

Fiscal Year	NRS 363B.119(4) Amount	Appropriated Amount	Difference
2015-2016	$5,000,000	$5,000,000	$0
2016-2017	$5,500,000	$5,500,000	$0
2017-2018	$6,050,000	$26,050,000	$20,000,000
2018-2019	$6,655,000	$6,655,000	$0
2019-2020	$7,320,500	$11,400,000	**$4,079,500**
2020-2021	$8,052,550	$11,400,000	**$3,347,450**
TOTAL	$38,578,050	$66,005,000	**$27,426,950**

At first glance, it appears that combining the bills increased the amount of tax credits available to businesses. But when one expands the chart past the 2020–21 fiscal year, A.B. 458's revenue-boosting effects become obvious:

Fiscal Year	Pre-A.B. 458 Tax Credits	S.B. 551 Tax Credits	Post-A.B. 458 Difference
2015-2016	$5,000,000	$5,000,000	$0
2016-2017	$5,500,000	$5,500,000	$0
2017-2018	$6,050,000	$26,050,000	$20,000,000
2018-2019	$6,655,000	$6,655,000	$0
2019-2020	$7,320,500	$11,400,000	$4,079,500
2020-2021	$8,052,550	$11,400,000	$3,347,450
2021-2022	$8,857,805	$0	-$8,857,805
2022-2023	$9,743,586	$0	-$9,743,586
2023-2024	$10,717,944	$0	-$10,717,944
2024-2025	$11,789,738	$0	-$11,789,738
TOTAL	**$79,687,123**	**$66,005,000**	**-$13,682,123**

As the expanded table shows, by adding just four additional fiscal years to Defendants' table, $13,682,123 in tax credits will have disappeared by 2025. That is over $13.5 million in scholarships that will no longer be available for Nevada families. S.B. 551 may add some tax credits for the current biennium. But it does nothing to replace the tens of millions of tax credits missing over the next biennia.

The Legislature's argument also falls apart under scrutiny. It argues that, because the planned tax credits for future fiscal years never went into effect, they never "became legally operative and binding" and therefore were not changed or repealed. Leg. Br. 18. This argument is wrong as a matter of law, because NRS 363B.119(4)—before its amendment by A.B. 458—was legally operative and "effective upon passage and approval" on April 13, 2015. 2015 Nev. Laws Ch. 22, § 9 (A.B. 165). When "statutory language is clear," courts "are not free to disregard [the Legislature's] express determination with respect to the effective date of the statutory changes." *In re Leibowitz*, 217 F.3d 799, 805 (9th Cir. 2000).

The Legislature's argument, if successful, would allow it to avoid the supermajority provision whenever it wished. Nevada's Legislature only meets once every two years, and legislation is generally not passed in the middle of a fiscal year. If the supermajority requirement could be avoided by claiming that a particular bill affects only future revenues, the Legislature would be able to avoid the supermajority requirement by simply passing, before July 1, revenue increases for the next fiscal year. That would deprive the supermajority provision of any meaning and therefore must be rejected. *We the People Nev.*, 124 Nev. at 881, 192 P.3d at 1171 ("[T]he Nevada Constitution should be read as a whole, so as to

give effect to . . . each provision."); *Ex parte Shelor*, 33 Nev. 361, 111 P. 291, 293 (1910) ("[T]he Court . . . must lean in favor of a construction that will render every word operative, rather than one which may make some words idle and nugatory.").

The fact remains that, before A.B. 458, the amount of tax credits available in future biennia was higher than the amount of tax credits now available. After A.B. 458, there are fewer tax credits and more revenues to the state. That fact is dispositive. A.B. 458 raises revenue and should have received a supermajority in the Nevada Senate.

Finally, to the extent there is any doubt about A.B. 458's operation, those doubts should be resolved in favor of Plaintiffs because they are taxpayers. "Taxing statutes when of doubtful validity or effect must be construed in favor of the taxpayers." *Dep't of Taxation v. Visual Commc'ns, Inc.*, 108 Nev. 721, 725, 836 P.2d 1245, 1247 (1992) (internal quotation marks omitted); *see also Harrah's Operating Co. v. Dep't of Taxation*, 130 Nev. 129, 132, 321 P.3d 850, 852 (2014) ("[T]ax statutes are to be construed in favor of the taxpayer."). Here, construing A.B. 458 in favor of the taxpayer means construing it as a revenue-generating bill, enjoining its application under article 4, section 18(2), and thereby leaving taxpayers' credits in place.

CONCLUSION

For the above reasons, Plaintiffs respectfully request that this Court deny Defendants' respective motions for summary judgment, grant Plaintiffs' Motion for Summary Judgment, and enjoin the enforcement of A.B. 458.

DATED this 6th day of March, 2020.

By /s/ Joshua A. House

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Institute for Justice, and that on the 6th day of March, 2020, I caused to be served a true and correct copy of foregoing **PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT** in the following manner:

(ELECTRONIC SERVICE) Pursuant to Administrative Order 14-2, the above-referenced document was electronically filed on the date hereof and served through the Notice of Electronic Filing automatically generated by that Court's facilities to those parties listed on the Court's Master Service List.

/s/ Claire Purple
An Employee of INSTITUTE FOR JUSTICE

TAB 11

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DISTRICT COURT

CLARK COUNTY, NEVADA

FLOR MORENCY; EKYSHA NEWELL; BONNIE YBARRA; AAA SCHOLARSHIP FOUNDATION, INC.; SKLAR WILLIAMS PLLC; ENVIRONMENTAL DESIGN GROUP, LLC, Plaintiffs, vs. STATE OF NEVADA, *ex rel*, DEPARTMENT OF EDUCATION; *et al.* Defendants.	Case No. A-19-800267-C Dept. No. XXXII **(Hearing Requested)**

EXECUTIVE DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Pursuant to Rule 56, Defendants State of Nevada, *ex rel*, DEPARTMENT OF EDUCATION; JHONE EBERT, in her official capacity as executive head of the DEPARTMENT OF EDUCATION; 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, 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, and MELANIE YOUNG, in her official capacity as the Executive Director and Chief Administrative Officer of the DEPARTMENT OF TAXATION (collectively the "Executive Defendants") hereby oppose Plaintiffs' motion for summary judgment.

This Opposition is made and based upon the following Memorandum of Points and Authorities, all the papers and pleadings on file herein, and any such argument that the Court chooses to entertain.

DATED this 6th day of March, 2020.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Based on the arguments set forth in the Executive Defendants' motion for summary judgment and the Legislature's motion for summary judgment, the Executive Defendants disagree with and oppose Plaintiffs' Motion for Summary Judgment.

Passage of Assembly Bill 458 complied with the plain language of Nevada's supermajority provision because it did not "create, generate, or increase" "taxes, fees, assessments and rates." The bill did not change the Modified Business Tax in any way. It kept the base level of Voucher Program tax credits the same as it had been in the prior fiscal year, allowing the same eligible children to apply for the same vouchers and the same businesses to seek the same first-come, first-served MBT tax credits from the same scholarship organizations.

To the extent there is any ambiguity requiring interpretation, the supermajority provision should be interpreted narrowly, consistent with the intent that it apply to new taxes and increased tax rates, not to the continuation of existing tax credits at existing rates from one year to the next. Because the Legislature is, by constitutional design, the most responsive branch to the People, its reasonable interpretation under these circumstances, upon the advice of its counsel, is entitled to deference from this court.

Rather than simply reiterate the arguments set forth in the affirmative motions, the Executive Defendants will attempt to address the infirmities of Plaintiffs' motion.

II. FACTUAL BACKGROUND

Plaintiffs' motion mistakenly presumes that Assembly Bill 458 increased revenue between fiscal years. This is mistaken for at least three reasons.

First, Assembly Bill 458 froze "subsection 4" tax credits at the identical six million six hundred fifty-five thousand ($6,655,000) amount they had been for Fiscal Year 2018-2019 for Fiscal Year 2019-2020. *See* Leg. Mot. at 6:7-7:18. Because the subsection 4 tax credits did not decrease, there is no corresponding revenue increase under Plaintiffs' flawed theory. Eliminating a potential future increase in tax credits – while maintaining

the existing tax credit amount – does not increase revenue and is no different from Nevada's decision to adopt measures providing that if there is any future reduction in federal gas taxes, state gas taxes will increase by the amount federal taxes are reduced. *See* NRS 365.185; *see also* 14 Akron Tax. J. 43, 73 (1999). Because potential future tax credits were not legally operative until July 1, 2019 (*see* Leg. Mot. at 4:16-6:6), there was no change to the effective tax rate, much less the actual tax rate, as a result of Assembly Bill 458.

Second, as noted in the Executive Defendants' motion for summary judgment, the 2019 Legislature increased the overall amount of tax credits above what Plaintiffs contend was mandated by the 2015 Legislature, exceeding the amount Plaintiffs contend was originally contemplated for Fiscal Year 2019-2020. But for the Legislature's decision to take final tax credit decisions in two bills versus one, there would be no articulable basis for any lawsuit.[1]

Third, decreasing tax expenditures on the Voucher Program results in a net decrease in Nevada revenue, according to its supporters. Specifically, a senior policy analyst for the Nevada Policy Research Institute ("NPRI") testified in opposition to Assembly Bill 458. One argument NPRI made in support of the Voucher Program is that it "generate[s] a fiscal savings to the state in the long run." Assembly Committee on Taxation (4/2/2019) at 8, a true and correct copy of which is attached hereto as **Exhibit A**. The same policy analyst submitted written testimony with the identical argument to that committee. *See* Exhibit E to Assembly Committee on Taxation (4/4/2019), a true and correct copy of which is attached hereto as **Exhibit B**. By the analyst's rationale, tax credits tend to generate a revenue surplus because of the overall cost savings associated with the Voucher Program drawing students out of public schools. If true, reducing available tax credits

[1] Plaintiffs' motion dismisses this issue by noting that the additional tax credits are only for the current biennium. Mot. at 19:18-19. However, as addressed in more detail by the Legislature in its motion for summary judgment, each legislature controls the use of public funds for the current biennium, and generally cannot bind the decisions of future legislatures by statute. At minimum, this again highlights why this case is not ripe for consideration because the purported harm associated with decreased tax credits does not yet exist.

would tend to generate a revenue deficit. In short, reducing the tax credits would tend to decrease revenue, not increase it, relative to costs.

This theoretical relationship between tax credits and revenue surplus is also reflected in the "Description of Fiscal Effect" provided to the 2015 Legislature when creating the Voucher Program. There, the Department of Taxation was unable "to determine the impacts of revenue," including "the increase in tax revenue this bill may cause." A true and correct copy of the February 18, 2015 "Description of Fiscal Effect" is attached hereto as **Exhibit C**. Ultimately, this demonstrates that there may be a positive correlation between tax credits and surplus revenue, such that eliminating tax credits would tend to decrease revenue from a fiscal standpoint.

NPRI is not alone in making this argument. The United States Supreme Court considered the same issue in *Arizona Christian School Tuition Organization v. Winn*, 563 U.S. 125 (2011). There, Plaintiffs' counsel in this case (Institute of Justice) represented successful parties. Specifically, IOJ argued that Arizona's Voucher Program "ultimately saves the state money." IOJ Br. (10/15/2010) at 13-14 (emphasis added), a true and correct copy of which is attached hereto for the court's convenience as **Exhibit D**. It does so by providing "savings the state realizes from being relieved of the duty to pay for participating children's educations." *Id.* at 13. Perhaps based on IOJ's arguments, the Supreme Court similarly stated that such tax credits "may not cause the State to incur any financial loss." 563 U.S. at 137.

In short, the Voucher Program increased Nevada revenues by relieving Nevada of the duty to pay for children's educations now occurring at private schools. From a budgetary standpoint, the converse would also be true. By the logic of NPRI and IOJ, Assembly Bill 458's purported reduction in size would reduce Nevada revenue by returning the obligation to pay for children's education to the State. If its counsel's analysis is true,

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Plaintiffs' asserted supermajority violation does not exist, making the supermajority issue moot for consideration in this case.[2] At minimum, it creates a fact question that warrants discovery should the court not grant summary judgment in favor of Defendants.

Under these facts, Plaintiffs are not entitled to summary judgment on their theory that passing Assembly Bill 458 violated Nevada's supermajority requirement.

III. LEGAL ANALYSIS

A. Standard of Review

In Nevada, the constitutionality of a statute is a question of law. "Statutes are presumed to be valid, and the burden is on the challenging party to demonstrate that a statute is unconstitutional." *Cornellia v. Justice Court*, 132 Nev. ___, 377 P.3d 97, 100 (2016). Here, Plaintiffs bear this burden.

Plaintiffs' efforts to shift this burden premised on citations pertaining to taxing statutes (see Mot. at 14:20-24) are misplaced. The Nevada Supreme Court considered this issue in *Cashman Photo Concessions & Labs, Inc. v. Nevada Gaming Commission*, 91 Nev. 424, 428 (1975). More specifically, the Nevada Supreme Court considered a taxpayer-friendly canon of construction in a case involving the applicability of the Casino Entertainment Tax to photographic services rendered at gaming licensee showrooms. *Id.* at 426-27. There, it was unclear whether the statute "did or did not intend the photographic

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2 Plaintiffs rely on the Arizona Christian case as lead support for a footnote distinguishing between tax credit expenditures and legislative appropriations. *See* Mot. at 16 n. 68. In addition to conflicting with their core theory that decreasing tax credits somehow increases state revenues, Plaintiffs' reliance is misplaced for multiple reasons. First, Plaintiffs' citation is not in the context of whether or how a State differentiates between tax credit expenditures and legislative appropriations. Instead, the Supreme Court considered the perspective of a non-tax credit receiving citizen whether they qualified for a limited exception for taxpayer standing in Establishment Clause cases. *Arizona Christian School Tuition Organization*, 563 U.S. at 145-46. Here, Nevada specifically recognizes and requires reporting on tax expenditures under statute, recognizing their similarities to legislative appropriations for purposes of budgeting state resources. NRS 360.137. Second, Arizona Christian's tax credit, which was one of dozens applicable to Arizona taxpayers, is easily distinguished from this Nevada tax credit, which is one of only two of which that could be directed to third party spending, with the only other exception being prepaid college tuition programs. *See* 2017-2018 Tax Expenditure Report, relevant portions pertaining to MBT tax credits attached hereto as **Exhibit E**. As set forth in the record, most Voucher Program recipients attend private religious schools. A true and correct copy of the November 2018 Department of Education report, previously attached to Defendants' motion to dismiss as Exhibit C, is attached hereto as **Exhibit F**.

concessions to be included." *Id.* at 427. When rejecting the Commission's imposition of a tax by rule that is not mentioned as taxable by statute, the Nevada Supreme Court stated that "[t]axing statutes when of doubtful validity or effect must be construed in favor of the taxpayers. A tax statute particularly must say what it means." *Id.* at 428. That is not the dispute before this court between these parties.

Similarly, in *Dep't of Taxation v. Visual Commc'ns, Inc.*, 108 Nev. 721, 725 (1992), the Nevada Supreme Court cited the same language when faced with "conflicting and inconsistent" taxing statutes and regulations. Again, that is not the dispute before this court between these parties. Finally, in *Harrah's Operating Co. v. Dep't of Taxation*, 130 Nev. 129, 134 (2014), the Nevada Supreme Court cited the earlier two cases when addressing the question of whether the tax statute required consideration of flights on a daily basis, refusing to "extend a tax statute by implication." *Id.*

Here, this court is not faced with a case concerning "doubtful validity" associated with legislative silence as to the scope or applicability of a tax. These parties do not have a disagreement about the scope or applicability of a tax. Instead, they have a disagreement as to the applicability and meaning of the Nevada Constitution as it pertains to the power of the Legislature. Accordingly, the purported "deference" argued by Plaintiffs does not apply to their burden to demonstrate a constitutional violation relative to the Legislature.

B. Assembly Bill 458 Complies with the Plain Language of the Supermajority Provision

Before considering Plaintiffs' arguments against Assembly Bill 458, it makes sense to consider the plain and ordinary meaning of "creates, generates, or increases."

"Create" means to "bring into existence" or to "produce." Merriam Webster's Collegiate Dictionary, 272." (10th ed. 1995). Similarly, "generate" also means to "bring into existence." *Id.* at 485. Here, Assembly Bill 458 continues existing taxes and fees at existing rates into future fiscal years. It also continues the identical amount of "subsection 4" tax

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credits. It does not "bring into existence" the challenged taxes or fees; they already existed in prior fiscal years. Instead, the terms "create" and "generate" apply to new taxes brought into existence by legislative action.

The Executive Defendants are left to assume that any argument Plaintiffs have on the plain language of the supermajority provision necessarily relies on the term "increase," which means "to become progressively greater" or to "make greater." *Id.* at 589. Nothing within the supermajority provision defines how to measure an "increase" in "public revenue." Simple revenue increases resulting from Nevada's population and business growth do not require supermajority votes, as demonstrated by prior Economic Forum projections.[3] Continuing existing taxes and fees at existing rates from one fiscal year to the next does not "make greater" "public revenue." At worst, the supermajority provision is ambiguous for failing to identify the appropriate baseline from which to measure an "increase."

Here, as addressed in the Legislature's motion for summary judgment, Plaintiffs presume an "existing tax structure" of decreased revenues from increased tax credits that had not yet existed. Because this provision was never in effect at the increased amounts as a matter of law, as set forth by the Legislature's counsel in its May 8, 2019 memorandum, Assembly Bill 458 maintains the existing "subsection 4" tax credit amount and

[3] Plaintiffs' reliance on the term "any" (*see* Mot. at 16:4-13) is undermined by this basic fact, as this interpretation would render the Economic Forum projection process unconstitutional absent supermajority approval. Plaintiffs' reliance on *In re Opinion of the Justices*, 575 A.2d 1186 (Del. 1990), in support of the "any" argument is also misplaced. There, the Delaware Supreme Court considered whether new or increased environmental impact fees violated Delaware's supermajority provisions, even though statutory authority to create or increase said fees predated the constitutional provision. *Id.* at 1188. Not surprisingly, based on the plain language of the supermajority provisions, the prior statutory authority to create or increase environmental impact fees now required supermajority approval. *Id.* at 1190. Delaware did not consider the applicability of freezing or repealing tax credits. Instead, Nevada's supermajority provision, as interpreted here by the Executive Defendants, would not allow the creation or increase of environmental impact fees in a new fiscal year. Similarly, the supermajority provision, as intended, would require supermajority support for creating a new tax that did not previously exist, such as a wealth tax. The supermajority provision, as intended, would require supermajority support for increasing rates on existing taxes, such as the MBT tax or the Commerce tax.

accompanying revenue structure. *See* Leg. Mot. at 4:16-6:6; **Ex. C** to the Executive Defendants' Motion.

Plaintiff's reliance on a fiscal note (*see* Mot. at 17:4-6) does not account for the continuity in the computational basis for the MBT. And the total amounts of the existing "subsection 4" tax credits remained the same between fiscal years, subject to the identical first-come, first-served process under the Voucher Program. Even without consideration of the Legislature's near simultaneous decrease in revenue from substantially increasing overall Voucher Program tax credits, Assembly Bill 458 does not "create, generate, or increase" any public revenue in any form relative to the prior fiscal year.[4] Because this complies with the plain language of the Nevada Constitution, the Court should enter judgment against Plaintiffs and in favor of Defendants.

C. The Legislature's Interpretation is Reasonable and Entitled to Deference

Plaintiffs disagree with the reasonableness of the Legislature's interpretation of the supermajority provision. For the reasons set forth below, the Legislature is entitled to deference in its reasonable interpretation of Nevada's supermajority provision, especially given the Legislature's reliance upon the specific advice of its counsel.

1. The History, Public Policy and Reason behind the Supermajority Provision Supports Defendants' Narrow Interpretation

Plaintiffs do not seriously challenge the history, public policy, and reason behind the supermajority provision. Following President Bush's broken promise of "no new taxes," supermajority provisions (including Nevada's) proliferated throughout the United States. Instead of remaining faithful to the undisputed historical record, Plaintiffs attempt to broaden the public policy and reason behind the supermajority provision to account for their desire that it apply to the elimination of tax credits. These efforts are each mistaken, as addressed now in turn.

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4 The Executive Defendants has already stated its argument regarding the overall 2019 Legislature increase in Voucher Program tax credits in the motion to dismiss briefing and its motion for summary judgment. For brevity, its argument will not be repeated here.

First, Plaintiffs argue that the explanation for AJR 21 stated that it was proposed to apply to "increase[s in] certain existing taxes." Mot. at 18:6-7. However, as already noted, this case does not concern tax increases. All MBT taxpayers are subject to the identical rate as the last fiscal year, with the same right to apply for "subsection 4" tax credits on a first-come, first-served basis. Simply put, AJR 21 did not address potential future changes in tax credits.

Second, Plaintiff cite language from former Governor Gibbons that "taxes always reduce[] the amount of money that would have been used by the private sector." Mot. at 18:15-16. This language is not applicable here, as the tax credits in question seek to serve the "public" purpose of meeting the State's constitution obligation to provide education for its children. Whether taxes are paid to the State's Distributive School Account or expended to the Voucher Program, the amount of money "diverted" from the private sector remains the same.

Under such circumstances, the Executive Defendants' interpretation of the supermajority provision is most reasonable.

2. Other States' Interpretation of Similar Provisions Supports Defendants' Narrow Interpretation

Nevada is not alone in having a supermajority provision. Nevada's "founding father" for the supermajority provision recognized that it was borrowed from what other states did, addressing the same concern over "no new taxes" arising from the presidency of George H.W. Bush. Other states have consistently interpreted these provisions narrowly as a limited exception to majoritarian rule. Plaintiffs have not identified any state interpreting a supermajority provision in a contrary fashion for continuing existing tax credits into future fiscal years or from elimination of tax credits. Review of the applicable plain language highlights why.

As addressed above, "increase" is Plaintiffs' sole possible plain language argument for their reading of the supermajority provision applying to the freeze of "subsection 4" tax credits. In this context, there is no meaningful distinction between "raising revenue" and

"increase public revenue." Seeing how other states interpret "raising revenue" may be instructive for a court when attempting to analyze Nevada's similar supermajority provision. Neither Oklahoma nor Oregon limit the term "raising," similar to how Nevada does not limit the term "increase." There is no conflict amongst these supermajority provisions.

Under such circumstances, Oregon's conclusion that eliminating a tax exemption for out-of-state electric utility facilities was not subject to its constitutional supermajority provision is persuasive authority supporting narrow interpretation of Nevada's supermajority provision. *City of Seattle v. Or. Dep't of Revenue*, 357 P.3d 979, 980 (Or. 2015). Oklahoma's analysis that deleting the "expiration date of [a] specified tax rate levy" was not subject to its supermajority provision is also persuasive authority for a court to consider when interpreting Nevada's supermajority provision. *Fent v. Fallin*, 345 P.3d 1113, 1114-17 n.6 (Okla. 2014). Oklahoma's analysis that eliminating exemptions from taxation (akin to eliminating Voucher Program tax credits) was not subject to its supermajority requirement is also persuasive authority supporting narrow interpretation of Nevada's supermajority provision. *Okla. Auto Dealers Ass'n. v. Okla. Tax Comm'n.*, 401 P.3d 1152, 1155 (Okla. 2017). Plaintiffs' failure to find contrary authority pertaining to the elimination of a tax exemption as subject to a supermajority provision may also be persuasive.

3. The Legislature, Relying on the Specific Advice of its Counsel, is Entitled to Deference

Finally, the Legislature was entitled to deference in its interpretation of Nevada's supermajority provision, given that it relied upon the specific advice of its counsel. *Nev. Mining Ass'n v. Erdoes*, 117 Nev. 531, 540 (2001).

Nevada courts do this because of the significant power vested in the Legislature under the Nevada Constitution, consistent with constitutional requirements for republican forms of government and majoritarian rule. As noted by James Madison in the Federalist Papers:

> In all cases where justice of the general good might require new laws to be passed, or active measures to be pursued, the fundamental principle of free government would be reversed. It would be no longer the majority that would rule; the power would be transferred to the minority. Were the defensive privilege limited to particular cases, an interested minority might take advantage of it to screen themselves from equitable sacrifices to the general weal, or in particular circumstances to extort unreasonable indulgences.

THE FEDERALIST NO. 58, at 397 (James Madison).

Here, the parties disagree with how the Legislature interpret Nevada's Constitution. Because the Legislature's interpretation is reasonable and the Legislature relied upon the specific advice of its counsel, this Court should defer to the Legislature's interpretation. Even if it would not be this Court's preferred interpretation, deferring to the Legislature will allow Nevada's true sovereign, the People, to ultimately decide the wisdom of the 2019 Legislature's decisions.

IV. CONCLUSION

This Court should deny Plaintiffs' motion for summary judgment and award Defendants summary judgment because the passage of Assembly Bill 458 complies with Article IV, Section 18(2) of the Nevada Constitution.

DATED this 6th day of March, 2020.

AARON D. FORD
Attorney General

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CERTIFICATE OF SERVICE

I hereby certify that I served the **EXECUTIVE DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT** by United States Mail, First Class, and this Court's electronic filing system on the 6th day of March, 2020, upon the following counsel of record:

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State of Nevada
Office of the Attorney General

INDEX OF EXHIBITS

EXHIBIT NO.	EXHIBIT DESCRIPTION	NUMBER OF PAGES
A	April 2, 2019 Assembly Committee on Taxation Hearing	31
B	Exhibit E to April 2, 2019 Assembly Committee on Taxation Hearing	1
C	2015 “Notice of Fiscal Effect”	2
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Exhibit A

Exhibit A

MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON TAXATION

Eightieth Session
April 2, 2019

The Committee on Taxation was called to order by Chair Dina Neal at 4:09 p.m. on Tuesday, April 2, 2019, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/App/NELIS/REL/80th2019.

COMMITTEE MEMBERS PRESENT:

Assemblywoman Dina Neal, Chair
Assemblywoman Ellen B. Spiegel, Vice Chair
Assemblywoman Shea Backus
Assemblywoman Teresa Benitez-Thompson
Assemblywoman Lesley E. Cohen
Assemblyman Chris Edwards
Assemblyman Edgar Flores
Assemblyman Gregory T. Hafen II
Assemblyman Al Kramer
Assemblywoman Susie Martinez
Assemblywoman Heidi Swank

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Assemblyman Jim Wheeler, Assembly District No. 39
Assemblywoman Daniele Monroe-Moreno, Assembly District No. 1

STAFF MEMBERS PRESENT:

Russell Guindon, Principal Deputy Fiscal Analyst
Michael Nakamoto, Deputy Fiscal Analyst
Gina Hall, Committee Secretary
Olivia Lloyd, Committee Assistant

Assemblyman Hafen:
You quoted about $1 million. Theoretically half of the veterans could be taking advantage of it currently, so that number could be just $500,000.

Mary Walker:
No. This is after I take out the people who are currently getting the exemption.

Chair Neal:
Do the members have any additional questions? [There were none.] Is there anyone who would like to testify as neutral on A.B. 436? Please come to the table. [There was no one.] I will call Assemblyman Wheeler back to the table for closing remarks.

Assemblyman Wheeler:
I believe this will go to the Assembly Committee on Ways and Means. As you can see by the numbers that were just given, less than half avail themselves now. I do not know how many will avail themselves. That is something we will have to look at on the fiscal note. I thank you very much for hearing me today and if anyone needs to talk offline, we can get numbers for you.

Chair Neal:
I will close the hearing on A.B. 436. Members, we are going to go out of order. I will open the hearing on Assembly Bill 466 and call Treasurer Conine to the table. [The presenter was not present.] They are apparently not here. I will open the hearing on Assembly Bill 458 on tax credits for the Nevada Educational Choice Scholarship Program. [The presenter was not present.] Committee members, we are missing people for all three bills, so we are going to take a brief recess.

[The Committee recessed at 4:25 p.m. and reconvened at 4:32 p.m.] I will open the hearing on Assembly Bill 466. I will call Assemblywoman Monroe-Moreno and her co-presenters to the table.

Assembly Bill 466: Requires the creation of a pilot program to facilitate certain financial transactions relating to marijuana. (BDR 18-870)

Chair Neal:
There was an amendment presented [amendment not considered for the record] and we are not sure if you are going to be speaking from this amendment or from the original version of the bill.

Assemblywoman Daniele Monroe-Moreno, Assembly District No. 1:
I believe our amendment only had the change of the effective dates on it (Exhibit E).

Chair Neal:
This has more than that.

Chair Neal:
Members, do you have any additional questions? [There were none.] I have an announcement to make. I know there are individuals sitting in the audience here in Carson City and down south in Las Vegas waiting for Assembly Bill 458. That is going to be rolled to Thursday. That bill is now going to be moved from this agenda. I will now call the individuals to the table who are in support of A.B. 466.

Chuck Callaway, Police Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department:
I had the pleasure of serving as the vice chair a couple of years ago on the Governor's Task Force on the Implementation of Question 2 [The Regulation and Taxation of Marijuana Act]. One of the recommendations in our report was the banking issue. It is a huge problem and having these cash-only businesses does present a public safety risk when high levels of cash are being transported for deposit.

One thing I want to throw out there, that I think the bill can cover through the regulations, I would want to ensure on the record that obviously the Department of Taxation should have access to this closed-loop system for the purposes of their regulations and enforcement. I also believe that law enforcement, in cases where there may be organized crime or financial crime investigations, should have a mechanism to access transactions.

Corey Solferino, Lieutenant, Legislative Liaison, Washoe County Sheriff's Office; and representing Nevada Sheriffs' and Chiefs' Association:
I am here in support. I want to thank Assemblywoman Monroe-Moreno for getting the stakeholders together and bringing this legislation forward. During the interim I sit on the Washoe County marijuana working group. We provide the security analysis for the dispensaries operating in our jurisdiction. One of the security recommendations we have made was not keeping large amounts of cash on hand, and we believe this will solve that problem.

Assemblyman Flores:
Do we have any data on how many incidents we have had related to violence or crime in instances dealing with somebody carrying a large amount of cash?

Corey Solferino:
In northern Nevada we had one incident where there was a stolen vehicle that was driven through the storefront. We do not know if the target of that was the cash or the product. I would be happy to work with you and Director Callaway offline to get you those numbers.

Dylan Shaver, Director of Policy and Strategy, Office of the City Manager, City of Reno:
The City of Reno is the home to four recreational marijuana establishments as well as the various licensed grow and distribution operations we have in our jurisdiction. Once per quarter we have marijuana tax day. We have to bring in extra security so people can come down to the city clerk's office and pay their taxes and fees in cash. The average payment is

Chair Neal:
Those are pretty much all of the questions. I am hoping for question 15 [page 4, (Exhibit P)], on the sale invoices for $297,486.45, $308,247.65, and $280,438.25, we can get the backup.

Nicole Thorn:
Yes, you can get the backup. These are actually receipts that came in from Clark County for the months of April, May, and June because the funds come in three months in arrears, so those were accrued in that fiscal year. We can provide that documentation if you would like.

[(Exhibit V) was submitted but not discussed and is included as an exhibit for the hearing.]

Chair Neal:
Thank you for your time and I look forward to that information.

Assembly Bill 458: Revises provisions relating to certain tax credits for the Nevada Educational Choice Scholarship Program. (BDR 32-794)

[Assembly Bill 458 was rescheduled to April 4, 2019.]

Chair Neal:
I will open the hearing for public comment, here and in Las Vegas. [There was no one.] We are adjourned [at 6:51 p.m.].

RESPECTFULLY SUBMITTED:

_____
Gina Hall
Committee Secretary

APPROVED BY:

_____
Assemblywoman Dina Neal, Chair

DATE: _____

MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON TAXATION

Eightieth Session
April 4, 2019

The Committee on Taxation was called to order by Chair Dina Neal at 4:10 p.m. on Thursday, April 4, 2019, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/App/NELIS/REL/80th2019.

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Assemblyman Chris Edwards
Assemblyman Edgar Flores
Assemblyman Gregory T. Hafen II
Assemblyman Al Kramer
Assemblywoman Susie Martinez
Assemblywoman Heidi Swank

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Assemblyman Jason Frierson, Assembly District No. 8

STAFF MEMBERS PRESENT:

Russell Guindon, Principal Deputy Fiscal Analyst
Michael Nakamoto, Deputy Fiscal Analyst
Gina Hall, Committee Secretary
Olivia Lloyd, Committee Assistant

OTHERS PRESENT:

Alex Marks, Political Coordinator, Nevada State Education Association
Annette Magnus, Executive Director, Battle Born Progress
Amanda Morgan, Legal Director, Educate Nevada Now
Nayvi Waite, Private Citizen, Carson City, Nevada
Daniel Honchariw, Senior Policy Analyst, Government Affairs, Nevada Policy Research Institute:
Lisa Friend, Private Citizen, Dayton, Nevada
Denise H. Lasher, representing AAA Scholarship Foundation
Bryan Anderson, Private Citizen, Fallon, Nevada
Janine Hansen, State President, Nevada Families for Freedom
Michael Sweazy, Private Citizen, Chico, California
Jaden Hairr, Private Citizen, Henderson, Nevada
Aimee Hairr, Private Citizen, Henderson, Nevada
Landon Hairr, Private Citizen, Henderson, Nevada
Steve Brown, Chairman, Clark County Libertarian Party
Jesus Marquez, Senior Political Consultant, Marquez Group Strategies
Heather Kidd, Private Citizen, North Las Vegas, Nevada
Buddy Hampton, Private Citizen, North Las Vegas, Nevada
Suzette Stabile-Lacorazza, Private Citizen, Las Vegas, Nevada
Alicia Manzano, Private Citizen, Las Vegas, Nevada
Ed Uehling, Private Citizen, Las Vegas, Nevada
Shari Ghiorzi, Private Citizen, Las Vegas, Nevada
Amy Bauer, Private Citizen, Henderson, Nevada
Valeria Gurr, Nevada State Director, Nevada School Choice Coalition
Deborah Dahl, Principal, Las Vegas Junior Academy, Las Vegas, Nevada
Sandra Canales, Private Citizen, North Las Vegas, Nevada
Karen Zeh, Tuition and Accounts Manager, Calvary Chapel Christian School, Las Vegas, Nevada
Camilo Perez, President, Consejo Pastoral De Las Vegas, Henderson, Nevada
Christian Martinez, Private Citizen, Las Vegas, Nevada
Rina Oseguera, Private Citizen, Henderson, Nevada
Wendy Florez, Private Citizen
David Holdridge, Private Citizen
Randolph D. Doeing, Private Citizen, Las Vegas, Nevada
Erin Phillips, President, Power2Parent, Las Vegas, Nevada
Rebecca Larrieu, School Director, Newton Learning Center, Reno, Nevada
Melanie Young, Executive Director, Department of Taxation
Michael Pelham, Director of Government and Community Affairs, Nevada Taxpayers Association
Bryan Wachter, Senior Vice President, Retail Association of Nevada
Chelsea Capurro, representing Amazon.com Services, Inc.

Edith Duarte, representing eBay Inc.
Omar Saucedo, representing AT&T Nevada
Elisa Cafferata, representing Nevada Technology Association, Inc.

Chair Neal:
[Roll was taken and Committee rules and protocol were reviewed.] I will open the hearing on Assembly Bill 458. Assemblyman Frierson, please come to the table.

Assembly Bill 458: Revises provisions relating to certain tax credits for the Nevada Educational Choice Scholarship Program. (BDR 32-794)

Assemblyman Jason Frierson, Assembly District No. 8:
I am presenting Assembly Bill 458 today. I want to give you some background about this bill in case folks do not know about the Nevada Educational Choice Scholarship Program. This program, also known as the Opportunity Scholarship Program, was approved in 2015 [Assembly Bill 165 of the 78th Session]. It is a tax credit scholarship program that authorizes corporations to claim 100 percent of the modified business tax (MBT) when they contribute to approved scholarship-granting organizations (SGOs). The SGO provides private school scholarships to families who meet certain income requirements. Nevada is one of 19 states with a tax credit program. To be eligible, family income cannot exceed 300 percent of the federal poverty level, which was $75,000 in fiscal year 2018-2019. In that fiscal year, 90 schools participated in the program and the maximum scholarship was $8,132. The amount of the scholarship increases by the consumer price index (CPI) each year.

The number of scholarships has increased each year, beginning in 2016 with 371 scholarships awarded, and in 2019, 2,306 scholarships were awarded. Before the 2019-2020 fiscal year there were seven registered SGOs serving Nevada. Under existing law, in order to become an SGO, the Nevada Department of Education is authorized to approve applications that meet criteria until the maximum amount of tax credits authorized for that fiscal year is met. Currently the amount of credits authorized is equal to 110 percent of the amount authorized for the immediately preceding fiscal year. For example, in 2017-2018 the amount authorized was $6.05 million; in 2018-2019, that 110 percent made it $6.655 million. That brings me to A.B. 458 and what it does.

First, I want to clarify what A.B. 458 does not do. Assembly Bill 458 does not get rid of the Opportunity Scholarship Program. This bill is designed to deal with the 110 percent increase in the credits authorized. The measure provides that the amount is $6.655 million, which it is currently, and any remaining amount of tax credits carried forward from the additional credit authorization made in 2017-2019.

This language, as it currently exists, has a 10 percent growth factor every year. That is simply unsustainable. There is no budget allocation in our state budget that could sustain 10 percent growth every year. It is independent of recession and independent of the state budget—the requirement that we fund education first. It is independent of revenue and shortfalls. It makes little sense to me, from a fiscal responsibility standpoint, to artificially

build in 10 percent growth each year for something that would be out of control in a short amount of time. In order for us to continue to provide this service to families and to students who are receiving it, I think it warrants stability and certainty, and taking out the 10 percent growth factor is a step toward ensuring we are being fiscally responsible with our entire budget. That is the intent of the bill.

Assemblyman Hafen:
Thank you for bringing this forward. I agree with you, we want to ensure this program stays in place, and I understand that 10 percent may be an unsustainable increase year after year. Had you considered doing a CPI, or some other kind of increase to go along with this, to ensure this continues and keeps up with the cost of inflation?

Assemblyman Frierson:
No. We do not give teachers CPI raises. We do not give universities CPI raises. We have a budget that we have to allocate every biennium and we work with what we have. I think to build in only one category of allocation for automatic growth is irresponsible.

Assemblyman Edwards:
If the program is not desired, then the 10 percent growth does not happen—if 10 percent more people do not apply for it, the 10 percent growth does not occur. Is that correct?

Assemblyman Frierson:
That is correct.

Assemblyman Edwards:
If 10 percent more people have this desire, why would we not want a successful program to grow? Our constituents want it and it would be a good way for their children to get into a better environment—or have a better choice for them. If I am running the numbers correctly, and the most they got was $8,000, then that is about $2,000 less than what we pay in the public schools. Would that not actually free up resources?

Assemblyman Frierson:
If we gave out 20 percent, people would apply for it. If we gave out 50 percent, people would apply for it. People would apply to get free money. Of course they would apply for it. We are not in the business of just giving away money in this state. We have a limited budget and we have to allocate our money responsibly. Quite frankly, I think some of the resources we do not collect in the way of these taxes, and give away, is money we are taking away from the rest of the population. You mentioned per-pupil spending. I would disagree with you that we do not spend $10,000 across the board per pupil necessarily, but I would welcome ensuring the base for per-pupil spending was $10,000. The fact of the matter is, if there is free money, of course people are going to apply for it in any tax credit bracket. People would apply for it at the expense of everybody else who is left behind. I do not want to get into the debate about the policy behind it. I am not trying to get rid of the program, but I do think that 10 percent automatic growth factor is just not a responsible way to budget in any capacity.

Assemblyman Edwards:
You do not think there would be any reasonable sustainable number we could use?

Assemblyman Frierson:
For this particular program, I do not think a built-in growth factor is a responsible way to budget anyway. I think that we as a Legislature have an opportunity to fund at appropriate levels every session we come back. If this were something this body collectively thought warranted 10 percent more, then I think we have the ability to allocate funds in the existing program by 10 percent more. But to have a built-in growth factor is just not responsible and does not take into account all the other dynamics of our budget. If we come back next session, we may very well agree this program is worthy of a 10 percent increase in the amount of funding. I do not think it is responsible to mandate that in statute.

Chair Neal:
Members, do you have any additional questions? [There were none.] We will move to those wishing to testify in support of A.B. 458.

Alex Marks, Political Coordinator, Nevada State Education Association:
The Nevada State Education Association has been a consistent advocate for adequate public education funding and keeping public funding in a public school. We support A.B. 458 to eliminate the automatic 10 percent annual increase in total amount of tax credits allowed for the Opportunity Scholarships. Every dollar allowed in a tax credit going to an Opportunity Scholarship is a dollar that the Legislature could program in our underfunded public schools, where 90 percent of Nevada children receive their education.

In February, hundreds of educators from across Nevada rallied under the banner of Red for Ed to draw attention to chronic underfunding of public education. Despite recent efforts, Nevada continues to rank near the bottom of states in most metrics. In the 2018 Quality Counts report from *Education Week*, Nevada ranked 47th in per-pupil funding and dead last in both class size and overall education quality. Nevada needs to do better.

Opportunity Scholarships are really just back-door school vouchers. Instead of diverting funding to programs that pay for a limited number of students to go to private schools, Nevada has the responsibility to allocate sufficient funds to public schools which are accessible to every Nevada student.

Over the last three years, not including the one-time expansion of the program last session, appropriations for Opportunity Scholarships have increased by more than 33 percent, while over the same period, per-pupil base funding for K-12 has only increased by a little more than 4 percent. This is significantly less than the increased cost of doing business, which is a major reason we saw draconian budget cuts in school districts across the state immediately after the last legislative session. We believe public money should be invested in public schools (Exhibit C).

Annette Magnus, Executive Director, Battle Born Progress:
Today I am here as a native Nevadan and proud graduate of the Clark County School District (CCSD) to represent the 20,000-plus subscribers to our Battle Born Progress Network statewide. We have a long history of opposing vouchers in the state of Nevada, and the Opportunity Scholarship Program is nothing but a voucher scheme promoted by the Koch brothers. That is what this program has always been.

We believe that when taxpayer money is spent, it should be spent on our public schools. Vouchers in any form are the wrong choice for public school reform. We need to strengthen neighborhood schools, improve classroom teaching, and enhance student achievement. We support A.B. 458 and we encourage you all to support it as well.

Assemblyman Edwards:
You said that every dollar should be spent on public schools. Did you mean students?

Annette Magnus:
I mean students, class size reduction, whatever it takes to ensure our public schools are strong. I do not have children, but I believe every taxpayer dollar I put into the system should be going to our public schools. That is where it belongs, not a private education.

Assemblyman Edwards:
You confused me there, because initially I thought you said students.

Annette Magnus:
It can be students. It can be teachers. It can be whatever the classroom needs.

Amanda Morgan, Legal Director, Educate Nevada Now:
We are powered by the Rogers Foundation and are a partner of the Public Money, Public Schools coalition. I have provided written testimony (Exhibit D) in support of A.B. 458 but would just like to emphasize a few points.

First, we have seen multiple national and state-level studies that have made very clear we need to start investing more in Nevada public schools so we can support the actual cost of providing our students the opportunity to succeed. That includes additional resources for students with unique needs such as English learners, at-risk students, and students with disabilities. Research and our own experiences in the state have shown investment in public schools matters, especially for these students. Compare that to the private school vouchers that have shown very weak results in Nevada, with 74 percent of voucher recipients sampled showing no growth or worse achievement levels. Other states have had similar results.

Additionally, Educate Nevada Now has analyzed available information on staffing in private schools and found over 50 percent of teacher and voucher recipient schools have never been licensed in Nevada, and some schools currently have no licensed staff educating students. Compare this to the high standards and professional development expected of our public school teachers. Every single dollar counts and we believe taxpayer dollars should go where

there is accountability and results. Our taxpayers deserve that, but more important, our students deserve a high-quality public education, and if there is a 10 percent growth factor, that should be in Nevada's public schools. For that reason, we support A.B. 458 and limiting private school voucher funding.

Chair Neal:
Is there anyone else who would like to speak in support of A.B. 458? [There was no one.] I will now take testimony from those who are in opposition to A.B. 458.

Nayvi Waite, Private Citizen, Carson City, Nevada:
I am asking you to please vote no for A.B. 458. We need the Opportunity Scholarship Program to grow and give other kids choices for their education. I am a mother of five, who migrated to this country 33 years ago because of the opportunity of a better life—the American Dream. My life here with my family has been a dream. I want my kids to know all the opportunities America offers. The most important opportunity I want them to have is the Nevada Opportunity Scholarship and the chance for the best education possible.

I am grateful and thankful for God's blessing to me and my family, and I know other minority parents who receive the Nevada Opportunity Scholarship feel this way too. How uplifting it is for children from low-income minority homes to have the best chance for the American Dream.

Page 3 of the 2017-2018 Nevada Educational Choice Scholarship Program report on the Department of Education website shows that 59 percent of the 2,330 scholarship recipients are minority, which is a blessing for the unrepresented wanting a better life for their children. It is not irresponsible to invest in our children, especially minorities who are receiving this scholarship.

To Ms. Magnus, who does not have any children, you will do whatever to give the best education possible to your children. We are so grateful for this scholarship, and there are people on the waiting list. It is not a waste of money to invest in children.

Assemblywoman Martinez:
I agree with you. All of our children deserve a good education. My daughter was in the public schools. When I would take her to school when it was raining, the ceilings would leak, and that is because we do not have the funding for the schools. I do agree every kid, whether they are in a school that is privately funded or regular schools, they all deserve a proper education.

Chair Neal:
I know we have a lot of people signed in, in opposition. This is not being disrespectful, but I am going to try to limit comments to two minutes. If someone has said something already, do not repeat it. If you have a unique position about what is going on with your child, state that.

Daniel Honchariw, Senior Policy Analyst, Government Affairs, Nevada Policy Research Institute:
The Nevada Policy Research Institute opposes A.B. 458 in the strongest terms. During a time when the state of Nevada should be prioritizing the proliferation of alternative educational options for our state's struggling students, this bill proposes to do the precise opposite. There are nearly half a million Nevada students enrolled in public K-12 schools statewide, yet this proposal suggests that providing a choice for a few thousand struggling, low-income students—which amounts to a mere rounding error in terms of total education funding—is not worth doing. What kind of message are we sending to our youth by denying these students an escape from their local schools that are not working for them? There are other options out there for these students that would work better for them, including Opportunity Scholarships, which, by the way, generate a fiscal savings to the state in the long run. Such programs should be embraced, not shunned. I urge this Committee to retain the 10 percent biennial increase on modified business tax credits, which can be used to finance these scholarships, by opposing A.B. 458. Let us please give these students a real chance for life success (Exhibit E).

Lisa Friend, Private Citizen, Dayton, Nevada:
I am here today in opposition of A.B. 458, which would eliminate the annual increase in funds for the Nevada Educational Opportunity Scholarship Program. The implementation of this bill would be disastrous to many Nevada families, as only current students would be able to receive scholarships. I am a single mother of three children and they have significantly benefited from the Nevada Educational Opportunity Scholarship Program. It has helped fund the educational needs and environments that are unique to each of my children.

I am here today to advocate for the many families who are currently on waiting lists—whose children may also have special learning needs—to have the same opportunity to benefit from the scholarship program. The positive impact of this program has extended beyond reasonable imagination, with 366 percent growth in its participation. The beneficiaries of this legislation are not only the economically disadvantaged but also the underrepresented students with disabilities whose needs extend beyond public capacity.

I truly believe in this program and the benefits it has for all Nevadans who are current recipients and those who may, for unforeseen reasons, need the program in the future. Please do not take this opportunity or last hope away from these families. The Opportunity Scholarship Program has been a blessing in my life. Please remember that none of this money associated with the scholarship program comes from any state revenue. All funding comes from private businesses that wish to give a financial avenue to the underresourced, and that funding is managed by a select number of registered scholarship organizations. The businesses also get afforded a benefit in a tax credit (Exhibit F).

Denise H. Lasher, representing AAA Scholarship Foundation:
I want to share a couple of factual statements on this particular program. The average scholarship amount is only $5,000, which is significantly less than what we are spending per pupil on our public school students. Almost 80 percent of the households earn 185 percent or

less of poverty. You may remember getting a presentation from the Department of Taxation on total expenditures—I am talking about tax programs here in the state. This program represents 0.1 percent of the over $30 billion in 2018 that were given in tax expenditure programs to businesses. There are numerous MBT tax credit programs currently in the state that have no cap, and there are several bills under consideration this session that also have no cap and no sunset.

This increase of 10 percent allows siblings of families who are currently benefiting from the program to be served, and just a handful of additional families. The 10 percent next year will mean about 110 to 120 additional students would be able to get a scholarship. The following year it is going to be about 140 extra students. This is a very small number of students whom we are talking about at this point.

These programs empower families and parents and also businesses to expand their philanthropic outreach into our community, and particularly for educational programs. In the current biennium, over 320 businesses had applications approved and utilized the credits under this program—320 businesses. These include the largest taxpayers in the state as well as some of the smallest. They come from the gaming sector, health care sector, manufacturing, retail, and distribution industries. Businesses support this program because they can expand their current reach within the community. They realize the long-term benefit this program provides for the few number of children—2,308 this year—whom this program serves, because these are the future workforce of our state and the future for our economy in the state.

On behalf of the families on the wait list for a scholarship, which is well over 1,000, and the hundreds of Nevada businesses that support this program, I ask for you to please vote no on this bill [(Exhibit G), (Exhibit H), and (Exhibit I)].

Bryan Anderson, Private Citizen, Fallon, Nevada:
I want to put a face behind things. This is my grandson, Jarron [referring to his grandson sitting to his right]. Jarron is a recipient of the scholarship. Jarron comes to me via the passing of his mother. My daughter passed away seven years ago and I have guardianship of my grandson. Jarron is diagnosed as having RAD, which is a relationship associated disorder. That means he has a hard time bonding with people. The public education system in Churchill County failed him miserably. They do not understand his disorder, nor did they want to take the time to understand it, even with us offering to buy the books for the school. We bought the books for Logos Christian Academy where he now attends. The teachers read the books and now he is getting straight A's.

I also have a daughter who attends Sierra Lutheran High School and who happens to be a math prodigy. She takes computational analytical mathematics from Cal Tech [California Institute of Technology] as a sophomore.

I am not here to be bagging on public education but to let you know that people like myself need to have the funding for schools. We are barely above the poverty line, and my wife works for the state of Nevada. Our public schools are not doing the job they should be doing. I do not know why, transient or whatever population. All I know is I am responsible for this young man and my daughter. I want them to have the best education possible.

Janine Hansen, State President, Nevada Families for Freedom:
We have long supported choice in education for many years. We truly want our children to have a successful education. In order for some children to, that includes choice in education. We need choice in America. It is a foundational principle and it provides competition against monopolies. The Gallup poll in April 2017 reported that 59 percent of Americans support school choice, and that 73 percent of Americans support scholarship tax credit programs for educational choice. These are very important because they realize that one-size-fits-all is not good for every child.

Parental choice in schools makes a huge difference in the education of our children. As reported by the National Center for Education Statistics, children in school choice programs in Washington, D.C., called the Opportunity Scholarship, had remarkable results. Students came from homes making less than $22,000 per year. The students who had scholarships saw a graduation rate of 82 percent while graduation rates for the regular Washington, D.C., school program was only 56 percent. School choice can reduce the cost of education, which you saw some of these students only get $5,000, while increasing learning. Washington, D.C., spent over $28,000 per pupil, for the cost of scholarships for children in the choice program were less than one-fourth.

I think it is so important to provide Americans with the opportunity to make the best choice for their children as to what type of an education would benefit them. This is not free money. This is money to educate children, and many of those are with special needs. It is very important to give them an opportunity.

Michael Sweazy, Private Citizen, Chico, California:
Two years ago my wife and I were at an intersection of frustration. My oldest daughter is challenged with dyslexia and while she worked very hard to overcome it, she lost her confidence in her capacity to read. Two years ago, we got access to a program that is funded to a private school and my daughter is going to graduate this year as an A/B student. Had we not had access to that, she would have stayed in the same public school environment. I will say they did work very hard to help her. She just had trouble. The private school environment gave her a smaller classroom size and administratively, by connecting with the principals and things like that, made a gigantic difference in their helping her accelerate and be able to graduate on time.

Chair Neal:
We will now hear from those in Las Vegas who are in opposition to A.B. 458.

Jaden Hairr, Private Citizen, Henderson, Nevada:
I am 13 years old and I currently attend the American Heritage Academy. This year I had the privilege to attend this school because of the Opportunity Scholarship. I have attended numerous public and charter schools in Clark County. I have struggled with each and every one. I was born with a learning disability and was a foster child until the age of 3. I struggled with reading, writing, and had an IEP [individualized education program]. I spent years in special education classrooms, being pulled out of class, and I could still never keep up with my grade level. Every single school, up until about sixth grade, my teachers separated the struggling kids from the smart kids. I could not focus with the amount of kids in my classroom and I felt embarrassed in being pulled out of the classroom or sitting at the struggling table. Even with special education I never felt that I belonged and even came close to failing every school. My self-confidence was so low.

My mom pulled me out of school to home school me so I could catch up with reading and spelling. I did not like being home schooled. For the first time in my life I made A/B honor roll two times. This year is the only year I have not been in a special education class, lower math, and I am able to take a 20-word spelling test like my classmates. I can now go to school not embarrassed of any special education class or table. Every teacher takes the time to listen to my questions and answer them to my understanding. In this private school I have had the privilege to stay after school for questions and problems that I do not understand. Please vote no on this bill. I would still be struggling in school if I did not get this Opportunity Scholarship. It has changed my academic life forever. Please do not cut the 10 percent increase because you will be cutting kids like me. Thank you so much for listening (Exhibit J).

Aimee Hairr, Private Citizen, Henderson, Nevada:
I am speaking in opposition to A.B. 458. I am a retired dental hygienist of 16 years, a local small business owner, a full-time mom, and a foster parent. I am currently parenting ten children. Two of my sons here today had the privilege of receiving the Opportunity Scholarship this past year. Years ago my son's special education teacher and facilitator told me in an IEP meeting that my expectations might be too high for my son, that he may only be a C/D student and to try to accept that. They were right; my expectations were too high in the public school setting. But given the opportunity to place him in a learning environment that best fit his needs, he quickly proved us all wrong. We wanted the free public education and charter schools to work for our kids. The partial 30 percent scholarship we get allows us to send our kids to a private school that best fits their individual needs. We also contribute our own money to pay for their private school and contribute tax dollars to our public schools. It is no coincidence that four of my children, from all different backgrounds, once placed in the proper learning environment, did a complete 180 with their education. This is no longer a hopeful belief but something I see working on a daily basis.

I have two children who joined our family with needs far greater than our public schools can accommodate. Without the 10 percent growth, there is no advancement and there are no new kids. By voting yes, you are cutting back on the community's most vulnerable children. The trauma these children have suffered is incomprehensible to many of us and which can affect

all aspects of their academic future. Their resilience with a new learning environment can be astounding. They need a chance and you can give that to them. Please vote no on A.B. 458 (Exhibit K).

Landon Hairr, Private Citizen, Henderson, Nevada:
I am here to testify for keeping the Opportunity Scholarships for kids like me. In public school I was learning the same thing over and over. By the time I was in fifth grade getting ready to go into middle school, I could barely do division, and I could not read well, write well, or know any mistakes between my grammar. The requirement for fifth grade requires knowing how to multiply and divide by fractions, and how to analyze characters, plots, and settings, as well as to recognize the author's purpose for writing and his or her organizational strategies. My older brother and best friend were bullied for months, and my parents and brother's best friend's parents took years to get the matter resolved. The bullying only stopped when both children's parents took them out and put them in private schools. Since then and up until last week, my cousin was bullied as well. He came and told me kids were calling him transgender and other nonappropriate words. He was even touched in unkind ways. When I was at a charter school two years ago, my grades started to suffer because I, too, was bullied due to a medical issue and IEP. I have my voice. For the last two years I have been in private school and have learned much more in the last two years than I would have in public school. There are many kids like me who want a chance, so I am asking you to please leave it alone and open for new kids like me. Our high school graduation rate is second-lowest in the country and less than 20 percent of Nevada adults have a bachelor's degree. Please vote no for A.B. 458 and let the kids who are bullied or struggling with learning find a place where they can learn and feel safe, and we will be the change you need to put Nevada higher on the ranking (Exhibit L).

Steve Brown, Chairman, Clark County Libertarian Party:
You spoke about fiscal responsibility. You do not have enough money for the roofs and all this other stuff. It is interesting considering there is a bottomless pit of money when it comes to the administrators. I am going to read to you just some of the salaries and benefits for people up at the top: $363,000, $300,000; correct me if I am wrong but that is over $600,000. Is that not how much the 10 percent increase would have been—$600,000. Two guys made enough money to fund the entire increase. Let us keep going: $292,000, $248,000; now you are well over $1 million and you only have four names. I could go down five more names and that puts us well over $2 million. There are 50 names to this page. I cannot even get close to the bottom and you could have funded the whole program with this.

The question is, if the school district is so broke, why are you paying these gargantuan salaries to the administrators? They do not teach classes. They do not drive buses. They do not provide security. They are paper pushers. A lot of these people, I do not even know what they are doing. Are they really worth that much more money than these kids who have come up and testified? Do you really have to pay someone $248,000 per year to be an assistant superintendent? That does not tell the whole story. Then we are going to go into their golden parachute pensions. There is a member of the Nevada State Senate. She is

making almost $114,000 in her pension last year. They make $200,000. They retire with a six-figure pension, and there are lots of them. We are not talking about a few now, and that still does not tell the whole story. Now let us talk about the consultants. You have a member, she retired as an administrator, making $120,000 per year on her pension, then signed a contract for another $130,000 per year to be a consultant. That is $250,000 for one person. That still does not tell the whole story. They can retire on a Friday and start on a Monday, working for the school district again. They can retire as an administrator with $100,000-per-year pension, then go back as a sub-administrator for another $120,000.

Why, when you talk about fiscal responsibility, you talk about this program which is really a small amount of money compared to what these folks are making. You do not have enough money to fix the roofs, you do not have enough money for the bus drivers, but there is a bottomless pit of money when it comes to your friends, the administrators.

Mr. Frierson, you should look everybody right in the face and tell them why they should be paying all these $200,000-per-year salaries to the administrators but we do not have enough money for a $6,000 scholarship for a poor kid. You need to come back on screen and explain that, because you have not done that at all.

Jesus Marquez, Senior Political Consultant, Marquez Group Strategies:
I am a local community organizer and father of a 10- and 5-year-old. I am here to oppose A.B. 458 because it will cut the ability for hundreds of families to receive the benefit of the Opportunity Scholarship Program. Most of the students who receive the Opportunity Scholarships are kids from low-income families. These kids have been left behind under the public school system. It simply does not work for them. Now this does not mean that the public system does not work at all; in fact, it does work for many but not every student is the same.

My role as a community organizer has helped hundreds of low-income families from all backgrounds apply for and receive the Opportunity Scholarship in the past three years. Their lives have changed dramatically for the good. By helping hundreds of families in Latino and African-American communities, I have found that the children who receive the Opportunity Scholarship have something in common. They are all different, and have different qualities and needs, and they are all looking for an education that fits those needs. I have personally followed up with these families and in the last three years have found that all the options that this program offers have literally changed their lives. Children who were not doing well in school, who were being bullied and were not happy at all, are now joyful and excelling in their new schools.

With all due respect, the stability and control that you are talking about the system does not mean anything for the hundreds of families that will lose the scholarship. Like someone in the community said, this program is working. If it is working, then why not leave it in place? Why not invest more in it?

Someone mentioned the Koch brothers, but the Koch brothers do not represent the hundreds of Latino and African-American students; these low-income families who are using this benefit. If you pass this bill, it will take away the joy and hope of hundreds of students in Nevada. It will take away their dreams. Please vote no on A.B. 458.

Heather Kidd, Private Citizen, North Las Vegas, Nevada:
I want to talk to you about America in 1776. Here is a nation of literate people who received private classical educations. The founding fathers have used this diverse education background to create one of the most perfect and enduring documents, the *United States Constitution*. Its strength is in the diversity of thought and experience that created it. Had the founding fathers all been required to attend homogenized and highly regulated public schools, that living document would have suffered a lack of depth and richness.

It would be foolish to put all of our educational resources into one ideological basket. That is not how America began and it is not our best future. There are 2,300 students using the Opportunity Scholarship. These kids are free to choose their educators and their scholastic culture. There are 1,300 additional students wait-listed because funding for the scholarship has been regulated to cap out. Assembly Bill 458 wants to cut the modest annual increase built into the Opportunity Scholarship that allows it to include students on that wait list. Our family of seven is grateful for the private school we could not afford without this funding.

As a military family, we live lives of personal sacrifice, fighting to maintain this nation's sacred liberty. We are not from Nevada and we would not choose to live here. Many aspects of our lives are already directed by the government. Our ability to choose educational opportunities for our children should not be further limited. Incidentally, we have been stationed at Nellis Air Force Base before, and we had the public school experience. The charter school experience here was not that great. The children have sacrificed enough. We vote a firm no on A.B. 458.

An additional thought: In listening to some of the people who are for it, it is ironic that the public school administrators want to take this money for their public schools. They somehow think that if these private donations were not being given to private schools that they would have access to that money. It is a mystery where all the public school money goes. Donations from private business to a public school do not have anything to do with public schools. They need to keep their hands out of our pockets. I already pay my tax dollars and that is where the public school funding comes from. This is a private donation. They need to stay out of it. It is not my fault if they cannot make their budget work.

Buddy Hampton, Private Citizen, North Las Vegas, Nevada:
My son, who is 7 years old, is a recipient of the Opportunity Scholarship. I am a single, middle-class father. I receive $2,000 of the $8,100 tuition—that is 25 percent. I am a homeowner. I am a taxpayer. I am not only paying my taxes but I am also paying an additional $6,100 towards his education that the school district is not footing the bill for.

That is not what I want to talk about today. I want to talk about the other 2,000-plus students who are receiving these scholarships. We have children here who have multiple different learning disabilities—ADHD [attention deficit hyperactivity disorder], ADD [attention deficit disorder], and autism. As you can tell, I have ADHD, so I know what it is like to be educated in the state of Nevada with ADHD. It failed me. I worked really hard. I had tutors. I stayed after school. I never fit in. They were wrong. Not because of what the school district did for me, but because of what my parents and what the private tutors did for me. I graduated with honors. I went on to the police academy and graduated at the top of my class, not because of what the school district did but because of what other people did.

The most important thing for children with challenges is consistency. The school district does not give you consistency. They have a special education teacher who comes in, spends about four weeks in a class, then that teacher moves somewhere else. All those students who have made so much progress in that month start all over again from square one. The Opportunity Scholarship gives kids who have those challenges resources—resources they cannot get in the public school system. The public school system works awesome for educating the people but fails to individually educate each child. No one knows better than the parent how to educate their child. If I believe, or the other families here believe, that the Opportunity Scholarship and private education is the best for our students, why are other people telling us no, you do not get that? I receive $2,000, so like I said before, I pay $6,100 out of my pocket and I am middle-class. I do not make a lot of money, but I work hard. I volunteer at my child's school every single day. People say that a private school is failing them; not at my kid's school. I have seen kids come in here and they are not at grade point average coming in from a public school. Within months they are growing leaps and bounds, not only educationally but as a member of the community. These kids grow together. They make lasting friendships that they are not making in the public school system. If you decide to cap this scholarship now, at what it is now, you are going to fail so many other students, not just my son but countless other students. Please consider voting against A.B. 458.

Suzette Stabile-Lacorazza, Private Citizen, Las Vegas, Nevada:
I am here to speak in opposition to A.B. 458. The Opportunity Scholarship has helped my daughter succeed. I am the proud parent of one of the 2,300 students in the Opportunity Scholarship Program. Being a single mom with two young girls, elementary and middle school were a challenge for me to navigate through, but being the parent of a child on the spectrum brings with it a unique set of circumstances and challenges that really cannot be understood unless you are the parent of a child with special needs.

Thankfully, I was fortunate enough to have had wonderful support from the CCSD for her early childhood education. At the age of 2, my daughter Isabella was placed in an early intervention program due to her delay in social and communication skills. She has been on an IEP since the age of 3. With the proper assistance and in the right environment, she excelled, not only maintaining straight A's but also becoming more social and being able to express herself throughout most of her elementary and middle school years. When it came time for high school, I was scared Isabella would get lost in the shuffle of an overpopulated public high school. Because of this program, my daughter Isabella was and still is fortunate

enough to attend a private high school. I find comfort in knowing that Isabella is being given the opportunity to thrive in a small classroom setting with all the benefits that come along with that, and also being part of a spiritual community, helping guide her way.

This has been a life-changing program, not only for my daughter and our whole family but many other families. It saddens me that A.B. 458 would remove the 10 percent increase that is built into this program. If it were not for this program, I would struggle to continue her education at a school where she is excelling. There are 2,300 other families in this program who all have their own stories and reasons for deciding the fate of the children involved. My being here today gives you just one face of the numbers being crunched in deciding the fate of the Opportunity Scholarship. Understand that every child in this program is more than just a number. It is a person with a family who has counted on the support of this scholarship to make real-life decisions that are in the best interest of their children. I implore this coalition to consider my daughter's story and keep the previously agreed-upon 10 percent increase intact so that others like Isabella can thrive in places more suited for them.

Alicia Manzano, Private Citizen, Las Vegas, Nevada:
I am the mother of four children. Three of them are of school age. They receive the scholarship and thanks to it, they now attend a good school with a safe environment and good academic level. Their previous school had a low academic level in addition to a high level of violence, and the students are exposed to alcohol and drugs daily. Today I am much calmer knowing that my children attend a safe school with an academic environment that challenges them to give their best each and every day.

I am here to ask you to not remove the 10 percent increase that this scholarship includes. If so, my children, including the youngest, will not be able to access this scholarship and will have to attend a school with low academic performance and unsafe walls (Exhibit M).

Ed Uehling, Private Citizen, Las Vegas, Nevada:
I think the main issue here is funding. The people in favor of this bill constantly state that the money is being taken out of the school district but, in fact, money is being put into the school district. The average cost of a student who is in the CCSD is $9,000 per year. The maximum amount of these scholarships, as I understand, is $8,100. For every student who gets the scholarship and goes to another school, that results in a $1,000 bonus to the CCSD. The best thing the schools, the Legislature, and the establishment could hope for is as many students as possible take these scholarships because for every one there is at least $1,000, and maybe as much as $3,000 to $4,000 each goes into the school district to pay these huge salaries for consultants, hangers-on, or whatever. Hopefully more students could participate in this.

I am in sort of a unique position. I graduated from Boulder City High School in Clark County in 1958. This was before the CCSD was formed. Three of the 60 students in our class received National Merit Scholarships, which was 5 percent of our class. I think the average in the CCSD now is around 1 percent, or even less than 1 percent.

The real problem here is the CCSD. The more money that could go directly to students and not to this monstrosity that is destroying the lives of students and causing bad results, the better off we will be. This program puts money into the schools. The people who are in favor of this bill, please quit lying. It is not true that it takes money out of the schools. That is a lie.

Shari Ghiorzi, Private Citizen, Las Vegas, Nevada:
I am here to oppose A.B. 458. I have worked for a scholarship grant organization for the past three years and am currently working for another one that is new this year. I can quote you the statistics, but you have heard them all. What I want to go to, and address, is how much the parents put into these programs. As you heard from one of the gentlemen who spoke earlier, he only got $2,000 for his son's scholarship. There are many parents like that, and I have had parents who have asked for less than the scholarship, and not even applied for the full scholarship because they wanted other children to have the opportunity as well.

The parents are working two and three jobs sometimes to cover the balance of the tuitions in the private schools so their kids can have the better opportunity. I can give you story after story. They are not just minority families that are affected by this. There are parents, like the grandfather who has custody of his grandson. I have been in tears many days over letters that I have gotten from people that I just could not help because of the restrictions involved in giving out these scholarships.

It is so important for the ones who can fall through the cracks so easily. Grandparents are more and more these days becoming guardians of their grandchildren. They need this help. Usually they are not working. Usually they are on a limited income and want to have the best for the child who is already facing emotional instability. They need the one-on-one time that the private schools give them.

When I came here from New York years ago with my kids, I took my child out of school and homeschooled her because it was so bad. She was so far ahead of the class she was put in she got bored. Kids with behavioral problems today, who have had problems in public schools, have gone on to these private schools and have been exemplary students. This is so important to families today and to the kids we are raising to be our leaders tomorrow.

Amy Bauer, Private Citizen, Henderson, Nevada:
I am a native Nevadan and a product of the CCSD. I am here against A.B. 458. I ask you to keep the scholarship program and continue the increase of 10 percent—the scholarship for our kids here in Nevada. Supporting our children and their education is, and should be, the top priority of our state and the Legislature. They are our future.

Our family currently has two children receiving this scholarship, and in the next five years will have two more kids able to go to school. That being said, we also have one graduating, so we have a large span. Without the growth, how are we to ensure our smaller children will be able to be in the program too? The 10 percent is necessary to families.

This is our first year participating in the scholarship program and it was not an easy process. You have to fill out lots of paperwork and there is a lot of waiting. We got our scholarship after school had already started. This is not an easy process.

I started homeschooling my two oldest when they were school age because they were two grades ahead of where their peers were at the same age. When I went to the public school, they did not care about their educational level or where it was. They told me they would only put my child in the grade their age assigns to them. We tried to put my daughter in school when she was in third grade—she should have been at fifth grade. It was a charter school. Even though I had the transcripts from her schooling, they put her back in third grade instead of putting her at the fifth grade where she was supposed to be.

Now, because of the scholarship program, they allowed my advanced children to learn at their level, with their peers, in a loving environment. We have a strong value system in our family and my kids wanted that to be a part of where they went to school. Because of the program, we are able to do that.

We are also stretched financially even with the scholarship program, but it is worth the benefits to my children to allow them to be in an environment where they are thriving and loved. Please vote against A.B. 458. I have a ton of friends who would love to have their kids at the school where we have our kids, but they are not able to get the scholarships because there is not enough funding. We need this 10 percent increase every single year so we can help more families.

Valeria Gurr, Nevada State Director, Nevada School Choice Coalition:
I am the Nevada State Director for the Nevada School Choice Coalition, a project of the American Federation for Children. I am here to testify against A.B. 458. Currently there are over 2,300 students in the Opportunity Scholarship Program, and if you decide to let the program remain flat, the $6.6 million will not cover all the students in the program or the students who are on the waiting list. Unless new funding is allocated, siblings as well as new students will not have access to the program either.

I am here to share why I believe in this program today. I am the daughter of a mother who did not graduate from high school. I know all the struggles she faced to raise me as a single mother, a mother who was never able to escape poverty because she did not have an education. She struggled; we struggled. My mother did everything she could to ensure I was provided with an education and put food on the table. However, I was the weak kid at school. I was bullied every day and unable to focus. All I remember is I was passed grade by grade in a large class setting.

My mother tried to put me into a private school but we could not afford that. There were no such things as Opportunity Scholarships at that time. I grew up thinking that all the horrible things others said were true. I grew up thinking I was not smart. I ask myself today why I went through this. Today I know. It was so I would understand when a parent knocks on my door to ask me for help; it was so I understand that a ZIP Code should not determine the

quality of education someone receives; it was so I understand that in 20 years things have not changed that much; it was so I can help all these families who are here today and the ones who do not have a voice—the ones who are behind me who cannot speak English—to share this story with you.

School choice should not be for the wealthy and well connected but for those who need it most. And that is exactly who the Opportunity Scholarships are serving. Many of the parents who are not here today are immigrants; parents who struggle; single parents, the ones searching for options. Many are just like my mother—they are just looking to give their children what they think is best, the right to an education that works for their children. Please do not take away the 10 percent so that we can serve them (Exhibit N).

Deborah Dahl, Principal, Las Vegas Junior Academy, Las Vegas, Nevada:
I honor you all for the hard work you do. I understand it is very challenging for you to be able to hear the hearts of those who have been speaking on behalf of our young people. They are our future and I know you all take that to heart in your considerations.

The reason I am here today is because I need to say the scholarship itself is double what I charge at our private school, so we are half of what the Opportunity Scholarship allows parents to have. We are fully accredited nationally. I heard someone say that the schools do not have licensed teachers. In speaking for myself and other schools, that is not true. We also have norm-referenced testing done, and we are fully qualified to do the jobs we do. You have heard people say their children are thriving in these environments. I do not think those would be environments for people who are uneducated and who are unlicensed, regardless of the type of licensing they have.

I am speaking as a principal. I have seen children come into my school who could not thrive in the public setting. I know for a fact that there are increases in the academic standards and Clark County schools are improving in reading and math areas in certain grades. I commend them for that.

Overall we are having more gains in our small private environments than the huge conglomerate that the CCSD is. I commend them for the efforts they are making; however, we are not taking away from anything they are doing. I think we are assisting them financially, as you have heard. We are charging a lot less than what you pay for the public education, and we are making strides in all gains. We are actually helping our community. Young people who are coming from our schools are able to go into the community and become positive, contributing citizens.

Please do not say it is free money. Most of the parents are paying a lot more into the process in order to keep their children in those schools, and my particular school charges less than half of the $8,000 that is paid in the public system. Please vote your conscience for all the hearts you have heard today in this room.

Sandra Canales, Private Citizen, North Las Vegas, Nevada:
I am the mother of three children. Two of them are attending private school. I want to give you a small story about it. I cannot speak English very well, and I did not grow up here. I came from Mexico and that is why I am so worried. Now my children have the big opportunity to attend private school. When I was a child I attended public school. The environment in that school was so hard for me. I grew up with scares and violence. All of us know the situation in Mexico. Now I am scared for my kids to lose the opportunity to be better. They grew up here, I got married here, and I am living here, but I have bad memories. That is why my husband and me, we put them into a private school. We make a lot of sacrifices to put them into this school but we thought that this was a good decision.

Since one year my husband broke in his company and we did not have enough money to continue with their education into this school, somebody told me about the Opportunity Scholarship and I attended with them and they gave me that opportunity. Now I am thinking about the other kids, and probably they have the same problems that I have in my family. They gave me the opportunity that I needed at that time to continue with the most important thing in my life, my kids' education. They gave me the life I needed to continue with them into this school. It is hard to think that I did not have enough money to continue with this, but at the same time they gave me the life I needed to continue. They give me money that I did not have. Thinking about other kids, that they could lose that opportunity, please vote against this law because we really need it.

As a parent, we work so hard, at home and outside. You do not know in our heart. Every day we are thinking, in the public school, because around my house, every month or every year, I sell candles on the corner and outside the public schools, that somebody kills another kid, and I do not want that for my kids. I am scared.

When I got married here in the United States, I be thinking about the future for my kids. I said, do not worry about it. I am in the United States. I can find the best future for my kids because this is a good country. I think and I really believe because they give me a lot of opportunity, even I cannot speak English very well, but I am trying because I am attending in the school, because I want to be better for my kids and for this country I am living in now. I come from a poor country. You have the rich country, that you can believe that you cannot imagine what a big country you are living in. Give them that opportunity.

Karen Zeh, Tuition and Accounts Manager, Calvary Chapel Christian School, Las Vegas, Nevada:
We are a preschool through twelfth grade school, and our population is about 512 students. We are accredited through the ACSI, which is the Association of Christian Schools International. Our core teachers, at a minimum, are required to have a bachelor's degree. I was educated in public schools in the state of Nevada. I have three adult daughters who are thriving young professionals who were also educated through Nevada public schools. I believe, as well as a lot of people here, that it is the parent's choice to seek the best situation for them, for where their students should be attending school.

At our school we have 180 students who are receiving the Opportunity Scholarship, which is almost 40 percent of our student population. Our student population is very diverse. Of those 180 scholarship students almost 60 percent are minority—almost 30 percent are African American, 10 percent are mixed race, 16 percent are Hispanic, and 3 percent are Native American/Pacific Islanders. Our students are thriving academically. They take part in geography, spelling bees, speech meets, math Olympics, and art festivals. One of our scholarship students did so well he was able to go to Washington, D.C., to compete in a national spelling bee when otherwise that might not have happened for him. Our students also thrive athletically. They take part in most major sports with our girls' varsity basketball team winning the regional championships.

Because of the Opportunity Scholarship Program, families can choose the best school for their family and situation. Our scholarship students and families are embedded in our school with very close friendships and relationships that have been formed over the years, and losing them would be a very sad situation because they are part of our family now.

Many young lives have been positively affected by the Opportunity Scholarship Program and altering their educational paths now could have a very adverse and negative effect on their lives. Our hopes and prayers are that the program is not reduced but rather increased to allow for more families to be able to choose the school that best suits their family's needs and for the students who are already in the program to remain there. Please vote no on A.B. 458 (Exhibit O).

Camilo Perez, President, Consejo Pastoral De Las Vegas, Henderson, Nevada:
I am a pastor for the Hispanic community at Strong Tower Christian Center in Henderson, Nevada. I am also the President of the Hispanic Pastoral Association, Consejo Pastoral De Las Vegas. I am here because I have experienced working with the Hispanic community. Before I became a pastor, I had the opportunity to become a teacher in my born country, Colombia. When I started working in the community here in Nevada, I was very worried about the low level of education in this state.

I am not absolutely against the state because I know the state is working hard for the community. I know working with people is not an easy job for any corporation, state, or government, but I think that for the low level of education here, it is time to work together. If this bill passes, it is the end for a lot of charter schools.

Also, we have a plan to open a charter school in our church this year, and maybe we will be opening others, but if this bill passes, it is not the end for me or my church, it is the end for a lot of charter schools. Right now this would really help for the education level here. I think right now we need to work together for good education and good options for our community.

Christian Martinez, Private Citizen, Las Vegas, Nevada:
I am here as a concerned member of the community and the state. I grew up pretty privileged, but I also grew up with a lot of friends in this diverse community who were not as privileged as I was to have the different opportunities that I have been afforded. I am just

asking you to remember what is at stake here, and what is at stake here is a lot. I always told myself that one day if I ever ran for office, my slogan would be, For our tomorrow we take action today, so I hope you guys find that when you go to vote for this. I hope you guys really let this serenade with you and all these people who are here in support of the Opportunity Scholarship Program.

Rina Oseguera, Private Citizen, Henderson, Nevada:
I am a mother of four children. Three of them are in elementary school—fourth, third, and second grades. I truly believe that as parents we should all have the ability to choose for the education of our children. Our state is 50th in education. This is not to attack the state, but contribute together for the best interests of our children. One of my children has been a very bright student but in his classroom he is with 40 other students, and one teacher. He has been struggling to keep his good grades. As a mother I worried when he did not achieve the grades that as parents we want for them. Also, I truly believe that the opportunity for this scholarship would not only help children like my son, but a lot of children who are out there in very packed classrooms. I think all of us together, we can work to better our education. It is very important as a nation to have prepared children, ready children, encouraged to work hard for their grades. In my case, I do not want my children to be used to getting C's on their report card. It is probably not their fault but maybe they are not having personalized close education with his teacher because there are so many other students there. Please say no to A.B. 458. I am Hispanic and I believe that education is the best way for all of us to get a better country. All of us are here for the best education [spoken in Spanish].

Wendy Florez, Private Citizen:
I have a bachelor's degree in international business from the University of Nevada, Las Vegas. I grew up on Owens Avenue and Pecos Road in North Las Vegas. It was very difficult to attend Rancho High School. Out of 200 students, only 50 percent graduated high school and only 20 students graduated from college. My father was a construction worker. He built some of the casinos in town. He has paid taxes for so many years. It was very difficult and I lived in a very rough neighborhood. Please consider to keep the Opportunity Scholarship Program for hundreds of students. This is a lifetime opportunity for them. It is more than education. They will have an opportunity to have a better life in the future. This program is great for minorities and for low-income families. We are in a democratic country. We are in an equal opportunity country. These programs should be good for the rich, the poor, the special needs kids—everybody should have the opportunity to expand and choose their education.

There are many kids who live in rough and violent neighborhoods, like I did in the past, and it would greatly benefit the kids to go in and have a career in life. We need to stop violence and vandalism, and this is one of the opportunities that will help to get these kids to have a better chance in life.

David Holdridge, Private Citizen:
I come before you as a parent and the fiancé of a beautiful woman who has disabled kids. Our kids have benefited from this program in the fact that they have been provided the

education and the attention that public schools neglect to provide to them. I have a daughter who would fail in class. We tried everything. We switched schools. We talked to teachers. We took them to afterschool programs. They would not progress because they would get bullied in school, they would get pushed around. We have a kid with cerebral palsy and he used to hate going to school. Today he wakes up every morning with excitement to be in school, thanks to the ability of having programs like this, to be able to further his education to a smaller school where he could have more attention from a teacher, individual attention, with a little bit more patience than a public school does.

Other things that were brought to concern, earlier on it was said that it is just a scheme to get free money. It is not a scheme to get free money because it is being given back to the kids, and there is no solid proof to that. I am a business owner. If you have solid proof for something, bring it over, not just say the words. We have brought solid proof that this program does work and does benefit the community, not just our children but the community, a future we are trying to build. A lot of these schools are faith-based schools that also put that family-oriented growth into our kids that public schools have failed to do.

My kid cannot say the Pledge of Allegiance under God—as this country was built on—anymore because schools do not allow that. So when I take my kid to a faith school, he is also led to believe that we are still a country under God, which a lot of public schools nowadays have taken out of the Pledge of Allegiance.

Randolph D. Doeing, Private Citizen, Las Vegas, Nevada:
I am a 44-year resident of Las Vegas. I raised two sons who attended the CCSD, Stanford Elementary School, Mike O'Callaghan Middle School, and Eldorado High School. I am a Cub Scout pack charter member for Pack 124, First Good Shepherd Lutheran School in downtown Las Vegas. I am a council committee member, working with First Good Shepherd to ensure that we put together a program that provides a quality education, with qualified people, in a great facility that meets all the inspection requirements from the school district, from OSHA [Occupational Safety and Health Administration] and that meets the standards of our overall group of folks in the congregation who support our school.

One of the things we have done over time is we have come to know that enrollment is the key to the success of any school program. We put a number out there, that is the number we need to reach as far as dollars for a quality program, and then we study the demographics of the downtown area. First Good Shepherd is located in downtown Las Vegas, 301 South Maryland Parkway and Bridger Avenue. It does not get much more downtown than that. We have the cost of a quality education and a facility, which we have a very new facility, and then we have an economic situation with folks who cannot afford that school.

We came forward with multiple programs, multiple donors, and volunteers to bridge that gap. What is happening now is we have an adopt-a-student program where congregant members and other family members and grandparents provide up to 25 percent of the tuition for students. We also have the family choice scholarships and have two scholarship generators who work with the families in need to get those things done.

We have a very large group of people who have made tough decisions on how to maintain quality, but to make it affordable—and to ensure we do not leave people behind. I really believe that family choice should really be called family hope.

There are a lot of children who cannot afford to go to a private school and gain those opportunities that other wealthy families have. Something you may not know about, First Good Shepherd was the charter in the group of people who had the foresight to start a private school in the west valley in Summerlin. You may have heard of it, Faith Lutheran Academy, Faith Lutheran Middle School, and Faith Lutheran High School. Dr. Steven Buuck comes to our graduation ceremonies and he continuously praises our students as performing at a grade to grade and a half higher than those assigned numbers. We are not looking at the family choice scholarship program as an answer, but a key component to how we can maintain education and provide it to those people in the downtown area. It does not get much poorer. We have so many people pulling for these folks and you are a key portion of that. I stand here before you today hoping and praying that you will say no to A.B. 458.

Erin Phillips, President, Power2Parent, Las Vegas, Nevada:
I am grateful for the opportunity to speak today after all of these amazing parents who have been so clear, emotionally expressing themselves, and what this scholarship means to their families. Thank you for hearing them out today.

I think we all know that it is not this Legislature's intention to further fund Opportunity Scholarships, even though I would love that to be the case. But instead we are seeing not just not funding this program, but essentially introducing a bill that would dissolve this program. We know the growth comes from private business taxes and if we stunt that growth, we will essentially be stunting the program altogether.

I spoke to a family recently who had made the decision for their child to seek an Opportunity Scholarship because their public school was not working for them. When they made that decision, they applied for the scholarship. As another parent mentioned, it is quite an extensive process. They waited. They did not find out if they had received a scholarship before the start of the school year. They made the decision to each seek a second job—each parent had a second job—so they could help make it through that year, this particular year, for their child to be able to attend the school they felt was best suited for their child. They ended up receiving a partial scholarship about half-way through the year and some financial aid from the school, but they still had to make up for the rest of that tuition, which was more than half of the tuition for that school. This was a huge sacrifice for their family. They also have younger children whom they are hoping to be able to put in a better school situation as well, and if this program is not allowed to grow and effectively is dissolved, none of their kids will be able to utilize the program.

What I am asking you today is to consider all of the testimony you have heard. These are low-income families who are seeking just exactly what this is called, an opportunity to a better education. When talking to some of you, I have heard people say we are not going to do away with the Opportunity Scholarship Program, we are just not going to divert any more

money to it until public school is fully funded. I think we all know that public school is not going to be fully funded any time in the near future. This is an innovative, creative program. School choice is a parental right. I am asking you to continue to let this program grow organically. Do not cut it. Listen to these families. Help them make the choices that are best for their children. Do not pass this bill. Do not vote against opportunity for these families.

Rebecca Larrieu, School Director, Newton Learning Center, Reno, Nevada:
I can only speak for my school and the population I serve. I run a private school specifically for kids with autism. What we do is work with our students to give them the skills and strategies they need that are not being given to them and presented to them in the public school system. While the public school does work with the majority of our kids, we work with that small percent whom it does not work for. What we do is give them those skills and strategies, then send the child back to that comprehensive school. We work with the public school system. We actually have a contract with the local school district and we collaborate with them to work with that student and get them back in.

While some of our students are funded by the school district, some of our students are not, and this is where the Opportunity Scholarship comes in—to help those families get their child the services they need—so we can transition them back to a comprehensive campus. I am against A.B. 458 and I hope you vote no.

Chair Neal:
Is there anyone who would like to testify as neutral on A.B. 458 in Las Vegas or Carson City? [There was no one.] Assemblyman Frierson had to leave so there will be no closing remarks. [(Exhibit P) was submitted but not discussed, and is included as an exhibit of the meeting.] I will close the hearing on A.B. 458 and open the hearing on Assembly Bill 445.

[Assemblywoman Spiegel assumed the Chair.]

Assembly Bill 445: Revises provisions governing sales and use taxes. (BDR 32-797)

Assemblywoman Dina Neal, Assembly District No. 7:
I will be presenting Assembly Bill 445. I want to give you a little bit of history, and it will apply to both bills, A.B. 445 and Assembly Bill 447, but we are hearing them separately. Last June the U.S. Supreme Court handed down a landmark decision in South Dakota versus Wayfair [*South Dakota v Wayfair, Inc.,* 138 S.Ct. 2080 (2018)], eliminating the requirement that businesses must be physically present in a state before their sales can be taxed, and granting states the ability to collect taxes from out-of-state and Internet retailers. The effect of this case was to pivot states to focus on economic nexus.

The first economic nexus law was enacted in 2016 by the South Dakota Legislature in Senate Bill 106, and the *Wayfair* case made this law. I want to help the Committee understand what economic nexus is and sales tax nexus is. Economic nexus refers to when a business has a certain amount of economic activity, such as the amount of transactions or sales, that require

EXHIBITS

Exhibit A is the Agenda.

Exhibit B is the Attendance Roster.

Exhibit C is a letter to the Assembly Committee on Taxation, dated April 2, 2019, submitted by Alex Marks, Political Coordinator, Nevada State Education Association, in support of Assembly Bill 458.

Exhibit D is written testimony dated April 4, 2019, submitted by Amanda Morgan, Legal Director, Educate Nevada Now, *in support of* Assembly Bill 458.

Exhibit E is written testimony dated April 2, 2019, submitted by Daniel Honchariw, Senior Policy Analyst, Government Affairs, Nevada Policy Research Institute, in opposition to Assembly Bill 458.

Exhibit F is written testimony submitted by Lisa Friend, Private Citizen, Dayton, Nevada, in opposition to Assembly Bill 458.

Exhibit G is a document titled "AB 458 - Opportunity Tax Credit Scholarship - Eliminates the Annual 10% Increase," submitted by Denise H. Lasher, representing AAA Scholarship Foundation.

Exhibit H is a document titled "AAA Scholarship Foundation, Nevada Income Based Scholarship - Waitlisted Students, Demographics for Q2 SY2018_2019," submitted by Denise H. Lasher, representing AAA Scholarship Foundation.

Exhibit I is a document titled "AAA Scholarship Households by Districts, Addresses matched to Legislative District," submitted by Denise H. Lasher, representing AAA Scholarship Foundation.

Exhibit J is written testimony submitted by Jaden Hairr, Private Citizen, Henderson, Nevada, in opposition to Assembly Bill 458.

Exhibit K is written testimony submitted by Aimee Hairr, Private Citizen, Henderson, Nevada, in opposition to Assembly Bill 458.

Exhibit L is written testimony submitted by Landon Hairr, Private Citizen, Henderson, Nevada, in opposition to Assembly Bill 458.

Exhibit M is written testimony submitted by Alicia Manzano, Private Citizen, Las Vegas, Nevada, in opposition to Assembly Bill 458.

Exhibit N is written testimony submitted by Valeria Gurr, Nevada State Director, Nevada School Choice Coalition, in opposition to Assembly Bill 458.

Exhibit O is written testimony submitted by Karen Zeh, Tuition and Accounts Manager, Calvary Chapel Christian School, Las Vegas, Nevada, in opposition to Assembly Bill 458.

Exhibit P is testimony submitted by Raymond A. LeBoeuf, Jr., Executive Principal, Mountain View Christian Schools, Las Vegas, Nevada, in opposition to Assembly Bill 458.

Exhibit Q is a document titled "An Act," consisting of Oklahoma bill language, submitted by Assemblywoman Dina Neal, Assembly District No. 7.

Exhibit R is Iowa Code 2019, Chapter 423, Streamlined Sales and Use Tax Act, dated December 7, 2018, submitted by Assemblywoman Dina Neal, Assembly District No. 7.

Exhibit S is a copyrighted article published by Sales Tax Institute titled "Iowa Expands Tax Base to Include Specified Digital Products," dated June 25, 2018, submitted by Assemblywoman Dina Neal, Assembly District No. 7.

Exhibit T is section 203 and section 24 of Senate File 2417 from the 2018 Iowa Legislature, submitted by Assemblywoman Dina Neal, Assembly District No. 7.

Exhibit U is proposed amendments to Assembly Bill 445, dated April 3, 2019, submitted by Assemblywoman Dina Neal, Assembly District No. 7.

Exhibit V is a document regarding the Wayfair Implementation and Marketplace Facilitator Work Group, Final White Paper, dated November 20, 2018, submitted by Assemblywoman Dina Neal, Assembly District No. 7.

Exhibit W is pages 57 through 60 and page 108 of the Streamlined Sales and Use Tax Agreement, dated December 14, 2018, submitted by Assemblywoman Dina Neal, Assembly District No. 7.

Exhibit X is a copyrighted article published by Quaderno titled, "Sales Tax for Digital Products in the U.S.," dated December 5, 2018, submitted by Assemblywoman Dina Neal, Assembly District No. 7.

Exhibit B

Exhibit B

NEVADA POLICY
Research Institute

Testimony in Opposition re: Assembly Bill 458 – Assembly Taxation Committee
Tuesday, April 2, 2019
4pm

My name is Daniel Honchariw. I represent the Nevada Policy Research Institute as its senior policy analyst and registered lobbyist.

NPRI opposes AB458 in the strongest terms. During a time when the State of Nevada should be prioritizing the proliferation of alternative educational options for our state's struggling students, this bill proposes to do the precise opposite.

There are nearly half a million Nevada students enrolled in public K-12 statewide, yet this proposal suggests that providing choice for a few thousand struggling, low-income students — a mere rounding error in terms of total education funding — is not worth doing.

What kind of message are we sending to our youth by denying these students an escape from their local schools which aren't working for them? There are other options out there for these students which would work better for them, including Opportunity Scholarships, which, by the way, generate a fiscal savings to the state in the long run. Such programs should be embraced, not shunned.

I urge this committee to retain the 10% biennial increase on Modified Business Tax credits which can be used to finance these scholarships by opposing AB458. Let us please give these students a real chance for life success.

Respectfully submitted,

Daniel Honchariw, MPA
Senior Policy Analyst
Nevada Policy Research Institute
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Assembly Committee. Taxation
Exhibit: E Page 1 of 1 Date: 04/04/2019
Submitted by: Daniel Honchariw

Exhibit C

Exhibit C

BDR 34-747
AB 165

EXECUTIVE AGENCY
FISCAL NOTE

AGENCY'S ESTIMATES

Date Prepared: February 19, 2015

Agency Submitting: Department of Taxation

Items of Revenue or Expense, or Both	Fiscal Year 2014-15	Fiscal Year 2015-16	Fiscal Year 2016-17	Effect on Future Biennia
Total	0	0	0	0

Explanation (Use Additional Sheets of Attachments, if required)

Please see attached Exhibit 1

Name Deonne Contine

Title Executive Director

DEPARTMENT OF ADMINISTRATION'S COMMENTS

Date Thursday, February 19, 2015

The agency's response appears reasonable.

Name Julia Teska

Title Director

FN 2265

DESCRIPTION OF FISCAL EFFECT

BDR/Bill/Amendment Number: BDR 34-747

Name of Agency: Department of Taxation

Division/Department:

Date: February 18, 2015

BDR 34-747 establishes the Nevada Educational Choice Scholarship Program. This bill allows for a credit against the modified business tax for taxpayers who donate money to a qualifying scholarship organization.

Through this program, scholarship organizations will apply to the Department of Taxation for a credit on behalf of a taxpayer who makes a donation. The Department will approve or deny the application and identify the amount of the credit that the taxpayer can use against future modified business taxes. Applications will be reviewed and approved in the order in which they are received. The cumulative amount of credits will not exceed the thresholds as set in the bill of $10 million for fiscal year 2016, $11 million for fiscal year 2017; and 110% percent of the amount authorized in each preceding fiscal year for each succeeding year. The Department would begin accepting applications and approving credits on January 1, 2016.

Revenues

The Department is not able to determine the impacts on revenue. We do not have information on how many taxpayers will apply through this program and the amounts in which they will be approved. However, the bill outlines the maximum amount of credits allowed per fiscal year. Alternatively, the Department cannot determine the increase in tax revenue this bill may cause.

Expenses

In order to administer this bill the Department will need to make some programming changes to the Unified Tax System. These costs can be absorbed in our current budget. Additionally, the Department is unaware of the volume of applicants that may apply. However, we believe that we can manage this program with our current staffing levels.

Exhibit D

Exhibit D

2010 WL 5146862 (U.S.) (Appellate Brief)
Supreme Court of the United States.

ARIZONA CHRISTIAN SCHOOL TUITION ORGANIZATION, Petitioner,
v.
Kathleen M. WINN, et al., Respondents.
Gale GARRIOTT, in his official capacity as Director of the Arizona Department of Revenue, Petitioner,
v.
Kathleen M. WINN, et al., Respondents.

Nos. 09-897, 09-991.
October 15, 2010.

On Writs Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

Reply Brief for Respondents Supporting Petitioners

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Cases

***1 REPLY BRIEF FOR RESPONDENTS SUPPORTING PETITIONERS**

The constitutional question in this case is whether Arizona's Scholarship Program (the "Scholarship Program"), A.R.S. § 43-1089, is a program of true private choice. When private choices direct the flow of money in an educational aid program, " 'no imprimatur of *state* approval' can be deemed to have been conferred on any particular religion, or on religion generally." *Zelman v. Simmons-Harris*, 536 U.S. 639, 650 (2002) (quoting *Mueller v. Allen*, 463 U.S. 388, 399 (1983) (emphasis added)). When educational aid reaches schools only as a result of true private choice - as it does in the Scholarship Program - then the *government* does not skew incentives toward religious schools and "the program [will therefore] survive scrutiny under the Establishment Clause." *Id.*

The Scholarship Program is plainly one in which educational aid reaches schools only through the "genuine and independent choices of private individuals." *Id.* at 649. Any individual can create a School Tuition Organization. Any individual can contribute to any School Tuition Organization and claim the tax credit. And any individual can apply for any scholarship offered by any School Tuition Organization. The state has no involvement beyond "making tax credits available. After that, the government takes its hands off the wheel." *Winn v. Ariz. Christian Sch. Tuition Org.*, 586 F.3d 649, 660 (9th Cir. 2009) (O'Scannlain, J., dissenting from order denying rehearing en banc).

***2** Because the Scholarship Program is one of true private choice, it simply does not implicate the Establishment Clause, which was designed to prevent government endorsement of religion, not limit educational options for parents. *See Zelman*, 536 U.S. at 647, 652. The Ninth Circuit's contrary decision was erroneous and should be reversed.

ARGUMENT

The First Amendment to the U.S. Constitution, as applied to the states through the Fourteenth Amendment, is concerned with whether the Scholarship Program constitutes impermissible *governmental* advancement or endorsement of religion. Programs that permit families to freely and independently use educational aid to attend religious institutions do not offend the Establishment Clause. Therefore, the constitutional question in this case is whether the Scholarship Program is an educational aid program of genuine private choice.

Private choice is the defining characteristic of Arizona's tax credit program. Private individuals choose to set up scholarship organizations. Private individuals freely decide which organizations they donate to. And parents make the choice where to enroll their children. Under these circumstances, "no reasonable observer would think a neutral program of private choice, where state aid reaches religious schools solely as a result of the numerous ***3** independent decisions of private individuals, carries with it the *imprimatur* of government endorsement." *Zelman*, 536 U.S. at 655.

The Court's "decisions have drawn a consistent distinction between government programs that provide aid directly to religious schools and programs of true private choice, in which government aid reaches religious schools only as a result of the genuine and independent choices of private individuals." *Zelman*, 536 U.S. at 649 (citations omitted). Starting with *Everson v. Bd. of Educ.*, 330 U.S. 1 (1947) (upholding use of public funds to transport children to religious schools that provide them with religious instruction), the Court has consistently rejected Establishment Clause challenges to indirect educational aid programs that are based on private, individual choice. The Court has not only rejected those challenges but has held that such programs do not even *implicate* the Establishment Clause. *Zelman*, 536 U.S. at 649. Indeed, the Court has "never found a program of true private choice to offend the Establishment Clause." *Id.* at 653.

I. ARIZONA'S SCHOLARSHIP PROGRAM IS A PROGRAM OF GENUINE PRIVATE CHOICE AND THEREFORE DOES NOT IMPLICATE THE ESTABLISHMENT CLAUSE.

The Court has "consistently held that government programs that neutrally provide benefits to a ***4** broad class of citizens defined without reference to religion are not readily subject to an Establishment Clause challenge just because sectarian institutions may receive an attenuated financial benefit."*Zobrest v. Catalina Foothills Sch. Dist.*, 509 U.S. 1, 8 (1993). The Scholarship Program allows any Arizona taxpayer to donate to any School Tuition Organization and claim a tax credit. It also allows any parent to apply to any School Tuition Organization for a scholarship to any private school funded by that organization.

Respondent Taxpayers concede that the Scholarship Program is facially neutral with regard to religion. Winn Br. 3. They also concede that it "is neutral with respect to the taxpayers who direct money to [School Tuition Organizations] … [meaning that] the program's aid that reaches a [School Tuition Organization] does so only as a result of the genuine and independent choice of an Arizona taxpayer." *Winn v. Ariz. Christian Sch. Tuition Org.*, 562 F.3d 1002, 1018 (9th Cir. 2009).

The Scholarship Program offers taxpayers a genuine choice of which School Tuition Organizations they donate to and parents a genuine choice of where to enroll their children. Yet Respondent Taxpayers continue to press their argument that the program violates the Establishment Clause. Their argument hinges on three erroneous premises. First, that School Tuition Organizations are state actors merely because the scholarships they award to families are "subsidized" by the state and because those organizations are subject to regulations designed to prevent ***5** fraud and abuse. Second, that the program skews parents' choices toward religious schools despite genuine private choice. And third, that the same constitutional limitations that apply to direct aid programs also apply to indirect aid programs.

A. School Tuition Organizations Are Not Government Actors.

Respondent Taxpayers' overarching theme is that School Tuition Organizations are creatures of the state, and are established and supervised by the state to administer what Respondents persistently mischaracterize as a "government spending program." Winn Br. 1. But School Tuition Organizations are privately created and privately controlled. They are not government actors. They are private actors. Neither the receipt of government "subsidized" scholarship funds nor being subject to modest government regulation transform these private entities into state actors.

1. School Tuition Organizations Are Privately Created.

School Tuition Organizations are privately created nonprofit organizations permitted by federal law to receive tax-deductible contributions and by state law to receive tax-credit-eligible donations. The government did not create School Tuition Organizations. The first School Tuition Organization to open its doors in Arizona was the Arizona School Choice ***6** Trust, one of the Respondents in Support of Petitioners. The School Choice Trust was privately founded five years before Arizona authorized a tax credit for contributions to such organizations. Ariz. Sch. Choice Trust, *Arizona School Choice Trust was founded for educational opportunity for low-income families*, http:// www.asct.org/Founders.shtml (last visited Oct. 13, 2010). Thus, when Arizona enacted the Scholarship Program, it was not creating a new type of charitable work or entity, but rather it was recognizing the valuable work being done by the School Choice Trust in expanding parental options in education to include private schools. This underscores the Legislature's purpose for enacting the Scholarship Program: its legitimate interests in giving parents educational choice. There was no improper religious motivation.

There are a few specific requirements School Tuition Organizations must satisfy in order to receive tax-credit-eligible contributions. A.R.S. § 43-1602(A); Dennard App.[1] 6a-7a; A.R.S. § 43-1603; Dennard App. 9a-11a. These requirements are: (1) the organization is exempt from federal taxation under ***7**26 U.S.C. § 501(c)(3), A.R.S. § 43-1602(A); Dennard App. 6a-7a; (2) the organization allocate at least 90 percent of its annual revenue for education scholarships, A.R.S. § 43-1603(B)(1); Dennard App. 9a; (3) the organization does not limit its scholarships to students of only one school, A.R.S. § 43-1603(B)(2); Dennard App. 10a; (4) the organization does not award scholarships based solely on donor recommendations, A.R.S. § 43-1603(B)(3); Dennard App. 10a; and (5) the organization does not knowingly allow taxpayers to "swap"

donations in an effort to benefit their own children, A.R.S. § 43-1603(B)(4); Dennard App. 10a. These requirements ensure that contributions to School Tuition Organizations benefit the general public and not individual taxpayers.

The Department of Revenue requires any School Tuition Organization desiring to receive tax-credit-eligible donations to certify on a preapproved form that it satisfies these requirements. Ariz. Dept. of Revenue, *A Manual for School Tuition Organizations* 29 Attach. 1 (Aug. 23, 2010), *available at* http:// www.azdor.gov/LinkClick.aspx?fileticket=CKcT5ZKM obŶ&tabid =240. There is no annual recertification requirement. *Id.* at 3. The Department may "decertify" School Tuition Organizations that fail to comply with these requirements, but contributions to decertified organizations would still be eligible for a federal tax deduction so long as the organization remains a federally-recognized 501(c)(3) organization.

***8** That contributions to non-state certified School Tuition Organizations are still federally tax-deductible underscores the fact that, while quantitatively different, other types of tax-reducing mechanisms - such as tax deductions, tax exemptions, and tax credits of less than 100 percent - are qualitatively the same as the tax credit at issue in this case.

The comparative value of a tax benefit to the taxpayer is a function of whether the taxpayer has taxable income and owes taxes, as well as the marginal tax rate on the income. As the marginal tax rate climbs, the quantitative distinction between the effect of 100 percent credits and deductions fades. *See Freedom from Religion Found. v. Geithner*, NO. CIV. 2:09-2894 WBS DAD, 2010 U.S. Dist. LEXIS 50413, at *16-17 (E.D. Cal. May 21, 2010) (finding no "meaningful distinction between tax deductions or exclusions and tax credits" because even though they "do not create dollar-for-dollar reductions in tax liability … they reduce tax liability by a percentage directly related to one's income tax bracket.").

Establishment Clause analysis cannot be driven by the percentage of return (100 percent v. 99 percent v. 90 percent v. 50 percent v. 1 percent) on contribution. *See Mueller*, 463 U.S. at 390 (rejecting Establishment Clause challenge to tax deduction for tuition paid to religious private schools); *see also Walz v. Tax Comm'n*, 397 U.S. 664, 680 (1970) (rejecting Establishment Clause challenge to property tax exemption to religious organizations for property used for religious purposes). It is thus irrelevant to the constitutional ***9** analysis whether the benefit is a 100 percent tax credit, a tax deduction, or an exemption.

Finally, Respondent Taxpayers assert that, pursuant to Arizona's recent legislative amendments, contributions to School Tuition Organizations are no longer "charitable donations" because the statute no longer refers to them as "charitable organizations," but rather as "nonprofit organizations." Under § 501(c)(3), "charitable" organizations are but one of a number of nonprofit organizations qualified to receive tax deductible contributions - other types include those organized for "religious," "educational" and "scientific" purposes. 26 U.S.C. § 501(c)(3). Debating whether School Tuition Organizations are best described as "charitable," "educational," or even "religious" organizations is a debate over inconsequential semantics.

2. School Tuition Organizations Operate Independently From Any Government Official.

"[A] State normally can be held responsible for a private decision *only* when it has exercised coercive power or has provided such significant encouragement, either overt or covert, that the choice must in law be deemed to be that of the State." *Blum v. Yaretsky*, 457 U.S. 991, 1004 (1982) (holding that private nursing homes that received reimbursement from the Medicaid program were not state actors); *Rendell-Baker v. Kohn*, 457 U.S. 830, 840 (1982)***10** (holding that private schools funded almost entirely by reimbursement payments from the state for providing special education services to publicly placed students were not state actors). In this case, the state does not control any decisions made under the Scholarship Program. The state has nothing to do with the scholarship-granting decisions made by School Tuition Organizations. As the Ninth Circuit explained, "Arizona does not specify scholarship eligibility criteria or dictate how [School Tuition Organizations] choose the students who receive scholarships."[2] *Winn*, 562 F.3d at 1006. And the Respondent Taxpayers *concede* that "[School Tuition Organizations] are free to award scholarships … to students chosen by them, according to their standards, from among all the school-age children in Arizona." Winn Br. 46. Such unrestricted freedom is a far cry from coercive state action.

In the clear absence of any overt state effort to advance religion, Respondent Taxpayers essentially urge the Court to find covert action in the fact that the Department of Revenue "allows" School Tuition Organizations to award scholarships only to the ***11** private schools of their own choosing. But there is nothing suspicious or untoward about this; to the contrary, it is

merely implementation of the law as written. It was plainly evident from the text of the original statute - and it is clear from the statute that will go into effect January 1, 201*1* - that a School Tuition Organization can restrict the total number of private schools to which it awards scholarships, so long as it does not award scholarships to only one school. *Hibbs v. Winn*, 542 U.S. 88, 95 (2004) (explaining that School Tuition Organizations "must designate at least two schools whose students will receive funds"); *Kotterman v. Killian*, 972 P.2d 606, 626 (Ariz. 1999) (Feldman, J., dissenting) ("[A] group of taxpayers who subscribe to a particular religion may form a[] [School Tuition Organization] that will support only schools of that religion."). Indeed, Respondent Taxpayers concede that "from the inception" of the program, School Tuition Organizations have been permitted to restrict scholarships only to particular religious schools. Winn Br. 11. There is no state coercion in giving School Tuition Organizations the freedom to award scholarships to particular types of schools.

School Tuition Organizations make private, independent decisions to serve different constituencies and organize themselves along a number of different lines and concerns, including religious, geographic, pedagogical, and economic. The state neither encourages nor discourages any particular type of School Tuition Organization. Rather, the state, in purely ***12** ministerial fashion, simply ensures that each organization satisfies the criteria discussed in section I.A. above - nothing more. This minor regulatory role does not transform School Tuition Organizations' activities into state action. *Blum*, 475 U.S. at 1004-05 ("Mere approval of or acquiescence in the initiatives of a private party is not sufficient to justify holding the State responsible for those initiatives under the terms of the Fourteenth Amendment.") (citing *Flagg Bros., Inc. v. Brooks*, 436 U.S. 149, 164-65 (1978) and *Jackson v. Metro. Edison Co.*, 419 U.S. 345, 357 (1974)). The state plays no role in the scholarship-granting decisions of School Tuition Organizations.

3. The Receipt Of Tax-Credit-Eligible Contributions Does Not Transform School Tuition Organizations Into State Actors.

Respondent Taxpayers argue that because contributions to School Tuition Organizations are eligible for a 100 percent tax credit, up to the modest limit of $500 per individual or $1,000 per married couple filing jointly, those contributions are the equivalent of state-income tax revenues and that they should be considered state "expenditures." Winn Br. 6. On one side of the ledger, the Scholarship Program does reduce state revenues. On the other side of the ledger are the savings the state realizes from being relieved of the duty to pay for participating children's educations. *See* Ronald J. Hansen, *Private-school tax credits save $8.3 million*, Arizona Republic, Oct. 20, 2009. ***13** Though the precise dollar amount of savings to the state is a subject of debate, the fact that the program ultimately saves the state money makes it difficult to characterize it as a state spending program.

Even if the Court were to decide that tax-credit-eligible contributions constitute a form of state "expenditures," the fact that the contributions essentially pass through School Tuition Organizations does not transform these private entities into state actors. In *Rendell-Baker v. Kohn*, the Court considered a legal challenge to the employment practices of a private school that received "virtually all of [its] income … from government funding." 457 U.S. at 840. Public school districts were contracting with the private school to purchase special education services just as Scholarship Program parents here purchase educational services from private schools. The Court's conclusion in *Rendell-Baker* that the government contracts "[did] not make the … [private school's] decisions acts of the State," *id.*, applies here.

It is also important to identify exactly who the Scholarship Program is designed to aid. The Scholarship Program aids school children and their families. It does not aid School Tuition Organizations. Indeed, those organizations are not able to keep the vast majority of the contributed funds. They can keep only a small amount to cover their administrative costs. The Scholarship Program also does not aid taxpayers because their contribution merely reduces their tax liability by the amount contributed, meaning they realize no net financial gain from their contribution. ***14** It is parents and children who receive the money in the form of scholarships. Families, therefore, are the beneficiaries of the Scholarship Program. Families use the scholarships to purchase educational services from private schools and their decisions to do so are not "acts of the state."

The funding for the challenged program flows from the decisions of individual taxpayers, who write checks drawn from their personal bank accounts, to School Tuition Organizations and then to parents - who independently decide where to enroll their children and which School Tuition Organizations to apply to for scholarship funds. Not a single dollar is transferred from the state to any School Tuition Organization. "The availability of scholarships to particular students and particular schools thus depends [not on government decision makers, but] on the amount of funding a [School Tuition Organization] receives [from

taxpayer contributions.]" *Winn*, 562 F.3d at 1006. Receipt by School Tuition Organizations of funds from private citizens intended to benefit other private citizens cannot form the basis of a finding that School Tuition Organizations are state actors.

4. Compliance With State Regulations Does Not Transform School Tuition Organizations Into State Actors.

Respondent Taxpayers argue that the recent legislative amendments to the Scholarship Program ***15** alter the very nature of School Tuition Organizations. But, as explained more fully in all of the Replies to the Respondent Taxpayers' Supplemental Brief Regarding a Change in State Law, nothing about the revised structure of the Scholarship Program alters the fact that "individuals voluntarily … contribute money" to School Tuition Organizations and that "the state's involvement stops with … making tax credits available." *Winn*, 586 F.3d at 659-60 (O'Scannlain, J., dissenting). Each School Tuition Organization's decision to support either religious or secular schools - or both - is in no way influenced by the state. And while the legislative amendments add some modest regulatory oversight, the "mere fact that a business is subject to state regulation does not by itself convert its action into that of the State." *Blum*, 475 U.S. at 1004 (quoting *Jackson*, 419 U.S. at 350).

5. Conclusion

In sum, there is no government involvement with religion whatsoever pursuant to the Scholarship Program. The government does not give money to any School Tuition Organization. No government actor decides which children receive scholarships from School Tuition Organizations. The relationship between the tax benefit to the taxpayer and the decision by parents to send their children to religious schools and apply for scholarships from religiously affiliated School Tuition Organizations is simply too attenuated and too variable over time to constitute government involvement with religion. Therefore, the Scholarship Program does not implicate the Establishment ***16** Clause. *Mueller*, 463 U.S. at 400 ("The historic purposes of the [Establishment] Clause simply do not encompass the sort of attenuated financial benefit, ultimately controlled by the private choices of individual parents, that eventually flows to parochial schools from the neutrally available tax benefit at issue in this case.").

B. The State Does Not Skew Incentives Toward Religion.

The question at the center of this case is whether "the *government itself* has advanced religion through its own activities and influence." *Corp. of the Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints v. Amos*, 483 U.S. 327, 337 (1987). As demonstrated in section I.A. above, the answer to that question is no. However, Respondent Taxpayers assert that the answer is yes because of the unrestricted freedom School Tuition Organizations enjoy to award scholarships - including the ability to award scholarships only to families who choose to enroll their children in religiously affiliated schools. Winn Br. 11-14. This argument is not only premised on the unfounded notion that School Tuition Organizations do not offer scholarships to nonreligious schools,[3] but ***17** also improperly focuses solely on the Scholarship Program rather than the full array of educational choices Arizona provides to parents.

The question is whether Arizona "is coercing parents into sending their children to religious schools, and that question must be answered by evaluating *all* options" Arizona "provides [its] school-children, only one of which is to obtain a program scholarship and then choose a religious school." *Zelman*, 536 U.S. at 656. By examining the Scholarship Program in light of the vast array of nonreligious educational options Arizona provides to families, it is abundantly clear that the state is not skewing incentives toward religion.

Respondent Taxpayers ignore the full range of educational choices available to Arizona parents. Instead, they focus on an alleged dearth of available scholarships to attend nonreligious private schools. Putting aside the fact that *many* School Tuition Organizations provide scholarships to nonreligious schools, Arizona offers families one of the broadest arrays of educational choices in the nation. Dennard Br. 39-43. These options include, among others, a ***18** robust charter school law and open public school enrollment that prohibits school districts from charging parents tuition. A.R.S. § 15-181, *et seq.*; A.R.S. § 15-816.01. In *Zelman*, the Court looked to precisely these types of additional public options in concluding that there was "no evidence that the program fails to provide genuine opportunities for Cleveland parents to select secular educational options

for their school-age children." *Zelman*, 536 U.S. at 655 (noting that students could "remain in public school as before … obtain a scholarship … enroll in a community school, or enroll in a magnet school"). And while such a wide array of options "are not necessary" to the constitutionality of indirect programs based on private choice, they do "clearly dispel the claim that the program 'creates … financial incentives for parents to choose a sectarian school.' " *Zelman*, 536 U.S. at 654 (quoting *Zobrest*, 509 U.S. at 10).

In seeking to distinguish *Zelman*'s holding, Respondent Taxpayers misconstrue and misrepresent the program upheld in that case. The Cleveland program did not require nonreligious private schools to participate. *Zelman*, 536 U.S. at 645. It was thus entirely plausible that the program in *Zelman* could have resulted in parents not being able to choose nonreligious schools. The program permitted - but did not require - area public schools to participate and, indeed, none chose to do so. *Id.* at 645-47. Of the private schools that chose to participate, 82 percent were religious, with approximately 96 percent of voucher recipients attending religious schools. ***19***Id.* And yet, the Court said that merely because "46 of the 56 private schools now participating in the program are religious schools does not condemn it as a violation of the Establishment Clause." *Id.* at 655. Thus, even where no public schools participated and the overwhelming majority of private schools participating in the program were religious, the Court held there were "no 'financial incentives' that 'skew' the program toward religious schools." *Id.* at 653 (quoting *Witters v. Wash. Dep't of Servs. for the Blind*, 474 U.S. 481, 487-88 (1986)).

The Scholarship Program leaves the decision to contribute to School Tuition Organizations in the hands of taxpayers. It leaves the decision for which schools to award scholarships in the hands of School Tuition Organizations. And it leaves the decision of which private schools to enroll their children in and which School Tuition Organizations to apply to for scholarship funds in the hands of parents. And those parents had a plethora of public schools, including numerous charter schools, to choose from. A program so thoroughly controlled by private choice does not violate the Establishment Clause.

C. The Establishment Clause Does Not Prohibit Individuals From Using Indirect Educational Aid To Obtain A Religious Education.

Respondent Taxpayers assert that before *Zelman*, individuals were not permitted "to use tax-raised funds" at "religious schools to support the *religious****20** instructional activities of those schools." Winn Br. 48. That assertion is wrong. In every one of the Court's indirect educational aid cases, the government aid at issue was used to support religious instructional activities, and in each case the educational aid program was upheld. In *Zobrest*, 509 U.S. at 4 n. 1, it was stipulated that "secular education and advancement of religious values or beliefs [we]re inextricably intertwined" in the Catholic school in which petitioner Zobrest's parents enrolled him. And the Court made it clear that the government-funded sign language interpreter, to which petitioner Zobrest was entitled, would transmit the pervasively sectarian content taught in the high school. *Id.* at 13. In *Witters*, 474 U.S. at 482, government aid was given to "a blind person studying at a Christian college and seeking to become a pastor, missionary, or youth director." Naturally, pursuing a degree in vocational ministry involves religious instruction. And, of course, *Mueller*, 463 U.S. 388, involved a tax deduction for tuition at religious schools that imposed no requirement that students must be allowed to opt out of the school's religious instruction. Under the Court's "Establishment Clause precedent, the link between government funds and religious training is broken by the independent and private choice of recipients." *Locke v. Davey*, 540 U.S. 712, 719 (2004). It is thus constitutionally permissible to give families the choice to use educational aid to purchase a religious education.

***21** Respondent Taxpayers base their argument on *Bowen v. Kendrick*, 487 U.S. 589 (1988), which involved government grants to religious institutions for counseling and education services pursuant to a federal program designed to educate adolescents about family life. While aspects of *Bowen* are instructive, particularly as it relates to whether the Scholarship Program is supported by a legitimate government interest, there are nevertheless significant limits to its applicability in this case because it involved a direct - rather than an indirect - aid program.

In *Bowen*, government officials selected which organizations received federal funds. Thus, the Court imposed some limits on exactly how those organizations could use the aid. Here, the government does not choose which School Tuition Organizations receive money or, in turn, to which families the School Tuition Organizations give scholarships. In two post-*Bowen* cases involving direct aid programs, the Court said "the question of whether governmental aid to religious schools results in governmental indoctrination is ultimately a question whether any religious indoctrination that occurs in those schools could reasonably be attributed to government action."*Agostini v. Felton*, 521 U.S. 203, 230 (1997) and *Mitchell*

v. Helms, 530 U.S. 793, 809 (2000) (plurality opinion). Thus, even in direct aid cases private choice is still determinative. Because there are no decisions made by governmental actors under the Scholarship Program, it would be unreasonable to attribute any ***22** parents' decision to enroll their child in a religious school and obtain a religious education to governmental coercion.

Regardless of the constitutional restrictions imposed on direct governmental aid programs, the Court has never struck down an indirect educational aid program characterized by true private choice merely because families use that aid to obtain a religious education. Respondent Taxpayers offer no compelling arguments for the Court to do so here.

II. ARIZONA'S SCHOLARSHIP PROGRAM SERVES LOW-AND MODERATE-INCOME FAMILIES.

Faced with a dearth of favorable case law, Respondent Taxpayers resort to a form of *ad hominem* argument by citing to a number of articles published by *The Arizona Republic* and *The East Valley Tribune*. Winn Br. 10, 43; Winn Opp'n Br. 9-11. These articles cast aspersions on the Scholarship Program as primarily awarding scholarships to wealthy families. But a recent survey by Dr. Vicki Murray of student-level data obtained directly from School Tuition Organizations demonstrates that the program does a good job of serving low- and moderate-income families. Vicki E. Murray, Ph.D., *An Analysis of Arizona Individual Income Tax-credit Scholarship Recipients' Family Income, 2009-10 School Year*, Program on Education Policy and Governance, Harvard University 10-18 (October 2010), *available at****23** http://www.hks.harvard.edu/pepg/PDF/Papers/PEPG10 -18_Murray.pdf.

Dr. Murray's analysis assessed *The East Valley Tribune*'s and *The Arizona Republic*'s repeated claim that Arizona's Scholarship Program does not serve low-income families. *Id.* at 2. Those newspapers interviewed officials or cited related statistics from approximately 15 of the 55 School Tuition Organizations operating at the time. *Id.* Yet neither newspaper collected student-level income data to verify that allegation. *Id.* Dr. Murray collected family income and related data directly from School Tuition Organizations for 19,990 students during the 2009-10 school year, which represents nearly 80 percent of all scholarships awarded in 2009. *Id.* at 5-6. Her analysis also compared the family incomes of scholarship recipients to U.S. Census Bureau median family incomes using addresses and zip codes provided by School Tuition Organizations. *Id.* at 6. The results of her analysis show:

• Scholarship recipients' median family income was $55,458 - nearly $5,000 lower than the U.S. Census Bureau statewide median annual income of $60,426. It was also nearly $5,000 lower than median incomes in recipients' neighborhoods, as estimated using student addresses and zip codes. *Id.* at 14.

• The annual family income of more than two-thirds (66.8 percent) of scholarship recipients would qualify them for another of Arizona's educational aid ***24** programs, the corporate tax credit scholarship program, eligibility for which is capped at $75,467 for a family of four. *Id.* at 15.

• A higher proportion of scholarship recipients come from families whose incomes qualify them as poor (at or below $20,050 for a family of four) than the U.S. Census Bureau statewide average, 12.8 percent compared to 10.2 percent. *Id.*

Dr. Murray's analysis found no factual basis for the claims that Arizona's Scholarship Program limits access to privileged students from higher-income families. *Id.* at 16. Instead, an overwhelming majority of the individuals receiving scholarships under the Scholarship Program also qualify for Arizona's separate, means-tested and corporately-funded scholarship program. *Id.*

Arizona's Scholarship Program is not just a program of private choice, it is a vital educational aid program that is helping tens of thousands of low- and middle-income families pursue opportunities that would otherwise be foreclosed to them. Nothing in the Constitution imposes a one-size-fits-all approach to public education, nor does it categorically prohibit states from creating programs that emphasize parental choice over centralized control and that include, among various educational options, private religious schools.

***25 CONCLUSION**

Respondents' Complaint was properly dismissed because it challenges a program of true private choice that is fully consistent with the Court's Establishment Clause precedent. The Respondents in Support of Petitioners, Glenn Dennard, Luis Moscoso, and the Arizona School Choice Trust, request the Court to reverse the judgment of the Ninth Circuit and remand the case with instructions to enter judgment in favor of Defendants and Defendant-Intervenors.

Footnotes

1 "Dennard App." refers to the Appendix to Brief of Respondents in Support of Petitioners filed by Glenn Dennard, Luis Moscoso, and the Arizona School Choice Trust ("Dennard Br."). Their Appendix refers to A.R.S. § 43-1601, *et seq.*, as A.R.S. § 1501, *et seq.* due to statutory renumbering that took place after the bill's adoption. Memorandum from Holly B. Hunnicutt, Ariz. Leg. Counsel (June 24, 2010), *available at* http://www.azleg.gov/alisPDFs/council/2010R̈enumberingm̈emo.pdf.

2 The recent legislative amendments to the program did add a requirement that School Tuition Organizations "shall consider the financial need of applicants" and prohibits donors from designating particular students as a condition of contributing to a School Tuition Organization, A.R.S. § 43-1603(B)(4), (D)(2); Dennard App. 10a-11a, but that does not alter the fact that scholarship award decisions remain in the hands of School Tuition Organizations.

3 According to a 2009 Department of Revenue report, the following secular School Tuition Organizations, among others, had ample resources to grant scholarships to nonreligious private schools: Arizona Scholarship Fund ($5,159,220); Institute for a Better Education ($4,803,063); Tuition Organization for Private Schools ($1,474,937); Arizona Private Education Scholarship Fund ($1,466,020); and the Arizona School Choice Trust ($1,022,823) (one of the Intervenors and Respondents in Support of Petitioners in this case). Ariz. Dept. of Revenue, *Individual Income Tax Credit for Donations to Private School Tuition Organizations: Reporting for 2009* (Apr. 21, 2010), *available at* http://www.azdor.gov/Portals/0/Reports/private-school-tax-credit-report-2009.pdf.

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Filings (55)

Title	PDF	Court	Date	Type
1. Respondents' Motion for Leave to File a Post-Argument Brief and Post-Argument Brief of Respondents Arizona Christian School Tuition Organization v. Winn 2010 WL 5487485		U.S.	Dec. 23, 2010	Brief
2. Petitioner's Reply Brief on the Merits Arizona Christian School Tuition Organization v. Winn 2010 WL 5146863		U.S.	Oct. 15, 2010	Brief
3. Reply Brief for Petitioner Arizona Christian School Tuition Organization Arizona Christian School Tuition Organization v. Winn 2010 WL 5146864		U.S.	Oct. 15, 2010	Brief
4. Brief Amici Curiae of the American Humanist Association, American Ethical Union, Atheist Alliance International, Center for Inquiry, Council for Secular Humanism, Freedom from Religion Foundation, Institute for Humanist Studies, Secular Coalition for America, Secular Student Alliance, Society for Humanistic Judaism and Unitarian Universalist Association, in Support of Respondents Arizona Christian School Tuition Organization v. Winn 2010 WL 3738679		U.S.	Sep. 22, 2010	Brief
5. Brief For Americans United for Separation of Church and State, American Jewish Committee, The Anti-Defamation League, The Baptist Joint Committee for Religious Liberty, and The Interfaith Alliance Foundation as Amici Curiae in Support of Respondents Arizona Christian School Tuition Organization v. Winn 2010 WL 3738680		U.S.	Sep. 22, 2010	Brief
6. Brief of Amici Curiae National School Boards Association, Arizona School Boards Association, American Association of School Administrators, National Education Association, and Arizona Education Association In Support of Respondents Arizona Christian School Tuition Organization v. Winn 2010 WL 3806527		U.S.	Sep. 22, 2010	Brief
7. Brief for Respondents Arizona Christian School Tuition Organization v. Winn 2010 WL 3624706		U.S.	Sep. 15, 2010	Brief
8. Petitioner Arizona Christian School Tuition Organization's Motion for Divided Argument and Response to Joint Motion of Petitioner Gale Garriott and the United States for Leave for the United States to Participate in Oral Argument as Amicus Curiae and for Divided Argument Arizona Christian School Tuition Organization v. Winn		U.S.	Sep. 09, 2010	Brief

Title	PDF	Court	Date	Type
2010 WL 5829800				
9. Reply to Respondents' Supplemental Brief Regarding a Change in State Law Arizona Christian School Tuition Organization v. Winn 2010 WL 3392010		U.S.	Aug. 25, 2010	Brief
10. Brief of Agudath Israel of America as Amicus Curiae in Support of Petitioners Arizona Christian School Tution Organization v. Winn 2010 WL 3183859		U.S.	Aug. 09, 2010	Brief
11. Brief of the Ethics and Religious Liberty Commission of the Southern Baptist Convention, The National Association of Evangelicals, and The Convocation of Anglicans in North America as Amici Curiae in Support of Petitioners Arizona Christian School Tuition Organization v. Winn 2010 WL 3167320		U.S.	Aug. 08, 2010	Brief
12. Amicus Brief of the American Center for Law and Justice in Support of Petitioners Arizona Christian School Tuition Organization v. Winn 2010 WL 3198846		U.S.	Aug. 08, 2010	Brief
13. Brief for the United States as Amicus Curiae Supporting Petitioners Arizona Christian School Tuition Organization v. Winn 2010 WL 3066230		U.S.	Aug. 06, 2010	Brief
14. Brief of Amici Curiae Jewish Tuition Organization, New Way Learning Academy, Catholic Tuition Organization of the Diocese of Phoenix, Catholic Tuition Support Organization of the Diocese of Tucson, and Lutheran Education Foundation, Inc. in Support o f Petitioners Arizona Christian School Tuition Organization v. Winn 2010 WL 3167316		U.S.	Aug. 06, 2010	Brief
15. Brief Amicus Curiae of the American Center for School Choice in Support of Petitioners Arizona Christian School Tuition Organization v. Winn 2010 WL 3167317		U.S.	Aug. 06, 2010	Brief
16. Brief for the Goldwater Institute and U.S. Representative Trent Franks as Amici Curiae Supporting Petitioners Arizona Christian School Tuition Organization v. Winn 2010 WL 3167318		U.S.	Aug. 06, 2010	Brief
17. Brief of Amici Curiae States Indiana, Michigan, Alabama, Colorado, Florida, Georgia, Louisiana, Mississippi, Pennsylvania, South Carolina, Texas, Utah, & Washington Arizona Christian School Tuition Organization v. Winn 2010 WL 3167319		U.S.	Aug. 06, 2010	Brief
18. Brief of Amici Curiae Christian Educators Association International and Advocates for Faith and Freedom in Support of Petitioners		U.S.	Aug. 06, 2010	Brief

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Arizona Christian School Tuition Organization v. Winn 2010 WL 3167321				
19. Brief of the Rutherford Institute, Amicus Curiae in Support of Petitioners Arizona Christian School Tuition Organization v. Winn 2010 WL 3167322		U.S.	Aug. 06, 2010	Brief
20. Brief of Justice and Freedom Fund as Amicus Curiae Supporting Petitioners Arizona Christian School Tuition Organization v. Winn 2010 WL 3167323		U.S.	Aug. 06, 2010	Brief
21. Brief for Amici Curiae Liberty Counsel and American Association of Christian Schools in Support of Petitioner Arizona Christian School Tuition Organization v. Winn 2010 WL 3198845		U.S.	Aug. 06, 2010	Brief
22. Brief Amicus Curiae of The Becket Fund for Religious Liberty in Support of Petitioners Arizona Christian School Tuition Organization v. Winn 2010 WL 4150190		U.S.	Aug. 06, 2010	Brief
23. Brief Of Amicus Curiae of Center for Constitutional Jurisprudence in Support of Petitioners Arizona Christian School Tuition Organization v. Winn 2010 WL 3066227		U.S.	Aug. 05, 2010	Brief
24. Brief Amici Curiae of United States Conference of Catholic Bishops, Union of Orthodox Jewish Congregations of America, Christian Legal Society, Council for Christian Colleges & Universities, Center for Arizona Policy, and Association for Biblical Hig her Education in Support of Petitioners Arizona Christian School Tuition Organization v. Winn 2010 WL 3535061		U.S.	Aug. 05, 2010	Brief
25. Brief Amicus Curiae of Pacific Legal Foundation in Support of Petitioners Arizona Christian School Tuition Organization v. Winn 2010 WL 4150189		U.S.	Aug. 05, 2010	Brief
26. Brief of the Cato Institute, Andrew J. Coulson, et al., as Amici Curiae in Support of Petitioners Arizona Christian School Tuition Organization v. Winn 2010 WL 3066228		U.S.	Aug. 04, 2010	Brief
27. Brief Amicus Curiae of Florida School Choice Fund, Foundation for Excellence in Education, Florida Association of Academic Nonpublic Schools, Association of Christian Schools International, Black Alliance for Educational Options, and Hispanic Council for Reform and Educational Options in Support of Petitioners Arizona Christian School Tuition Organization v. Winn 2010 WL 3066229		U.S.	Aug. 04, 2010	Brief
28. Brief for Petitioner Arizona Christian School Tuition Organization		U.S.	July 30, 2010	Brief

Title	PDF	Court	Date	Type
Arizona Christian School Tuition Organization v. Winn 2010 WL 3017756				
29. Petitioner Gale Garriott's Brief on the Merits Arizona Christian School Tuition Organization v. Winn 2010 WL 3017757		U.S.	July 30, 2010	Brief
30. Brief of Respondents in Support of Petitioners Arizona Christian School Tuition Organization v. Winn 2010 WL 3017758		U.S.	July 30, 2010	Brief
31. Reply Brief of Appellants Kathleen M. WINN, an Arizona taxpayer, et al., Plaintiffs-Appellants, v. Gale GARRIOTT, in his official capacity as Director of the Arizona Department of Revenue, et al., Defendants-Appellees. 2005 WL 4147035		C.A.9	Oct. 23, 2005	Brief
32. Brief of Appellee Gale Garriott, Director of The Arizona Department of Revenue Kathleen M. WINN, et. al., Plaintiffs-Appellants, v. Gale GARRETT, et al., Defendants-Appellees. 2005 WL 3755705		C.A.9	Sep. 22, 2005	Brief
33. Brief of Appellees Kathleen M. WINN, et al., Plaintiffs-Appellants, v. Mark W. KILLIAN, et al., Defendants-Appellees. 2005 WL 3246805	—	C.A.9	Sep. 08, 2005	Brief
34. Brief of Defendant-Appellee Arizona Christian School Tuition Organization (''"Acsto"') Kathleen M. WINN, et al., Plaintiffs-Appellants, v. Gale GARRIOTT, et al., Defendants-Appellees. 2005 WL 3517422		C.A.9	Sep. 07, 2005	Brief
35. Joint Appendix Arizona Christian School Tuition Organization v. Winn 2010 WL 3034525		U.S.	July 30, 2010	Joint Appendix
36. Oral Argument ARIZONA CHRISTIAN SCHOOL TUITION ORGANIZATION, Petitioner, v. Kathleen M. WINN, et al. Gale Garriott, Director, Arizona Department of Revenue, Petitioner, v. Kathleen M. Winn, et al. 2010 WL 4339923		U.S.	Nov. 03, 2010	Oral Argument
37. Motion for Leave to File Response and Response to Post-Argument Brief for the Petitioner Arizona Christian School of Tuition Organization Arizona Christian School Tuition Organization v. Winn 2010 WL 5172851		U.S.	Dec. 16, 2010	Petition
38. Motion to File Post-Argument Brief and Post-Argument Brief for the Petitioner Arizona Christian School Tuition Organization v. Winn 2010 WL 4876468		U.S.	Nov. 24, 2010	Petition
39. Petitioner Gale Garriott's Reply to Respondents' Supplemental Brief Regarding a Change in State Law Arizona Christian School Tuition Organization v. Winn 2010 WL 3511817		U.S.	Sep. 07, 2010	Petition

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40. **Petitioner Arizona Christian School Tuition Organization's Reply to Respondents' Supplemental Brief Regarding a Change in State Law** Arizona Christian School Tuition Organization v. Winn 2010 WL 3413080		U.S.	Aug. 26, 2010	Petition
41. **Respondents' Supplemental Brief Regarding a Change in State Law** Arizona Christian School Tuition Organization v. Winn 2010 WL 3279290		U.S.	Aug. 17, 2010	Petition
42. **Reply Brief** Arizona Christian School Tuition Organization v. Winn 2010 WL 1789710		U.S.	May 03, 2010	Petition
43. **Reply Brief for Petitioner** Garriott v. Winn 2010 WL 1789711		U.S.	May 03, 2010	Petition
44. **Brief in Opposition** Arizona Christian School Tuition Organization v. Winn 2010 WL 1725602		U.S.	Apr. 23, 2010	Petition
45. **Brief of Amici Curiae States of Michigan, Florida, Indiana, Louisiana, New Jersey, Pennsylvania, South Carolina, and Utah in Support of Petitioner** Garriott v. Winn 2010 WL 1218958		U.S.	Mar. 25, 2010	Petition
46. **Brief of Amici Curiae Jewish Tuition Organization and New Way Learning Academy in Support of Petitioners** Arizona Christian School Tuition Organization v. Winn 2010 WL 1186432		U.S.	Mar. 24, 2010	Petition
47. **Motion for Leave to File Brief as Amicus Curiae and Brief for the Goldwater Institute, Scharf-Norton Center for Constitutional Government, as Amicus Curiae Supporting Petitioners** Arizona School Choice Trust v. Winn 2010 WL 1186437		U.S.	Mar. 24, 2010	Petition
48. **Brief of the Cato Institute, Foundation for Educational Choice, American Federation for Children, and Andrew J. Coulson as Amici Curiae in Support of Petitioners** Arizona Christian School Tuition Organization v. Winn 2010 WL 1186438		U.S.	Mar. 24, 2010	Petition
49. **Petition for Writ of Certiorari** Arizona Christian School Tuition Organization v. Winn 2010 WL 619543		U.S.	Feb. 18, 2010	Petition
50. **Petition for Writ of Certiorari** Arizona Christian School Tuition Organization v. Winn 2010 WL 619544		U.S.	Feb. 18, 2010	Petition
51. **Petition for Writ of Certiorari** Garriott v. Winn 2010 WL 638476		U.S.	Feb. 18, 2010	Petition

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52. **Docket 09-991** GALE GARRIOTT, DIRECTOR, ARIZONA DEPARTMENT OF REVENUE v. KATHLEEN M. WINN, ET AL.	—	U.S.	Feb. 23, 2010	Docket
53. **Docket 09-987** ARIZONA CHRISTIAN SCHOOL TUITION ORGANIZATION v. KATHLEEN M. WINN, ET AL.	—	U.S.	Feb. 22, 2010	Docket
54. **Docket 09-988** ARIZONA SCHOOL CHOICE TRUST, ET AL. v. KATHLEEN M. WINN, ET AL.	—	U.S.	Feb. 22, 2010	Docket
55. **Docket 05-15754** WINN, ET AL v. GARRIOTT, ET AL	—	C.A.9	Apr. 29, 2005	Docket

Negative Treatment

Negative Citing References (6)

The KeyCited document has been negatively referenced by the following events or decisions in other litigation or proceedings:

Treatment	Title	Date	Type	Depth	Headnote(s)
Not Followed on State Law Grounds	1. Jenner v. Illinois Dept. of Commerce and Economic Opportunity 59 N.E.3d 204 , Ill.App. 4 Dist. TAXATION - Parties. Taxpayers had standing to seek an injunction against enforcement of an administrative regulation that they alleged violated a statute.	Aug. 02, 2016	Case		4 S.Ct.
Distinguished by	2. Corr v. Metropolitan Washington Airports Authority 800 F.Supp.2d 743 , E.D.Va. LITIGATION - Dismissal. Motorists who used toll road lacked prudential standing to bring action against airport authority who assessed tolls.	July 07, 2011	Case		2 S.Ct.
Distinguished by	3. American Civil Liberties Union of Massachusetts v. Sebelius 821 F.Supp.2d 474 , D.Mass. CIVIL RIGHTS - Religion. Permitting Catholic organization to restrict tax-payer funded services was an endorsement of religion.	Mar. 23, 2012	Case		3 4 S.Ct.
Distinguished by	4. Freedom from Religion Foundation, Inc. v. United States 2012 WL 12996109 , W.D.Wis. Plaintiffs Freedom from Religion Foundation, Inc., Annie Laurie Gaylor, Anne Nicol Gaylor and Dan Barker brought this lawsuit under the Administrative Procedure Act, 5 U.S.C....	Aug. 29, 2012	Case		3 4 S.Ct.
Distinguished by	5. Freedom from Religion Foundation, Inc. v. Lew 983 F.Supp.2d 1051 , W.D.Wis. TAXATION - Income. Tax exemption granted solely to “ministers of the gospel” violated establishment clause of the First Amendment.	Nov. 22, 2013	Case		4 S.Ct.
Distinguished by	6. Texas v. U.S. 787 F.3d 733 , 5th Cir.(Tex.) IMMIGRATION - Deportation or Removal. Preliminary injunction against deferred action for illegal aliens would not be stayed pending appeal.	May 26, 2015	Case		4 S.Ct.

History (21)

Direct History (10)

1. Winn v. Hibbs
361 F.Supp.2d 1117 , D.Ariz. , Mar. 25, 2005

Opinion Reversed by

2. Winn v. Arizona Christian School Tuition Organization
562 F.3d 1002 , 9th Cir.(Ariz.) , Apr. 21, 2009

Rehearing en Banc Denied by

3. Winn v. Arizona Christian School Tuition Organization
586 F.3d 649 , 9th Cir.(Ariz.) , Oct. 21, 2009

AND Certiorari Granted by

4. Garriott v. Winn
560 U.S. 924 , U.S. , May 24, 2010

AND Certiorari Granted by

5. Arizona Christian School Tuition Organization v. Winn
560 U.S. 924 , U.S. , May 24, 2010

AND Reversed by

6. Arizona Christian School Tuition Organization v. Winn
563 U.S. 125 , U.S. , Apr. 04, 2011

AND Certiorari Granted, Cause Remanded by

7. Arizona School Choice Trust v. Winn
563 U.S. 932 , U.S. , Apr. 18, 2011

On Remand to

8. Winn v. Arizona Christian School Tuition Organization
658 F.3d 889 , 9th Cir.(Ariz.) , Sep. 01, 2011

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9. Winn v. Arizona Christian School Tuition Organization
562 F.3d 1002 , 9th Cir.(Ariz.) , Apr. 21, 2009

Judgment Reversed and Remanded by

10. Winn v. Arizona Christian School Tuition Organization
658 F.3d 889 , 9th Cir.(Ariz.) , Sep. 01, 2011

Related References (11)

11. Winn v. Killian
2001 WL 37120490 , D.Ariz. , Feb. 27, 2001

Reversed and Remanded by

12. Winn v. Killian
307 F.3d 1011 , 9th Cir.(Ariz.) , Oct. 03, 2002

Rehearing en Banc Denied by

13. Winn v. Killian
321 F.3d 911 , 9th Cir. , Mar. 05, 2003

AND Certiorari Granted by

14. Hibbs v. Winn
539 U.S. 986 , U.S. , Sep. 30, 2003

AND Judgment Affirmed by

15. Hibbs v. Winn
542 U.S. 88 , U.S. , June 14, 2004

16. Arizona Christian School Tuition Organization v. Winn
562 U.S. 959 , U.S. , Oct. 12, 2010

17. Garriott v. Winn
562 U.S. 959 , U.S. , Oct. 12, 2010

18. Arizona Christian School Tuition Organization v. Winn
562 U.S. 1090 , U.S. , Dec. 06, 2010

19. Garriott v. Winn
562 U.S. 1090 , U.S. , Dec. 06, 2010

20. Arizona Christian School Tuition Organization v. Winn
562 U.S. 1126 , U.S. , Jan. 07, 2011

21. Garriott v. Winn
562 U.S. 1126 , U.S. , Jan. 07, 2011

Related Opinions (9)

Title	Court	Date
1. Arizona Christian School Tuition Organization v. Winn, 131 S.Ct. 1436 , 2011 WL 1225707 , 563 U.S. 125 , 179 L.Ed.2d 523 , 79 USLW 4216 , 265 Ed. Law Rep. 855 , 11 Cal. Daily Op. Serv. 3982 , 2011 Daily Journal D.A.R. 4821 , 22 Fla. L. Weekly Fed. S 922 LITIGATION - Parties. Taxpayers lacked standing to challenge Arizona tuition tax credit on Establishment Clause grounds.	U.S.	Apr. 04, 2011
2. Garriott v. Winn, 131 S.Ct. 857 , 2011 WL 47851 , 562 U.S. 1126 , 178 L.Ed.2d 621 , 79 USLW 3396 Motion of respondents Glenn Dennard, et al. for leave to file a supplemental brief after argument granted. Motion of respondents Kathleen M. Winn, et al. for leave to file a...	U.S.	Jan. 07, 2011
3. Arizona Christian School Tuition Organization v. Winn, 131 S.Ct. 857 , 2011 WL 47764 , 562 U.S. 1126 , 178 L.Ed.2d 621 , 79 USLW 3396 Motion of respondents Glenn Dennard, et al. for leave to file a supplemental brief after argument granted. Motion of respondents Kathleen M. Winn, et al. for leave to file a...	U.S.	Jan. 07, 2011
4. Garriott v. Winn, 131 S.Ct. 812 , 2010 WL 4922900 , 562 U.S. 1090 , 178 L.Ed.2d 529 , 79 USLW 3342 Motion of petitioner Arizona Christian School Tuition Organization for leave to file a supplemental brief after argument granted.	U.S.	Dec. 06, 2010
5. Arizona Christian School Tuition Organization v. Winn, 131 S.Ct. 812 , 2010 WL 4922899 , 562 U.S. 1090 , 178 L.Ed.2d 529 , 79 USLW 3342 Motion of petitioner Arizona Christian School Tuition Organization for leave to file a supplemental brief after argument granted.	U.S.	Dec. 06, 2010
6. Garriott v. Winn, 131 S.Ct. 497 , 2010 WL 3956910 , 562 U.S. 959 , 178 L.Ed.2d 284 , 79 USLW 3226 Motion of petitioner Arizona Christian School Tuition Organization for divided argument denied. Motion of petitioner Gale Garriott and the Acting Solicitor General for leave to...	U.S.	Oct. 12, 2010
7. Arizona Christian School Tuition Organization v. Winn,	U.S.	Oct. 12, 2010

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131 S.Ct. 497 , 2010 WL 3956909 , 562 U.S. 959 , 178 L.Ed.2d 284 , 79 USLW 3226 Motion of petitioner Arizona Christian School Tuition Organization for divided argument denied. Motion of petitioner Gale Garriott and the Acting Solicitor General for leave to...		
8. **Garriott v. Winn,** 130 S.Ct. 3324 , 2010 WL 621396 , 560 U.S. 924 , 176 L.Ed.2d 1218 , 78 USLW 3522 , 78 USLW 3678 , 78 USLW 3687 Consolidated with Arizona Christian School Tuition Organization v. Winn, No. 09–987, 130 S.Ct. 3350. Case below, 562 F.3d 1002.	U.S.	May 24, 2010
9. **Arizona Christian School Tuition Organization v. Winn,** 130 S.Ct. 3350 , 2010 WL 2025143 , 560 U.S. 924 , 176 L.Ed.2d 1218 , 78 USLW 3501 , 78 USLW 3678 , 78 USLW 3687 , 79 USLW 3014 Consolidated with Garriott v. Winn, No. 09–991, 130 S.Ct. 3324. Case below, 562 F.3d 1002.	U.S.	May 24, 2010

Table of Authorities (21)

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Cited	1. **Agostini v. Felton** 117 S.Ct. 1997, U.S.N.Y., 1997 EDUCATION - Religion. City board of education's program of sending public school teachers into parochial schools to provide remedial education to disadvantaged children pursuant to...	Case			5146862 +
Cited	2. **Andrews v. California Cooler, Inc.** 106 S.Ct. 1173, U.S., 1986 The motion of petitioner to direct the Clerk to file a petition for writ of certiorari out-of-time and for relief from the requirement of Rule 28.2 is denied.	Case			5146862
Cited	3. **Blum v. Yaretsky** 102 S.Ct. 2777, U.S.N.Y., 1982 Actions were brought by nursing home residents alleging that they had not been afforded adequate notice either of decisions that they should be transferred to lower level of care...	Case		”	5146862 +
Discussed	4. **Bowen v. Kendrick** 108 S.Ct. 2562, U.S.Dist.Col., 1988 Action was brought challenging constitutionality of Adolescent Family Life Act as violating the establishment clause. The United States District Court for the District of...	Case			5146862 +
Cited	5. **Corporation of Presiding Bishop of Church of Jesus Christ of Latter-day Saints v. Amos** 107 S.Ct. 2862, U.S.Utah, 1987 Individuals fired from their job with church-owned corporations for failure to qualify as church members brought action for religious discrimination. The United States District...	Case		”	5146862 +

Treatment	Referenced Title	Type	Depth	Quoted	Page Number
Cited	**6. Everson v. Board of Ed. of Ewing Tp.** 67 S.Ct. 504, U.S.N.J., 1947 Certiorari proceedings by Arch R. Everson to set aside a resolution of the Board of Education of the Township of Ewing, in the County of Mercer, state of New Jersey, providing for...	Case			5146862 +
Cited	**7. Flagg Bros., Inc. v. Brooks** 98 S.Ct. 1729, U.S.N.Y., 1978 A class action federal civil rights suit was brought seeking damages, an injunction against threatened sale of belongings and declaration that such sale by warehouseman pursuant...	Case			5146862 +
Cited	**8. Freedom From Religion Foundation, Inc. v. Geithner** 715 F.Supp.2d 1051, E.D.Cal., 2010 CIVIL RIGHTS - Religion. California minister of gospel state income tax exemption for housing allowances may be in violation of Establishment Clause.	Case			5146862
Cited	**9. Hibbs v. Winn** 124 S.Ct. 2276, U.S., 2004 CIVIL RIGHTS - Jurisdiction. Tax Injunction Act did not bar challenge to constitutionality of statute permitting tax credits.	Case		”	5146862 +
Cited	**10. Jackson v. Metropolitan Edison Co.** 95 S.Ct. 449, U.S.Pa., 1974 Customer brought suit against privately owned and operated utility corporation, which held a certificate of public convenience issued by the Pennsylvania Utilities Commission,...	Case			5146862 +
Cited	**11. Kotterman v. Killian** 972 P.2d 606, Ariz., 1999 EDUCATION - Religion. State tax credit for school tuition organizations (STO) did not violate Establishment Clause.	Case			5146862 +

Treatment	Referenced Title	Type	Depth	Quoted	Page Number
Cited	12. Locke v. Davey 124 S.Ct. 1307, U.S., 2004 CIVIL RIGHTS - Religion. State did not violate the Free Exercise Clause by refusing to fund devotional theology instruction.	Case			5146862 +
Cited	13. Mitchell v. Helms 120 S.Ct. 2530, U.S.La., 2000 EDUCATION - Religion. Furnishing educational materials to parochial schools is not unconstitutional.	Case			5146862 +
Discussed	14. Mueller v. Allen 103 S.Ct. 3062, U.S.Minn., 1983 Minnesota taxpayers brought action against Minnesota's Commissioner of Revenue and parents who had taken tax deduction for expenses incurred in sending their children to parochial...	Case			5146862 +
Discussed	15. Rendell-Baker v. Kohn 102 S.Ct. 2764, U.S.Mass., 1982 Former teachers and vocational counselor at nonprofit, privately operated school for maladjusted high school students brought civil rights action against school for violation of...	Case			5146862 +
Cited	16. Walz v. Tax Commission of City of New York 90 S.Ct. 1409, U.S.N.Y., 1970 Realty owner sought injunction to prevent New York City Tax Commission from granting property tax exemptions to religious organizations for properties used solely for religious...	Case			5146862 +
Discussed	17. Winn v. Arizona Christian School Tuition Organization 586 F.3d 649, 9th Cir.(Ariz.), 2009 Judges Reinhardt and Fisher voted to reject the petitions for rehearing en banc and Judge Nelson so recommended. The full court was advised of the petitions for rehearing en banc....	Case			5146862 +

Treatment	Referenced Title	Type	Depth	Quoted	Page Number
Discussed	**18.** **Winn v. Arizona Christian School Tuition Organization** 562 F.3d 1002, 9th Cir.(Ariz.), 2009 EDUCATION - Religion. Complaint challenging Arizona's tuition tax credit program stated as-applied Establishment Clause claim.	Case			5146862 +
Cited	**19.** **Witters v. Washington Dept. of Services for the Blind** 106 S.Ct. 748, U.S.Wash., 1986 Student who was pursuing bible studies degree at Christian college appealed denial of financial vocational assistance by Washington State Commission for the Blind. The Superior...	Case			5146862 +
Examined	**20.** **Zelman v. Simmons-Harris** 122 S.Ct. 2460, U.S., 2002 EDUCATION - Religion. School voucher program did not violate Establishment Clause.	Case			5146862 +
Discussed	**21.** **Zobrest v. Catalina Foothills School Dist.** 113 S.Ct. 2462, U.S.Ariz., 1993 Sectarian Schools. It did not violate Establishment Clause to provide interpreter for deaf student attending Catholic high school.	Case			5146862 +

Exhibit E

Exhibit E

2017-2018
Tax Expenditure Report

Report to the Governor and the Director of the Legislative Counsel Bureau for transmittal to the Legislature and appropriate interim committee or committees of the Legislature: NRS 360.137

Prepared and compiled by the *Nevada Department of Taxation*
in partnership with:

Nevada Department of Administration

Nevada Department of Motor Vehicles

Nevada Gaming Control Board

Local Governments throughout Nevada

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1-866-962-3707 | https://tax.nv.gov/

Tax Type: Modified Business Tax

Expenditure Name: A deduction on the Modified Business Tax Return for the first $50,000 of gross wages **Category: Deduction**

Agency: Department of Taxation

Description: For fiscal year 2016, a deduction is allowed in the amount of $50,000 per quarter from the sum of all wages that is reported on the Modified Business Tax Return.

For the fiscal year 2015, a deduction is allowed in the amount of $85,000 per quarter from the sum of all wages that is reported on the Modified Business Tax Return.

Year Enacted: 2003 **Sunset Date:** None

Purpose: Legislative intent not defined in statute

Who Benefits: Businesses

NRS: 363B.110

Summary of Amendments: Added to NRS by 2003, 20th Special Session, 142; A 2003, 20th Special Session, 230; 2005, 2081; 2005, 22nd Special Session, 139; 2007, 1712; 2009, 2190; 2011, 2891; 2013, 3425, 3427, 3428; 2015, 89, 2901

Fiscal Year 2017 Expenditures		
Beneficiary Category	**# Receiving Benefit**	**Expenditure Amount**
Business	61039	$99,087,240.09
Fiscal Year Total:	**61039**	**$99,087,240.09**

Fiscal Year 2018 Expenditures		
Beneficiary Category	**# Receiving Benefit**	**Expenditure Amount**
Business	63320	$104,395,743.05
Fiscal Year Total:	**63320**	**$104,395,743.05**

Tax Type: Modified Business Tax

Expenditure Name: **Abatement of Modified Business Tax for capital investment at least $1 billion** **Category:** **Abatement**

Agency: Department of Taxation

Description: The partial abatement for the lead participant in the qualified project must, for employer excise taxes, be for a duration of not more than 10 years after the effective date of the partial abatement and in an amount that equals 75 %of the amount of the employer excise taxes that would otherwise be owed by each participant for employees employed by the participant for the qualified project.

Year Enacted: 2015 **Sunset Date:** 6/30/2032

Purpose: Legislative intent not defined in statute

Who Benefits: Businesses

NRS: 360.893 (2)(b)

Summary of Amendments: Added to NRS by 2015, 29th Special Session, 24

Fiscal Year 2017 Expenditures		
Beneficiary Category	**# Receiving Benefit**	**Expenditure Amount**
Business	Not Available	Not Available
Fiscal Year Total:		

Fiscal Year 2018 Expenditures		
Beneficiary Category	**# Receiving Benefit**	**Expenditure Amount**
Business	Not Available	Not Available
Fiscal Year Total:		

2017 - Expenditure Explanation: No businesses are currently utilizing this expenditure.

2018 - Expenditure Explanation: No businesses are currently utilizing this expenditure.

Tax Type: Modified Business Tax

Expenditure Name: **Abatement of Modified Business Tax for capital investment at least $3.5 billion** **Category:** **Abatement**

Agency: Department of Taxation

Description: Abatement of Modified Business Tax for qualified projects with a capital investment of at least $3.5 billion.

Year Enacted: 2014 **Sunset Date:** 6/30/2036

Purpose: Legislative intent not defined in statute

Who Benefits: Businesses

NRS: 360.965 (2)(b)

Summary of Amendments: Added to NRS by 2014, 28th Special Session, 18

Fiscal Year 2017 Expenditures		
Beneficiary Category	**# Receiving Benefit**	**Expenditure Amount**
Business	1	$1,394,725.84
Fiscal Year Total:	**1**	**$1,394,725.84**

Fiscal Year 2018 Expenditures		
Beneficiary Category	**# Receiving Benefit**	**Expenditure Amount**
Business	1	$3,575,624.60
Fiscal Year Total:	**1**	**$3,575,624.60**

Tax Type: Modified Business Tax

Expenditure Name: **Credit for donation to scholarship organization made through Nevada Educational Choice Scholarship Program (business)**

Category: **Credit**

Agency: Department of Taxation

Description: Any taxpayer who is required to pay a tax pursuant to NRS 363A.130 may receive a credit against the tax otherwise due for any donation of money made by the taxpayer to a scholarship organization in the manner provided by this section.

Year Enacted: 2015 **Sunset Date:** None

Purpose: Legislative intent not defined in statute

Who Benefits: Businesses

NRS: 363A.139

Summary of Amendments: Added to NRS by 2015, 86

Fiscal Year 2017 Expenditures		
Beneficiary Category	**# Receiving Benefit**	**Expenditure Amount**
Business	1	$50,000.00
Fiscal Year Total:	**1**	**$50,000.00**

Fiscal Year 2018 Expenditures		
Beneficiary Category	**# Receiving Benefit**	**Expenditure Amount**
Business	1	$50,000.00
Fiscal Year Total:	**1**	**$50,000.00**

Tax Type: Modified Business Tax

Expenditure Name: **Credit for donation to scholarship organization made through Nevada Educational Choice Scholarship Program (public)**

Category: **Credit**

Agency: Department of Taxation

Description: If a taxpayer applies to and is approved by the Department of Taxation for the credit authorized by subsection 1, the amount of the credit provided by this section is equal to the amount approved by the Department of Taxation pursuant to subsection 2, which must not exceed the amount of the donation made by the taxpayer to a scholarship organization. The total amount of the credit applied against the taxes described in subsection 1 and otherwise due from a taxpayer must not exceed the amount of the donation.

Year Enacted: 2015 **Sunset Date:** None

Purpose: Legislative intent not identified in statute

Who Benefits: Public

NRS: 363B.119 (4)

Summary of Amendments: Added to NRS by 2015, 86

Fiscal Year 2017 Expenditures		
Beneficiary Category	**# Receiving Benefit**	**Expenditure Amount**
Business	120	$4,818,214.07
Fiscal Year Total:	**120**	**$4,818,214.07**

Fiscal Year 2018 Expenditures		
Beneficiary Category	**# Receiving Benefit**	**Expenditure Amount**
Business	200	$15,897,681.00
Fiscal Year Total:	**200**	**$15,897,681.00**

Tax Type: Modified Business Tax

Expenditure Name: **Deduction of amount paid for health insurance, health benefit plan for employees of a financial institution**

Category: **Deduction**

Agency: Department of Taxation

Description: A financial institution employer may deduct from the total amount of wages reported for the purpose of calculating the amount of excise tax required to be paid pursuant to NRS 363A.130 any amount authorized pursuant to this section that is paid by the employer for health insurance or a health benefit plan for its employees in the calendar quarter for which the tax is paid.

Year Enacted: 2005 **Sunset Date:** None

Purpose: Legislative intent not defined in statute

Who Benefits: Financial institutions

NRS: 363A.135 (1)

Summary of Amendments: Added to NRS by 2005, 22nd Special Session, 132

Fiscal Year 2017 Expenditures		
Beneficiary Category	**# Receiving Benefit**	**Expenditure Amount**
Business	573	$4,270,154.14
Fiscal Year Total:	**573**	**$4,270,154.14**

Fiscal Year 2018 Expenditures		
Beneficiary Category	**# Receiving Benefit**	**Expenditure Amount**
Business	588	$4,124,932.43
Fiscal Year Total:	**588**	**$4,124,932.43**

Tax Type: Modified Business Tax

Expenditure Name: **Modified Business Tax credit for matching employee contributions to college savings trust accounts**

Category: **Credit**

Agency: Department of Taxation

Description: An employer that makes a matching contribution to a Nevada College Savings Trust Fund can take a credit equal to 25% of the matching contribution but may not exceed $500 per contributing employee per year.

Year Enacted: 2015 **Sunset Date:** None

Purpose: Legislative intent not defined in statute

Who Benefits: Businesses

NRS: 363B.117

Summary of Amendments: 2015, 2449

Fiscal Year 2017 Expenditures		
Beneficiary Category	**# Receiving Benefit**	**Expenditure Amount**
Business/Personal	Not Available	Not Available
Fiscal Year Total:		

Fiscal Year 2018 Expenditures		
Beneficiary Category	**# Receiving Benefit**	**Expenditure Amount**
Business/Personal	Not Available	Not Available
Fiscal Year Total:		

2017 - Expenditure Explanation: No employer has utilized the credit.

2018 - Expenditure Explanation: No employer has utilized the credit.

Tax Type: Modified Business Tax

Expenditure Name: **Modified Business Tax credit for matching employee contributions to college savings trust accounts**

Category: **Credit**

Agency: Department of Taxation

Description: An employer that makes a matching contribution to a Nevada College Savings Trust Fund can take a credit equal to 25% of the matching contribution but may not exceed $500 per contributing employee per year.

Year Enacted: 2015 **Sunset Date:** None

Purpose: Legislative intent not defined in statute

Who Benefits: Businesses

NRS: 363A.137

Summary of Amendments: 2015, 2448; A 2015, 2451

Fiscal Year 2017 Expenditures		
Beneficiary Category	**# Receiving Benefit**	**Expenditure Amount**
Business/Personal	Not Available	Not Available
Fiscal Year Total:		

Fiscal Year 2018 Expenditures		
Beneficiary Category	**# Receiving Benefit**	**Expenditure Amount**
Business/Personal	Not Available	Not Available
Fiscal Year Total:		

2017 - Expenditure Explanation: No employer has utilized the credit.

2018 - Expenditure Explanation: No employer has utilized the credit.

Tax Type: Modified Business Tax

Expenditure Name: ***Partial abatement of the Modified Business Tax during initial period of operation*** **Category: Abatement**

Agency: Department of Taxation

Description: An employer that qualifies pursuant to NRS 360.750 is entitled to an exemption of 50 % of the amount of tax otherwise due pursuant to NRS 363B.110 during the first 4 years of its operation.

Year Enacted: 2003 **Sunset Date:** None

Purpose: Legislative intent not defined in statute

Who Benefits: Businesses

NRS: 363B.120

Summary of Amendments: Added to NRS by 2003, 20th Special Session, 144; A 2011, 3467; 2015, 1073

Fiscal Year 2017 Expenditures		
Beneficiary Category	**# Receiving Benefit**	**Expenditure Amount**
Business	64	$1,844,710.93
Fiscal Year Total:	**64**	**$1,844,710.93**

Fiscal Year 2018 Expenditures		
Beneficiary Category	**# Receiving Benefit**	**Expenditure Amount**
Business	71	$1,679,087.93
Fiscal Year Total:	**71**	**$1,679,087.93**

Tax Type: Modified Business Tax

Expenditure Name: **Payroll Tax: deduction of wages paid to certain newly hired veterans** **Category:** **Deduction**

Agency: Department of Taxation

Description: An employer may deduct from the total amount of wages reported for hiring a veteran as defined in NRS 363A.133.

Year Enacted: 2015 **Sunset Date:** None

Purpose: Legislative intent is not defined in statute

Who Benefits: Businesses

NRS: 363A.133 (1)

Summary of Amendments: Added to NRS by 2015, 3926

Fiscal Year 2017 Expenditures		
Beneficiary Category	**# Receiving Benefit**	**Expenditure Amount**
Business	Not Available	Not Available
Fiscal Year Total:		

Fiscal Year 2018 Expenditures		
Beneficiary Category	**# Receiving Benefit**	**Expenditure Amount**
Business	Not Available	Not Available
Fiscal Year Total:		

2017 - Expenditure Explanation: Currently no employer has utilized this expenditure.

2018 - Expenditure Explanation: Currently no employer has utilized this expenditure.

Exhibit F

Exhibit F

FACT SHEET

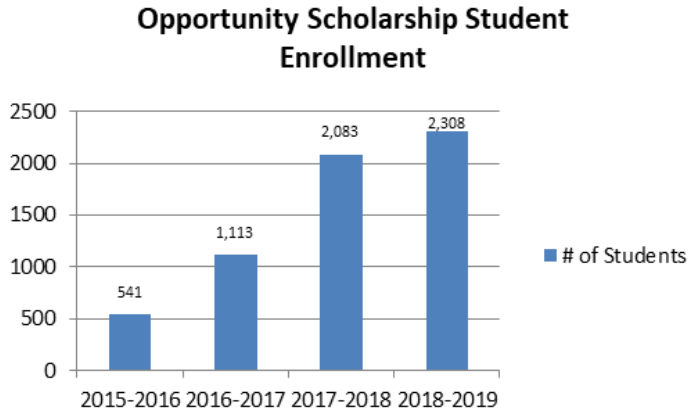
Office of Student & School Supports

Nevada Opportunity Tax Credit Scholarship Program

AB165 created the Nevada Educational Choice Scholarship Program (often referred to as Opportunity Scholarships), which became effective July 1, 2015. This program allows a student whose family has a household income not more than 300 percent of the federal poverty level to apply for a scholarship from an approved scholarship organization. The scholarship provides support for the student to attend a registered private school, pay the fees for distance education programs and/or dual credit programs in our public schools and cover the transportation costs if the school does not offer transportation. A grand total of 6,187 scholarships have been awarded since the launch of the program in 2015.

Contributions Help Provide Choices for Parents

This 2018-2019 school year, scholarships in the amount of $ 12,574,192 were awarded to a total of 2,308 students enrolled in 90 participating Nevada private schools, which is a 10% student participation increase from the prior year.



Active Scholarship Granting Organizations

Scholarship Granting Organizations (SGOs) are responsible for the receipt and distribution of contributed funds to eligible students attending participating Nevada private schools. Scholarships are awarded to low-income students whose household income is within 300% of the Federal Poverty Guidelines. In 2017-2018, the maximum scholarship per student was $7,934 and in 2018-2019 the maximum is $8,132.

AAA Scholarship Foundation 1452 W. Horizon Ridge Road # 541 Henderson, NV 89012	**Children's Tuition Fund of NV** 731 Chapel Hills Drive Colorado Springs, CO 80920
Dinosaurs & Roses 7310 Smoke Ranch Road, B Las Vegas, NV 89128	**Education Fund of Northern Nevada** 3025 Mill Street Reno, NV 89509

Scholarship Granting Organization Data 2018-2019 SY

2018-2019 School Year	AAA Foundation	Children's Tuition Fund	Dinosaurs & Roses	Education Fund of N. NV
Total Number of Pupils Granted Scholarships	934	6	450	1,428
Total Dollar Amount of Scholarships Awarded	**$6,086,250.00**	**$33,250.00**	**$1,758,393.00**	**$4,504,193.00**

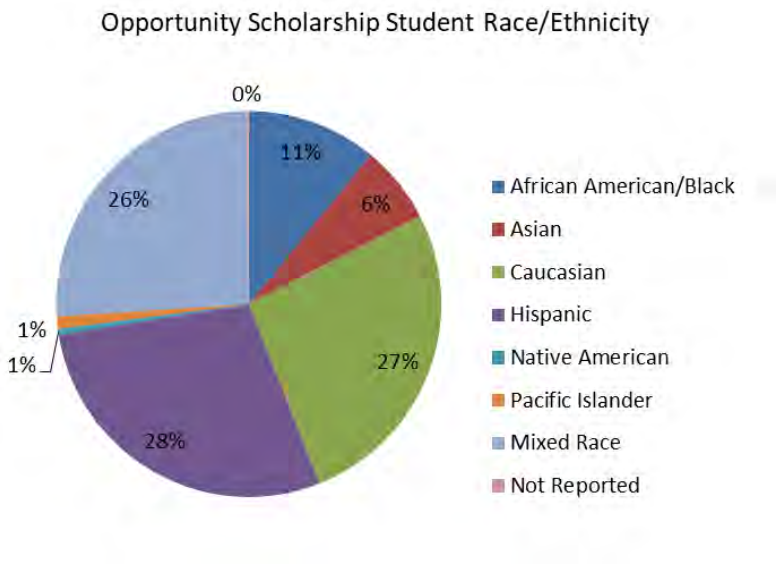
Total awarded scholarships 2018-2019: **$12,382,086.00**

Students who received scholarships from multiple SGOs: **510**
Total number of individual students who received scholarships: **2,308**

Reported Ethnicity/Race of Students Awarded Scholarships for 2018-2019 SY

*public school population data based on demographic data released by NDE in December 2018.

Ethnicity/Race	Total Unduplicated # of Recipients	% Population of Recipients	% Population Public School Districts
African American/Black	253	10.9	11.2
Asian	150	6.5	5.5
Caucasian	612	26.5	31.9
Hispanic	655	28.4	42.4
Native American	12	0.52	0.86
Native Hawaiian/PI	24	1.04	1.4
Mixed Race	597	25.8	6.6
Not Reported	5	0.2	0.0004
	2,308		



The Opportunity Scholarship program serves students from low-income households and diverse race and ethnic backgrounds, providing opportunity to the most disadvantaged children.

A majority of children awarded scholarships in 2018-2019 are Hispanic, followed by Caucasian, and mixed race.

The average household income for recipients is **$45,694.00.**

Addendum: Nevada Opportunity Tax Credit Scholarship Report– February 6,2019

NRS 388D.280 requires that a scholarship organization which receives a donation, gift, or grant of money shall report the total number and dollar amount of such donations, gifts, and grants received as well as the total number of pupils for whom the scholarship organization made grants, as well as the schools enrolling scholarship students. The original submission of this report in November 2018 details such information and includes a formal addendum with the results of student achievement data.

While the report was originally submitted ahead of its January 31st deadline, a limitation of the data findings prevented a full student achievement analysis to be submitted with the report. The general findings on student achievement are included below.

Student Achievement Data

The Nevada Department of Education (NDE) analyzed 149 student assessment results on six different assessments including: ACT Aspire, Iowa Test of Basic Skills (ITBS), Measure of Academic Progress (MAP), PSAT, Terra Nova, and Terra Nova 3.

NDE selected the sample of students based on consecutive number of years as a scholarship recipient so that longitudinal progress could be tracked across a single assessment for each student. Out of the 149 students assessed, 38 students participated in the same assessment for three consecutive years. Table 1 shows the test score changes for the reported 3 year participants, and Table 2 shows the test score changes for the reported 2 year participants. Table 3 shows this data broken out by individual assessment.

Approximately 68% of the 3 year participants demonstrated maintenance or growth in scores, and approximately 65% of 2 year participants demonstrated maintenance of growth in scores.

Table 1. Test score change for reported 3 year participants (N=38)

Score Change	# of students	Percent
Positive (maintained or raised score)	26	68.4%
Negative	12	31.6%

Table 2. Test score change for reported 2 year participants (N=111)

Score Change	# of students	Percent
Positive (maintained or raised score)	73	65.7%
Negative	38	34.2%

Table 3. Test score change s by assessment (N= 149)

Assessment	Total # Students	Decrease in Score	Maintain Score	Increase in Score
ACT Aspire	16	7	5	4
ITBS	23	7	14	2
MAP	15	0	8	7
PSAT	10	4	3	3
Terra Nova	33	10	10	13
Terra Nova 3	52	22	20	10

- Given the variation in score reporting formats and scales, results cannot be compared across different assessments. Each score was correlated with the assessment publisher's corresponding norming and standardization tables, generating score measures that could be compared longitudinally.
- In Tables 1 and 2 student results that *maintained or increased grade-normed standing* year-over-year are in the 'positive' category.
- The sample size (N=149) is small in comparison to the total number of scholarship recipients due to the marked increase in student participation each year since the beginning of the program in 2015. Many students are new to the program and do not have multiple years of assessment scores to determine achievement.

AAA Scholarship Fund as of 12/31/2018

School Name	Address	# Students	AMOUNT AWARDED	AMOUNT PAID
Abundant Life Christian Academy	1720 J Street, Las Vegas, 89106	9	$61,875.00	$21,324.75
American Heritage Academy	2100 Olympic Ave., Henderson, 89014	24	$151,875.00	$62,039.06
Applied Scholastic Academy LV	1018 Sahara Ave., Suite D, Las Vegas, 89104	4	$30,000.00	$15,060.00
Bethlehem Lutheran School	1837 Mountain Street, Carson City, 89701	12	$67,500.00	$26,102.54
Bishop Gorman High School	5959 S. Hualapai Way, Las Vegas, 89148	15	$112,500.00	$41,974.68
Bishop Manogue Catholic High School	110 Bishop Manogue Drive, Reno, 89511	13	$86,250.00	$41,414.18
Brilliant Child Christian Academy	7885 W. Rochelle Avenue, Las Vegas, 89147	3	$22,500.00	$8,870.68
Calvary Chapel Christian School	7175 W. Oquendo Rd., Las Vegas, 89113	116	$789,375.00	$367,152.32
Calvary Chapel Green Valley Christian Academy	2615 W. Horizon Ridge Parkway, Henderson, 89052	8	$52,500.00	$19,125.00
Candil Hall Academy	5348 N. Rainbow Blvd., Las Vegas, 89130	5	$25,813.00	$11,512.50
Christian Montessori Academy	5580 S. Pecos Road, Las Vegas, 89120	2	$11,250.00	$6,027.50
Community Christian Academy	1061 E. Wilson, Pahrump, 89048	1	$7,500.00	$450.00
Cornerstone Christian Academy	5825 Eldora Ave., Las Vegas, 89146	28	$172,500.00	$85,370.05
Excel Christian School	850 Baring Blvd., Sparks, 89434	16	$118,125.00	$52,010.00
Faith Christian Academy	1004 Dresslerville Rd., Gardnerville, 89460	3	$16,875.00	$6,612.50
Faith Lutheran Academy	2700 Town Center Dr., Las Vegas, 89135	4	$30,000.00	$13,575.00
Faith Lutheran Middle & High School	2015 South Hualapai, Las Vegas, 89117	28	$185,625.00	$54,753.44
Far West Academy	4660 N. Rancho Drive, Las Vegas, 89130	16	$108,750.00	$48,750.00
First Good Shepherd Lutheran School	301 s. Maryland Pkwy., Las Vegas, 89101	1	$5,625.00	$1,875.00
Good Samaritan Christian Academy	8425 W. Windmill Lane, Las Vegas, 89113	1	$7,500.00	$3,927.50
Green Valley Christian School	711 Valle Verde Ct., Henderson, 89014	31	$213,750.00	$101,684.00
Innovation Academy	5705 North Rainbow Blvd., Las Vegas, 89130	4	$27,712.75	$8,900.00
International Christian Academy	8100 Westcliff Drive, Las Vegas, 89145	34	$220,224.25	$115,910.15
Journey Education	2710 S. Rainbow Blvd., Las Vegas, 89146	3	$18,750.00	$8,290.50
King's Academy, The	3195 Everett Drive, Reno, 89503	3	$22,500.00	$7,115.00
Lake Mead Christian Academy	540 E. Lake Mead Pkwy, Henderson, 89105	46	$305,625.00	$132,283.86
Lamb of God Lutheran School	6232 N. Jones Blvd., Las Vegas, 89130	1	$1,875.00	$625.00
Las Vegas Day School	3275 Red Rock Street, Las Vegas, 89146	2	$11,250.00	$6,725.00
Las Vegas Jr Academy	6059 W. Oakey Blvd., Las Vegas, 89146	14	$97,500.00	$31,361.70
Liberty Baptist Academy	6501 W. Lake Mead, Las Vegas, 89108	25	$180,000.00	$45,802.50
Little Flower School	1300 Casazza Dr., Reno, 89502	11	$60,000.00	$24,670.84
Logos Christian Academy	665 Sheckler Rd., Fallon, 89406	2	$15,000.00	$0.00
Lone Mountain Academy	4295 N. Rancho Dr., Las Vegas, 89130	24	$151,875.00	$77,262.50
Merryhill Elementary School-Durango	5055 S. Durango Dr., Las Vegas, 89113	1	$7,500.00	$4,075.00

AAA Scholarship Fund Continued

School Name	Address	# Students	AMOUNT AWARDED	AMOUNT PAID
Mesivta of Las Vegas	1940 Pasco Verde Pkwy, Henderson, 89012	3	$15,000.00	$8,400.00
Montessori Visions Academy	1905 E. Warm Springs Rd., Las Vegas, 89119	1	$7,500.00	$2,500.00
Mountain View Christian School	3900 E. Bonanza Rd., Las Vegas, 89110	65	$421,875.00	$188,009.56
Mountain View Lutheran School	9550 West Cheyenne, Las Vegas, 89129	2	$15,000.00	$8,125.00
Nasri Academy for Gifted Children	5300 El Camino Rd., Las Vegas, 89118	1	$7,500.00	$2,500.00
Nevada Sage Waldorf School	565 Reactor Way, Reno, 89502	3	$22,500.00	$8,932.00
New Horizons Academy	6701 W. Charleston Blvd., Las Vegas, 89146	2	$15,000.00	$7,625.00
Newton Learning Center	4895 Village Green Pkwy, Reno, 89519	1	$7,500.00	$1,499.97
Omar Haikal Islamic Academy	485 E. Eldorado Lane, Las Vegas, 89123	63	$442,500.00	$163,639.02
Our Lady of Las Vegas School	3046 Alta Drive, Las Vegas, 89107	22	$153,750.00	$53,382.80
Our Lady of the Snows	1125 Lander Street, Reno, 89509	5	$33,750.00	$9,413.34
Riverview Christian Academy	7125 West 4th Street, Reno, 89523	5	$37,500.00	$0.00
Saint Albert the Great	1255 St. Albert Drive, Reno, 89503	6	$43,125.00	$15,175.00
Saint Anne Catholic School	1813 S. Maryland Pkwy, Las Vegas, 89104	35	$251,250.00	$72,276.58
Saint Christopher Catholic School	1840 N. Bryce Street, North Las Vegas, 89030	7	$43,125.00	$12,293.34
Saint Elizabeth Ann Seton Catholic School	1807 Pueblo Vista Drive, Las Vegas, 89128	11	$69,375.00	$30,334.18
Saint Francis de Sales School	1111 Michael Way, Las Vegas, 89108	14	$90,000.00	$29,430.00
Saint Gabriel Catholic School	2170 E. Maule Ave., Las Vegas, 89119	5	$37,500.00	$10,700.00
Saint Teresa of Avila Catholic School	567 S. Richmond Avenue, Carson City, 89703	14	$80,625.00	$23,984.22
Saint Viator School	4246 S. Eastern Avenue, Las Vegas, 89119	10	$60,000.00	$24,579.68
Sierra Lutheran High School	3601 Romans Rd., Carson City, 89705	7	$52,500.00	$28,680.00
Spring Creek Christian Academy	285 Spring Creek Parkway, Spring Creek, 89815	3	$11,250.00	$6,375.00
Spring Valley Christian Academy	7570 Peace Way, Las Vegas, 89147	13	$86,250.00	$36,611.68
Trinity International School	4141 Meadows Lane, Las Vegas, 89107	2	$15,000.00	$7,987.50
West Charleston Enrichment Academy	3216 W. Charleston Blvd., Ste B, Las Vegas, 89102	1	$3,750.00	$2,150.00
Word of Life Christian Academy	3520 N. Buffalo Dr., Las Vegas, 89129	42	$294,375.00	$118,764.68
Yeshiva Day School of Las Vegas	55 N. Valle Verde Dr., Henderson, 89074	37	$230,625.00	$94,783.36
*FORFEITS***		*22*	*$140,625.00*	*$0.00*
61 SCHOOLS		**912***	**$6,086,250.00**	**$2,420,784.66**

*** The total number of students reported (910) is different than the total above because of two students who transferred schools during the period reported. A student is only counted once regardless of the number of schools that the student attends that year.**

***Students awarded but decided not to use the scholarship*

Children's Tuition Fund of Nevada as of 12/31/2018

School Name	Address	# Students	Awarded	Paid
Calvary Chapel Christian School	7175 W. Oquendo Road, Las Vegas	2	$16,257.00	$16,257.00
Faith Lutheran Middle School & High School	2015 South Hualapai, Las Vegas	1	$8,132.00	$8,132.00
West Charleston Enrichment Academy	3216 West Charleston Blvd, Suite B, Las Vegas	3	$8,861.00	$8,861.00
	Totals	6	$33,250.00	$33,250.00

Dinosaurs and Roses as of 12/31/2018

School Name	Address	# Students	Awarded	Paid
Abundant Life Christian Academy	1720 N. J Street, Las Vegas, NV 89106	4	$15,900.00	$7,950.00
American Heritage Academy	2100 Olympic Ave., Henderson, NV 89014	14	$48,500.00	$24,250.00
Applied Scholastics Academy	1018 E. Sahara Ave. (#D), Las Vegas, NV 89104	6	$30,725.00	$15,362.50
Bethlehem Lutheran School	1837 Mountain St., Carson City, NV 89703	2	$3,000.00	$1,500.00
Bishop Gorman High School	5959 S. Hualapai Way, Las Vegas, NV 89148	6	$28,500.00	$14,250.00
Bishop Manogue Catholic High School	110 Bishop Manogue Dr., Reno, NV 89511	3	$8,900.00	$4,450.00
Brillian Child Christian Academy	7885 W. Rochelle Ave., Las Vegas, NV 89147	1	$6,000.00	$3,000.00
Calvary Chapel Christian School	7065 W. Oquendo Rd., Las Vegas, NV 89113	35	$ 127,995.00	$63,997.50
Candil Hall	5348 N. Rainbow Blvd., Las Vegas, NV 89130	3	$2,500.00	$1,250.00
Christian Montessori Academy	5880 S. Pecos Rd., Las Vegas, NV 89120	1	$2,000.00	$1,000.00
Community Christian Academy	1061 E. Wilson Rd., Pahrump, NV 89048	4	$ 9,950.00	$4,475.00
Cornerstone Christian Academy	5825 W. Eldora Ave., Las Vegas, NV 89146	23	$64,632.00	$32,316.00
Desert Torah Academy	1312 Vista Dr., Las Vegas, NV 89102	78	$548,000.00	$274,000.00
Faith Lutheran Middle/High School	2015 S. Hualapai Way, Las Vegas, NV 89117	8	$27,005.00	$12,879.83
First Good Shepherd Lutheran School	301 S. Maryland Pkwy., Las Vegas, NV 89101	3	$14,000.00	$7,000.00
Good Samaritan Christian Academy	8425 W. Windmill Ln., Las Vegas, NV 89113	3	$14,500.00	$7,250.00
Grace Christian Academy	512 California Ave., Boulder City, NV 89005	1	$4,250.00	$2,125.00
Grace Christian Academy	2320 Heybourne Rd., Minden, NV 89423	2	$3,000.00	$1,500.00
Green Valley Christian School	711 Valle Verde Ct., Henderson, NV 89014	8	$31,935.00	$15,967.50
Henderson International School	1165 Sandy Ridge Ave., Henderson, NV 89052	3	$14,000.00	$7,000.00
Innovation Academy	5705 N. Rainbow Blvd., Las Vegas, NV 89149	1	$6,000.00	$3,000.00
International Christian Academy	8100 Westcliff Dr., Las Vegas , NV 89149	10	$37,250.00	$16,393.32
Journey Education	2710 S. Rainbow Blvd., Las Vegas, NV 89146	1	$4,000.00	$2,000.00
J.O.Y. Academy of Southern Nevada	3883 E. Mesa Vista Way, Las Vegas, NV 89120	1	$6,000.00	$3,000.00

Dinosaurs and Roses Continued

School Name	Address	# Students	Awarded	Paid
Kids R Kids Learning Academy #2	5000 S. Jones Blvd., Las Vegas, NV 89118	1	$6,000.00	$3,000.00
Lake Mead Christian Academy	540 E. Lake Mead Blvd., Henderson, NV 89015	13	$51,600.00	$25,800.00
Lamb of God Lutheran School	6232 N. Jones Blvd., Las Vegas, NV 89130	2	$5,125.00	$2,562.50
Las Vegas Day School	3275 Red Rock St., Las Vegas, NV 89146	1	$350.00	$ 175.00
Las Vegas Junior Academy	6059 W. Oakey Blvd., Las Vegas. NV 89146	3	$7,150.00	$3,575.00
Little Flower Catholic School	1300 Casazza Dr., Reno, NV 89502	9	$19,900.00	$9,950.00
Logos Christian Academy	655 Sheckler Rd., Fallon, NV 89406	1	$4,459.00	$2,229.50
Mesivta of Las Vegas	1940 Paseo Verde Pkwy., Henderson, NV 89012	2	$5,000.00	$2,500.00
Montessori Visions Academy	1905 E. Warm Springs Rd., Las Vegas. NV 89119	1	$3,500.00	$1,750.00
Mountain View Christian School	3900 E. Bonanza Rd., Las Vegas, NV 89110	22	$63,149.00	$29,115.68
New Horizons Academy	6701 W. Charleston Blvd., Las Vegas, NV 89146	3	$14,000.00	$7,000.00
Omar Haikal Islamic Adademy	485 E. Eldorado Ln., Las Vegas, NV 89123	10	$22,075.00	$11,037.50
Our Lady of Las Vegas Catholic School	3046 Alta Dr., Las Vegas, NV 89107	8	$38,147.00	$19,073.50
Sierra Bible Church/The King's Academy	3195 Everett Dr., Reno, NV 89503	2	$9,558.00	$4,779.00
Sierra Lutheran High School	3601 Roman Rd., Carson City, NV 89705	1	$6,000.00	$3,000.00
Spring Valley Christian Academy	7570 Peace Way, Las Vegas, NV 89147	5	$18,000.00	$9,000.00
Spring Valley Montessori School	6940 Edna Ave., Las Vegas, NV 89117	2	$ 12,000.00	$6,000.00
St. Anne Catholic School	1813 S. Maryland Pkwy., Las Vegas, NV 89101	37	$94,370.00	$47,185.00
St. Christopher Catholic School	1840 N. Bruce St., N. Las Vegas, NV 89030	47	$139,040.00	$69,520.00
St. Elizabeth Ann Seton Catholic School	1807 Pueblo Vista Dr., Las Vegas, NV 89128	4	$22,000.00	$11,000.00
St. Teresa of Avila Catholic School	567 S. Richmond Ave., Carson City, NV 89703	7	$19,900.00	$9,950.00
St. Francis de Sales School	1111 Michael Way, Las Vegas, NV 89108	10	$38,380.00	$19,190.00
St. Viator Catholic School	4246 S. Eastern Ave., Las Vegas, NV 89119	18	$57,914.00	$28,957.00
West Charleston Enrichment Academy	3216 W. Charleston Blvd. (#B), Las Vegas, NV 89102	1	$1,000.00	$250.00
Word of Life Christian Academy	3520 N. Buffalo Dr., Las Vegas, NV 89129	8	$18,234.00	$9,117.00
Yeshiva Day School	55 N. Valle Verde Dr., Henderson, NV 89074	7	$23,000.00	$11,500.00
	TOTALS	450	$1,758,393.00	$873,133.33

Education Fund of Northern Nevada as of 12/31/2018

Schools	ADDRESS	CITY, NV ZIP	Pupils	Scholarships	Payment Q1	Payment Q2
Abundant Life Christian Academy	1720 N. J Street	Las Vegas, NV 89106	2	$3,000.00	$750.00	$750.00
Adelson Educational Campus	9700 W. Hillpointe	Las Vegas, NV 89134	1	$6,500.00	$2,375.00	$1,375.00
American Heritage Academy	2100 Olympic Ave.	Henderson, NV 89104	20	$39,825.50	$9,956.50	$9,581.50
Anderson Academy of Math and Science	4780 W. Ann Rd, Ste. 5 #414	Las Vegas, NV 89031	2	$4,000.00	$1,000.00	$1,000.00
Applied Scholastics Academy	1018 E. Sahara Ave., Suite D	Las Vegas, NV 89104	2	$2,050.00	$512.50	$512.50
Bethlehem Lutheran School	1837 Mountain St.	Carson City, NV 89703	22	$51,435.00	$12,858.75	$12,858.75
Bishop Gorman High School	5959 S. Hualapai Way	Las Vegas, NV 89148	49	$312,632.00	$78,158.00	$78,158.00
Bishop Manogue High School	110 Bishop Manogue Dr.	Reno, NV 89511	94	$620,153.00	$155,038.25	$148,374.00
Brilliant Child Christian Academy	7885 W. Rochelle	Las Vegas, NV 89147	2	$3,500.00	$875.00	$875.00
Calvary Chapel Christian School	7175 W. Oquendo Rd.	Las Vegas, NV 89113	106	$236,613.00	$59,153.25	$59,153.25
Calvary Chapel of Green Valley Christian	2075 E. Warm Springs Rd.	Las Vegas, NV 89119	8	$22,500.00	$5,625.00	$5,625.00
Candil Hall Academy	5348 N. Rainbow Blvd.	Las Vegas, NV 89130	2	$6,000.00	$1,500.00	$1,500.00
Christian Montessori Academy	5580 S. Pecos Road	Las Vegas, NV 89120	3	$6,000.00	$1,500.00	$1,500.00
Community Christian Academy	1061 E. Wilson	Pahrump, NV 89048	4	$6,000.00	$1,500.00	$1,500.00
Cornerstone Christian Academy	5825 W. Eldora Ave.	Las Vegas, NV 89146	45	$112,899.00	$28,299.75	$29,199.75
Desert Torah Academy	1312 Vista Drive	Las Vegas, NV 89102	15	$50,000.00	$12,500.00	$12,500.00
Excel Christian School	850 Baring Blvd.	Sparks, NV 89434	18	$70,000.00	$17,500.00	$17,500.00
Faith Christian Academy	1004 Dresslerville	Gardnerville, NV 89460	3	$7,500.00	$1,875.00	$1,875.00
Faith Lutheran Academy	2700 S. Town Center Dr.	Las Vegas, NV 89135	3	$8,500.00	$2,125.00	$2,625.00
Faith Lutheran Middle & High School	2015 S. Hualapai Way	Las Vegas, NV 89117	69	$334,282.76	$86,782.76	$82,000.00
Far West Academy	4660 N. Rancho Rd.	Las Vegas, NV 89130	40	$78,000.00	$19,500.00	$18,500.00
First Good Shepherd	301 S. Maryland Pkwy.	Las Vegas, NV 89101	1	$2,000.00	$500.00	$500.00
Good Samaritan Christian Academy	8425 W. Windmill Ln.	Las Vegas, NV 89113	2	$3,500.00	$875.00	$875.00
Grace Christian Academy (Minden)	2320 Heybourne Rd.	Minden, NV 89423	15	$37,500.00	$9,375.00	$9,375.00
Grace Christian Academy, Boulder City	512 California Ave.	Boulder City, NV 89005	1	$2,500.00	$625.00	$625.00
Green Valley Christian School	711 Valle Verde Ct.	Henderson, NV 89014	16	$42,632.00	$10,658.00	$10,658.00
Green Valley Lutheran	1799 Wigwam Pkwy.	Henderson, NV 89074	1	$1,500.00	$375.00	$375.00
Henderson International School	1165 Sandy Ridge Ave.	Henderson, NV 89052	5	$13,500.00	$3,375.00	$3,375.00
Innovation Academy	5705 N. Rainbow Blvd.	Las Vegas, NV 89149	2	$3,500.00	$875.00	$875.00
International Christian Academy	8100 Westcliff Dr.	Las Vegas, NV 89145	40	$100,118.70	$27,875.00	$16,184.36
Joy Academy	3883 E. Mesa Vista Way	Las Vegas, NV 89120	3	$6,000.00	$1,500.00	$1,500.00
Kids R Kids Learning Academy	5000 S. Jones Blvd.	Las Vegas, NV 89118	1	$2,000.00	$500.00	$500.00
Kings Academy	3195 Everett Dr.	Reno, NV 89503	11	$21,000.00	$5,250.00	$5,250.00
Lake Mead Christian Academy	540 E. Lake Mead	Henderson, NV 89015	73	$185,966.00	$46,491.50	$46,491.50
Lamb of God Lutheran School	6232 N. Jones Blvd.	Las Vegas, NV 89130	1	$3,000.00	$750.00	$750.00
Las Vegas Junior Academy	6059 W. Oakey Blvd.	Las Vegas, NV 89146	24	$69,000.00	$17,250.00	$17,250.00
Liberty Baptist Academy	6501 W. Lake Mead Blvd.	Las Vegas, NV 89108	23	$57,500.00	$14,375.00	$13,750.00
Little Flower Catholic School	1300 Casazza Dr.	Reno, NV 89502	34	$88,620.00	$22,155.00	$22,155.00
Logos Christian Academy	655 Sheckler Rd.	Fallon, NV 89406	9	$17,500.00	$4,375.00	$4,375.00
Lone Mountain Academy	4295 N. Rancho Dr.	Las Vegas, NV 89130	7	$19,500.00	$4,875.00	$4,875.00
Merryhill Durango	5055 S. Durango Dr.	Las Vegas, NV 89113	1	$2,000.00	$500.00	$500.00
Mesivta of Las Vegas	1940 Paseo Verde Pkwy.	Henderson, NV 89012	9	$36,139.00	$9,034.75	$9,034.75
Montessori Visions Academy	1905 E. Warm Springs Rd.	Las Vegas, NV 89119	3	$7,500.00	$1,875.00	$1,875.00
Mountain View Christian School	3900 E. Bonanza Rd.	Las Vegas, NV 89110	125	$320,139.00	$78,959.75	$79,334.75

Education Fund of Northern Nevada Continued

Schools	ADDRESS	CITY, NV ZIP	Pupils	Scholarships	Payment Q1	Payment Q2
Nevada Sage Waldorf	565 Reactor Way	Reno, NV 89502	3	$9,000.00	$2,250.00	$2,250.00
New Horizons Academy	6701 W. Charleston	Las Vegas, NV 89146	4	$16,000.00	$4,000.00	$4,000.00
Omar Haikal Islamic Academy	485 E. Elorado Ln.	Las Vegas, NV 89123	77	$160,732.00	$40,183.00	$40,183.00
Our Lady of Las Vegas Catholic School	3046 Alta Dr.	Las Vegas, NV 89107	9	$27,000.00	$6,750.00	$6,750.00
Our Lady of the Snows	1125 Lander St.	Reno, NV 89509	15	$42,000.00	$10,500.00	$10,500.00
Riverview Christian Academy	7125 W. Fourth St.	Reno, NV 89523	2	$4,000.00	$1,000.00	$1,000.00
Sage Ridge School	2515 Crossbow Ct.	Reno, NV 89511	9	$58,500.00	$14,625.00	$14,625.00
Saint Albert the Great Catholic School	1255 St. Albert Dr.	Reno, NV 89503	8	$24,000.00	$6,000.00	$6,000.00
Saint Anne Catholic School	1813 S. Maryland Pkwy.	Las Vegas, NV 89104	41	$114,000.00	$28,500.00	$28,500.00
Saint Christopher Catholic School	1840 N. Bruce St.	No. Las Vegas, NV 89030	89	$252,000.00	$63,000.00	$63,000.00
Saint Elizabeth Ann Seton	1807 Pueblo Vista Dr.	Las Vegas, NV 89128	8	$19,500.00	$4,875.00	$4,875.00
Saint Francis De Sales School	1111 Michael Way	Las Vegas, NV 89108	15	$43,500.00	$10,875.00	$10,875.00
Saint Gabriels Catholic School	2170 E. Maule Ave.	Las Vegas, NV 89119	3	$9,000.00	$2,250.00	$2,250.00
Saint Teresa Avila Catholic School	567 S. Richmond	Carson City, NV 89703	38	$106,500.00	$26,625.00	$26,625.00
Saint Viator Catholic School	4246 S. Eastern Ave.	Las Vegas, NV 89119	17	$48,000.00	$12,000.00	$12,000.00
Sierra Lutheran High	3601 Romans Rd.	Carson City, NV 89705	21	$115,264.00	$28,816.00	$28,816.00
Solomon Schecter Day School	10700 Havenwood Ln.	Las Vegas, NV 89135	7	$23,000.00	$5,750.00	$5,750.00
Spring Valley Christian	7570 Peace Wy.	Las Vegas, NV 89147	4	$7,000.00	$1,750.00	$1,750.00
Spring Valley Montessori	6940 Edna Ave.	Las Vegas, NV 89117	1	$2,000.00	$500.00	$500.00
Trinity International	4141 Meadows Lane	Las Vegas, NV 89107	1	$2,000.00	$500.00	$500.00
West Charleston Enrichment Academy	3216 W. Charleston, Suite B	Las Vegas, NV 89102	6	$16,500.00	$4,125.00	$4,125.00
Word of Life Christian Academy	3520 N. Buffalo Dr.	Las Vegas, NV 89129	44	$132,428.10	$36,273.65	$29,940.41
Yeshiva Day School	55 N. Valle Verde Dr.	Henderson, NV 89074	89	$248,264.00	$62,066.00	$62,066.00
		Totals:	1428	$4,504,193.06	$1,135,022.41	$1,104,326.52

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Institute for Justice, and that on the 10th day of July, 2020, I caused to be served, via the Court's electronic filing service, a true and correct copy of the foregoing **JOINT APPENDIX, VOLUME III** to the following parties:

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/s/ Claire Purple
An Employee of INSTITUTE FOR JUSTICE

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,

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,

Respondents,

Supreme Court Case No. 81281

On Appeal from a Final Judgment of the District Court for Clark County, Nevada, Case No. A-19-800267-C, Hon. Rob Bare

Joint Appendix, Volume IV

and

THE LEGISLATURE OF THE STATE OF NEVADA,

Respondent-Intervenors.

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JOINT APPENDIX INDEX

TAB 12

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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. DEPARTMENT OF EDUCATION; et al., Defendants, and THE LEGISLATURE OF THE STATE OF NEVADA, Intervenor-Defendant.	**Case No. A-19-800267-C** **Dept. No. 32**

INTERVENOR-DEFENDANT NEVADA LEGISLATURE'S OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Date of Hearing: March 17, 2020
Time of Hearing: 9:30 a.m.

OPPOSITION

Intervenor-Defendant Legislature of the State of Nevada (Legislature), by and through its counsel the Legal Division of the Legislative Counsel Bureau under NRS 218F.720, hereby files this Opposition to Plaintiffs' Motion for Summary Judgment pursuant NRCP 56 and EDCR 2.20. The Legislature's Opposition is based upon the attached Memorandum of Points and Authorities, all pleadings, documents and exhibits on file in this case and any oral arguments the Court may allow.

The Legislature requests that the Court deny Plaintiffs' Motion for Summary Judgment, grant the Legislature's Motion for Summary Judgment and enter a final judgment in favor of the Legislature and all other Defendants on all causes of action and claims for relief alleged in Plaintiffs' Complaint filed on August 15, 2019, because: (1) Plaintiffs' state constitutional claims present only pure issues of law that require no factual development, so there are no genuine issues or disputes as to any material fact; and (2) AB 458 is constitutional as a matter of law, so the Legislature and all other Defendants are entitled to summary judgment on Plaintiffs' state constitutional claims as a matter of law.[1]

MEMORANDUM OF POINTS AND AUTHORITIES

I. Introduction.

In their motion for summary judgment, Plaintiffs contend that Assembly Bill No. 458 (AB 458) of the 2019 legislative session, 2019 Nev. Stat., ch. 366, at 2295-99, was a bill which created, generated, or increased public revenue and was subject to the two-thirds majority requirement in Article 4, Section 18(2) of the Nevada Constitution ("two-thirds requirement").[2] (*Pls.' MSJ at 14-20*.) The two-thirds requirement provides in relevant part that:

---

[1] It is well settled that if a plaintiff's claims fail as a matter of law on a motion for summary judgment, all defendants are entitled to a final judgment in their favor on those claims, regardless of whether they joined in the motion. See Lewis v. Lynn, 236 F.3d 766, 768 (5th Cir. 2001); True the Vote v. Hosemann, 43 F.Supp.3d 693, 708 n.59 (S.D. Miss. 2014).

[2] AB 458 is reproduced in the Addendum after the Memorandum of Points and Authorities.

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

Nev. Const. art. 4, § 18(2). Based on the two-thirds requirement, Plaintiffs argue that AB 458 was not validly enacted and was therefore unconstitutional and void from its inception because the Senate passed the bill by a majority of all the members elected to the Senate, instead of a two-thirds majority of all the members elected to the Senate. (*Pls.' MSJ at 14-20*.)

AB 458 made statutory amendments to the amount of potential future tax credits that the Department of Taxation would have been authorized to approve under the Nevada Educational Choice Scholarship Program ("scholarship program") in future fiscal years pursuant to subsection 4 of NRS 363A.139 and 363B.119 ("subsection 4 credits"). Plaintiffs argue that by eliminating potential future increases in subsection 4 credits under the scholarship program, AB 458 "has the effect of raising revenue and should therefore have received a supermajority vote in the Senate." (*Pls.' MSJ at 17*.)

Plaintiffs' arguments are wrong as a matter of law because they ignore the reality that by eliminating the potential future increases in subsection 4 credits before they became legally operative and binding at the beginning of the fiscal year on July 1, 2019, the Legislature did not change—but maintained—the existing legally operative amount of subsection 4 credits at **$6,655,000**, which is the amount that was legally in effect before the passage of AB 458 and which is the amount that is now legally in effect after the passage of AB 458. Moreover, that amount—**$6,655,000**—will remain exactly the same for each fiscal year thereafter, unless a future Legislature changes that amount.

Thus, because AB 458 did not change—but maintained—the existing legally operative amount of subsection 4 credits at **$6,655,000**, the Legislature could reasonably conclude that AB 458 did not create, generate or increase any public revenue in any form under the two-thirds requirement. Furthermore, in passing AB 458, the Legislature acted on the Legislative Counsel's opinion that this is a

reasonable interpretation of the two-thirds requirement. (*Leg.'s MSJ Ex. A.*) Under such circumstances, the Legislature's reasonable interpretation of the two-thirds requirement is entitled to deference because "[i]n choosing this interpretation, the Legislature acted on Legislative Counsel's opinion that this is a reasonable construction of the provision . . . and the Legislature is entitled to deference in its counseled selection of this interpretation." Nev. Mining Ass'n v. Erdoes, 117 Nev. 531, 540 (2001).

In addition, even assuming for the sake of argument that AB 458 changed or reduced the amount of subsection 4 credits, the Legislature could reasonably conclude that AB 458 was not subject to the two-thirds requirement because the legislative framers of the two-thirds requirement did not intend to include changes in tax credits in the constitutional provision. Because changes in tax credits do not change the existing "computation bases" or statutory formulas used to calculate a taxpayer's liability for the underlying state taxes, changes in tax credits are not of the same kind, class or nature as changes in "taxes, fees, assessments and rates" or "changes in the computation bases for taxes, fees, assessments and rates." Therefore, by expressly mentioning those tax-related changes in the plain text of the two-thirds requirement—while clearly omitting any references to changes in tax credits from the plain text—it must be presumed that the legislative framers did not intend to include any changes in tax credits in the two-thirds requirement.

Moreover, even if the legislative framers intended to include changes in tax credits in the constitutional provision, the Legislature still could reasonably conclude that AB 458 did not change—but maintained—the existing "computation bases" or statutory formulas used to calculate the underlying state taxes to which the subsection 4 credits are applicable. Because the subsection 4 credits are not part of the existing "computation bases" or statutory formulas used by the Department of Taxation to calculate a taxpayer's liability under the Modified Business Tax or MBT, AB 458 did not change—but maintained—those existing "computation bases" or statutory formulas and therefore did not change any "taxes, fees, assessments and rates" or "the computation bases for [any] taxes, fees, assessments and

rates." Again, in passing AB 458, the Legislature acted on the Legislative Counsel's opinion that this is a reasonable interpretation of the two-thirds requirement. (*Leg.'s MSJ Ex. A.*) Because the Legislature acted on the Legislative Counsel's opinion that this is a reasonable interpretation of the two-thirds requirement, "the Legislature is entitled to deference in its counseled selection of this interpretation." Nev. Mining, 117 Nev. at 540.

Finally, the Legislature's reasonable interpretation of the two-thirds requirement is supported by: (1) contemporaneous extrinsic evidence of the purpose and intent of Nevada's two-thirds requirement; and (2) case law from other states interpreting similar supermajority requirements that served as the model for Nevada's two-thirds requirement. Based on the case law from the other states, the Legislature could reasonably interpret Nevada's two-thirds requirement in a manner that adopts and follows the judicial interpretations placed on the similar supermajority requirements from those other states. Under those judicial interpretations, the Legislature could reasonably conclude that Nevada's two-thirds requirement **does not** apply to a bill which reduces or eliminates available tax exemptions or tax credits, and "the Legislature is entitled to deference in its counseled selection of this interpretation." Nev. Mining, 117 Nev. at 540.

II. Legislature's objections to Plaintiffs' evidentiary materials.

Under NRCP 56(c)(2), the Legislature objects to the evidentiary materials that Plaintiffs submitted in support of their motion for summary judgment because those evidentiary materials are not relevant and material to the question of whether AB 458 is facially constitutional and are not admissible in evidence under Nevada's evidence code.

When a party submits evidentiary materials in support of a motion for summary judgment, those evidentiary materials must set forth facts which are relevant and material to the legal questions at issue and which are admissible in evidence under Nevada's evidence code. NRCP 56(c)(2); Schneider v. Cont'l Assur. Co., 110 Nev. 1270, 1273 (1994). For example, a party cannot support a motion for summary judgment with irrelevant and immaterial facts or with other inadmissible evidence such as

hearsay statements which are barred under Nevada's evidence code. Collins v. Union Fed. Sav. & Loan, 99 Nev. 284, 302 (1983).

Under Nevada's evidence code, evidence is relevant and material only if it has "any tendency to make the existence of any *fact that is of consequence to the determination of the action* more or less probable than it would be without the evidence." NRS 48.015 (emphasis added); Jaeger v. State, 113 Nev. 1275, 1281 (1997). Evidence is not relevant and material if it involves any fact that has no consequence to the determination of the action. Thus, the only facts that are relevant and material for purposes of summary judgment are "facts that might affect the outcome of the suit under the governing law." Wood v. Safeway, Inc., 121 Nev. 724, 730 (2005) (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-48 (1986)). Consequently, the reviewing court cannot consider facts that are "irrelevant or unnecessary" in resolving the legal questions presented under the governing law. Id. Instead, the court must limit its review to considering only those supporting materials which are "probative on the operative facts that are significant to the outcome under the controlling law." Id.

Finally, because a party's evidentiary materials on summary judgment must set forth facts which are admissible in evidence under Nevada's evidence code, the reviewing court must disregard statements and opinions in a party's evidentiary materials which are nothing more than legal conclusions concerning issues of law that are exclusively within the province of the court to decide. Dredge Corp. v. Husite Co., 78 Nev. 69, 86-87 (1962) (disregarding legal conclusions in the parties' affidavits on summary judgment where "the conflict in reality presented an issue of law and it was the province of the court to determine the same."). Consequently, for purposes of summary judgment, "statements in declarations based on speculation or improper legal conclusions, or argumentative statements, are not facts and likewise will not be considered on a motion for summary judgment." Burch v. Regents of Univ. of Cal., 433 F.Supp.2d 1110, 1119 (E.D. Cal. 2006); EEOC v. Swissport Fueling, 916 F.Supp.2d 1005, 1016 (D. Ariz. 2013) (stating that "a district court may not rely on irrelevant facts, legal

conclusions, or speculations on a motion for summary judgment.").

In this case, the Court cannot consider Plaintiffs' evidentiary materials under NRCP 56(c)(2) because those evidentiary materials are not relevant and material to the question of whether AB 458 is facially constitutional and are not admissible in evidence under Nevada's evidence code. Those evidentiary materials also contain inadmissible hearsay statements which are barred under Nevada's evidence code.

In their motion for summary judgment, Plaintiffs argue that AB 458 was not validly enacted under the two-thirds requirement and was therefore unconstitutional and void from its inception. (*Pls.' MSJ at 14-20.*) Based on these arguments, Plaintiffs are making a facial challenge to the validity of AB 458 because they are claiming that the bill cannot be applied constitutionally under any circumstances. Id. As a result, for purposes of summary judgment, the controlling or governing law consists of the well-established standards for reviewing the facial validity of a statute.

Under those standards, the Nevada Supreme Court has stated that "[w]hen making a facial challenge to a statute, the challenger generally bears the burden of demonstrating that there is no set of circumstances under which the statute would be valid." Deja Vu Showgirls v. Nev. Dep't of Tax'n, 130 Nev. 719, 725-26 (2014); Schwartz v. Lopez, 132 Nev. 732, 744-45 (2016). The court has also stated that the question of whether a statute is facially valid is "purely a legal question." Schwartz, 132 Nev. at 744; Flamingo Paradise Gaming v. Chanos, 125 Nev. 502, 508 (2009) (stating that "the issues presented concerned questions of law because only a facial challenge to the statute was asserted."). Because a facial challenge presents a pure legal question, the court's review of the facial validity of a statute "is not dependent upon, and must necessarily be resolved without reference to any fact in the case before the court." Beavers v. State Dep't of Mtr. Vehs., 109 Nev. 435, 438 n.1 (1993). As a result, in determining whether a statute is facially valid, the court does not consider any materials in the record regarding personalized impacts and potential future effects of the application of the statute to the parties or any

other persons because "it is improper in the context of a facial challenge review to consider these [individualized or] hypothetical situations." Flamingo Paradise, 125 Nev. at 519-20 n.14. Thus, when parties make a facial challenge to a statute, the court must resolve the challenge based solely on the face of the law without consideration of any facts regarding personalized impacts and potential future effects of the application of the statute to the parties or any other persons because such facts are not relevant and material in deciding the pure legal question of whether the statute is facially constitutional. Id.; Deja Vu Showgirls, 130 Nev. at 725-26.

Furthermore, in resolving a facial challenge or any other constitutional challenge to a statute, the court does not consider the merits, wisdom and public policy of the statute because such matters fall outside the scope of proper constitutional adjudication and have no bearing on the legal issue of whether the statute is constitutional. King v. Bd. of Regents, 65 Nev. 533, 542 (1948) ("[M]atters of policy or convenience or right or justice or hardship or questions of whether the legislation is good or bad are solely matters for consideration of the legislature and not of the courts."); In re Estate of McKay, 43 Nev. 114, 127 (1919) ("The policy, wisdom, or expediency of a law is within the exclusive theater of legislative action. It is a forbidden sphere for the judiciary, which courts cannot invade, even under pressure of constant importunity.").[3]

Accordingly, under well-established principles of separation of powers, "the courts have nothing to do with the general policy of the law." Vineyard Land & Stock Co. v. Dist. Ct., 42 Nev. 1, 14 (1918). The reason for this rule is that the Legislature is the "appropriate forum to discuss public policy." Sheriff v. Encoe, 110 Nev. 1317, 1320 (1994). For example, because the scholarship program "involves many competing societal, economic, and policy considerations, the legislative procedures and

[3] See also Koscot Interplanetary, Inc. v. Draney, 90 Nev. 450, 456 (1974) ("Whether a legislative enactment is wise or unwise is not a determination to be made by the judicial branch."); W. Realty Co. v. City of Reno, 63 Nev. 330, 351 (1946) ("[I]t is not the province of the courts to pass upon the wisdom of legislative policy."); Prouse v. Prouse, 56 Nev. 467, 471-72 (1936) ("This argument goes to the wisdom or policy of legislative action, with which we have no concern.").

safeguards are well equipped to the task of fashioning an appropriate change, if any." Id. (quoting Hinegardner v. Marcor Resorts, 108 Nev. 1091, 1096 (1992)).

In support of their motion for summary judgment, Plaintiffs submitted several affidavits describing various personalized impacts and potential future effects regarding the application of AB 458 to Plaintiffs and other persons who are business donors, scholarship organizations and parents under the scholarship program. (*Aff. of Flor Morency at ¶¶ 6-24; Aff. of Bonnie Ybarra at ¶¶ 5-31; Aff. of Keysha Newell at ¶¶ 4-23; Aff. of Kimberly Dyson at ¶¶ 4-29; Aff. of Alan C. Sklar at ¶¶ 5-11;Aff. of Howard A. Perlman at ¶¶ 5-11.*) However, during the legislative hearings on AB 458, the public presented similar testimony to the Legislature describing various personalized impacts and potential future effects relating to the bill, and the Legislature considered and weighed that testimony when it was assessing, evaluating and debating the merits, wisdom and public policy of AB 458 before passing the legislation. Legislative History of AB 458, 80th Leg. (Nev. LCB Research Library 2019) (Hearing on AB 458 before Assembly Comm. on Taxation, 80th Leg., at 5-25 (Nev. Apr. 4, 2019); Hearing on AB 458 before Senate Comm. on Revenue & Economic Development, 80th Leg., at 5-14 (Nev. May 2, 2019)) (https://www.leg.state.nv.us/Division/Research/Library/LegHistory/LHs/2019/AB458,2019.pdf).[4] For example, Plaintiffs Flor Morency and Keysha Newell each presented testimony during legislative hearings describing various personalized impacts and potential future effects relating to the bill when they testified against AB 458 and questioned the merits, wisdom and public policy of the legislation. Id. (Hearing on AB 458 before Senate Comm. on Revenue & Economic Development, 80th Leg., at 10 & 13 (Nev. May 2, 2019)).

Unquestionably, any personalized impacts and potential future effects relating to AB 458 were properly presented to the Legislature for its consideration. Moreover, such personalized impacts and potential future effects were undoubtedly relevant and material to the Legislature's evaluation of the

[4] The Court may take judicial notice of the legislative history as a public record. Jory v. Bennight, 91 Nev. 763, 766 (1975); Fierle v. Perez, 125 Nev. 728, 737-38 n.6 (2009).

merits, wisdom and public policy of the legislation and to its consideration of the legislative question of whether to pass the legislation under its lawmaking power to establish the public policy of this State. However, after the Legislature exercised its lawmaking power and established the public policy of this State through the passage of AB 458, such personalized impacts and potential future effects are not relevant and material to the judicial question of whether the legislation is facially constitutional because: (1) the facial constitutionality of AB 458 presents only a pure legal question; and (2) any personalized impacts and potential future effects regarding the application of the legislation are matters relating to the merits, wisdom and public policy of the legislation, which are matters solely for consideration by the Legislature and not by the courts.

Therefore, because such personalized impacts and potential future effects are not relevant and material to the pure legal question of whether the bill is facially constitutional, the Court cannot consider such personalized impacts and potential future effects in deciding the parties' motions for summary judgment. Consequently, under NRCP 56(c)(2), the Legislature objects to all such evidentiary materials in the record because such materials are not admissible in evidence under Nevada's evidence code in deciding the pure legal question of whether AB 458 is facially constitutional.

In addition, the Legislature objects to paragraphs 25, 26 and 27 of Plaintiff Bonnie Ybarra's affidavit because those paragraphs contain inadmissible hearsay statements which are barred under Nevada's evidence code. Collins, 99 Nev. at 302. Under Nevada's evidence code, hearsay statements include any out-of-court statements which are offered in evidence to prove the truth of the matters asserted therein and which do not fall within an established exception to the hearsay rule. See NRS 51.035, 51.045 & 51.065; Ramiez v. State, 114 Nev. 550, 560-62 (1998); Soebbing v. Carpet Barn, 109 Nev. 78, 81 (1993); Mishler v. McNally, 102 Nev. 625, 628 (1986). If a party wants to use hearsay statements to support its claims, the party has the initial burden of proving that the foundational requirements for an established exception to the hearsay rule have been met. See Shelton v. Consumer

Prods. Safety Comm'n, 277 F.3d 998, 1010 (8th Cir. 2002); Barry v. Trs. Pension Plan, 467 F.Supp.2d 91, 106 (D.D.C. 2006) ("The structure of [the hearsay rule] places the initial burden on the proponent of the document's admission to show that it meets the basic requirements of the rule." (quoting 2 McCormick on Evidence § 288)).

In paragraphs 25-28 of Plaintiff Bonnie Ybarra's affidavit, she offers out-of-court statements by Mark Maddox, the Executive Director of Operations at Mountain View Christian School, and other unidentified officers or employees of the school to assert alleged matters relating to the operations of the school. (*Aff. of Bonnie Ybarra at ¶¶ 25-28.*) However, in deciding the parties' motions for summary judgment, the Court must disregard all such statements as inadmissible hearsay because the statements are offered in evidence to prove the truth of the matters asserted therein and Plaintiffs have not met their burden to show that the statements fall within an established exception to the hearsay rule. Consequently, under NRCP 56(c)(2), the Legislature objects to all such statements as inadmissible hearsay statements that are barred under Nevada's evidence code.

III. Correct standards for reviewing the constitutionality of statutes.

In their motion for summary judgment, Plaintiffs apply the wrong standards for reviewing the constitutionality of statutes. (*Pls.' MSJ at 14.*) Plaintiffs argue that their facial challenge to the constitutionality of AB 458 is governed by the standards of statutory construction that are used for interpreting ambiguous tax statutes when those statutes are being applied to specific taxpayers to determine whether they owe taxes under individualized circumstances. Id. Under those standards of statutory construction, the Nevada Supreme Court has stated that:

> Taxing statutes when of doubtful validity or effect must be construed in favor of the taxpayers. A tax statute particularly must say what it means. We will not extend a tax statute by implication.

State Dep't of Tax'n v. Visual Commc'ns, 108 Nev. 721, 725 (1992) (quoting Cashman Photo v. Nev. Gaming Comm'n, 91 Nev. 424, 428 (1975)); Harrah's Operating Co. v. State Dep't of Tax'n, 130 Nev.

129, 132 (2014) ("[T]ax statutes are to be construed in favor of the taxpayer.").

As discussed previously, this case presents a facial challenge to the constitutionality of AB 458. This case does involve the interpretation of ambiguous tax statutes that are being applied to specific taxpayers to determine whether they owe taxes under individualized circumstances. Accordingly, because the standards of statutory construction proffered by Plaintiffs do not govern their facial challenge to the constitutionality of AB 458, Plaintiffs apply the wrong standards of constitutional review in their motion for summary judgment.

Under the correct standards of constitutional review, the Court must presume that AB 458 is constitutional. List v. Whisler, 99 Nev. 133, 137 (1983). Moreover, "[i]n case of doubt, every possible presumption will be made in favor of the constitutionality of a statute, and courts will interfere only when the Constitution is clearly violated." Id. The presumption places a heavy burden on the challenger to make "a clear showing that the statute is unconstitutional." Id. at 138. As a result, the Court must not invalidate AB 458 on constitutional grounds unless its invalidity appears "beyond a reasonable doubt." Cauble v. Beemer, 64 Nev. 77, 101 (1947); State ex rel. Lewis v. Doron, 5 Nev. 399, 408 (1870) ("[E]very statute is to be upheld, unless plainly and without reasonable doubt in conflict with the Constitution.").

Furthermore, it is a fundamental rule of constitutional review that "the judiciary will not declare an act void because it disagrees with the wisdom of the Legislature." Anthony v. State, 94 Nev. 337, 341 (1978). Thus, the Court may not find AB 458 unconstitutional "simply because [it] might question the wisdom or necessity of the provision under scrutiny." Techtow v. City Council of N. Las Vegas, 105 Nev. 330, 333 (1989). The reason for this rule is that "[q]uestions relating to the policy, wisdom, and expediency of the law are for the people's representatives in the legislature assembled, and not for the courts to determine." Worthington v. Dist. Ct., 37 Nev. 212, 244 (1914).

By applying the correct standards of constitutional review in this case, it is evident that Plaintiffs'

state constitutional claims have no merit and that AB 458 is constitutional as a matter of law. Therefore, the Legislature and all other Defendants are entitled to summary judgment on Plaintiffs' state constitutional claims as a matter of law.

IV. Argument.

A. The Legislature could reasonably conclude that AB 458 was not subject to the two-thirds requirement because the bill did not change—but maintained—the existing legally operative amount of subsection 4 credits at $6,655,000, which is the amount that was legally in effect before the passage of AB 458 and which is the amount that is now legally in effect after the passage of AB 458.

In their motion for summary judgment, Plaintiffs argue that by eliminating potential future increases in subsection 4 credits under the scholarship program, AB 458 "has the effect of raising revenue and should therefore have received a supermajority vote in the Senate." (*Pls.' MSJ at 17*.) Plaintiffs' arguments are wrong as a matter of law because the Legislature could reasonably conclude that AB 458 did not create, generate or increase any public revenue in any form because the bill did not change—but maintained—the existing legally operative amount of subsection 4 credits at **$6,655,000**, which is the amount that was legally in effect before the passage of AB 458 and which is the amount that is now legally in effect after the passage of AB 458.

At the time of passage of AB 458, the Department of Taxation was authorized to approve subsection 4 credits in the amount of **$6,655,000** for the fiscal year beginning on July 1, 2018 (Fiscal Year 2018-2019). Legislative Counsel's Digest, AB 458, 2019 Nev. Stat., ch. 366, at 2295-96. Before the Legislature passed AB 458, the amount of subsection 4 credits that the Department of Taxation would have been authorized to approve under the scholarship program for the next fiscal year beginning on July 1, 2019 (Fiscal Year 2019-2020)—and for other future fiscal years—would have increased by 10 percent at the beginning of each fiscal year. Id. However, when the Legislature passed AB 458, those potential future increases in subsection 4 credits were not legally operative and binding yet because they would not lawfully go into effect and become legally operative and binding until the beginning of the

fiscal year on July 1, 2019, and the beginning of each fiscal year thereafter.

It is well established that "[t]he existence of a law, and the time when it shall take effect, are two separate and distinct things. The law exists from the date of approval, but its operation [may be] postponed to a future day." People ex rel. Graham v. Inglis, 43 N.E. 1103, 1104 (Ill. 1896). Thus, because the Legislature has the power to postpone the operation of a statute until a later time, it may enact a statute that has both an effective date and a later operative date. 82 C.J.S. Statutes § 549 (Westlaw 2019). Under such circumstances, the effective date is the date upon which the statute becomes an existing law, but the later operative date is the date upon which the requirements of the statute will actually become legally binding. 82 C.J.S. Statutes § 549 (Westlaw 2019); Preston v. State Bd. of Equal., 19 P.3d 1148, 1167 (Cal. 2001). When a statute has both an effective date and a later operative date, the statute must be understood as speaking from its later operative date when it actually becomes legally binding and not from its earlier effective date when it becomes an existing law but does not have any legally binding requirements yet. 82 C.J.S. Statutes § 549 (Westlaw 2019); Longview Co. v. Lynn, 108 P.2d 365, 373 (Wash. 1940). Consequently, until the statute reaches its later operative date, the statute is not legally operative and binding yet, and the statute does not confer any presently existing and enforceable legal rights or benefits under its provisions. Id.; Levinson v. City of Kansas City, 43 S.W.3d 312, 316-18 (Mo. Ct. App. 2001).

Therefore, when the Legislature passed AB 458, the potential future increases in subsection 4 credits were not legally operative and binding yet because they would not lawfully go into effect and become legally operative and binding until the beginning of the fiscal year on July 1, 2019, and the beginning of each fiscal year thereafter. Consequently, after the passage of AB 458, the amount of subsection 4 credits—**$6,655,000**—that the Department of Taxation was authorized to approve for the fiscal year beginning on July 1, 2018 (Fiscal Year 2018-2019) did not change and was not reduced by AB 458. Instead, that amount—**$6,655,000**—remained exactly the same after the passage of AB 458 for

the next fiscal year beginning on July 1, 2019 (Fiscal Year 2019-2020). Moreover, that amount—**$6,655,000**—will remain exactly the same for each fiscal year thereafter, unless a future Legislature changes that amount. Thus, by eliminating the potential future increases in subsection 4 credits before they became legally operative and binding, the Legislature did not change—but maintained—the existing legally operative amount of subsection 4 credits at **$6,655,000**.

Accordingly, the Legislature could reasonably conclude that AB 458 did not create, generate or increase any public revenue in any form because the bill did not change—but maintained—the existing legally operative amount of subsection 4 credits at **$6,655,000**, which is the amount that was legally in effect before the passage of AB 458 and which is the amount that is now legally in effect after the passage of AB 458. Under such circumstances, "the Legislature is entitled to deference in its counseled selection of this interpretation." Nev. Mining, 117 Nev. at 540. Therefore, because the Legislature could reasonably conclude that AB 458 was not subject to the two-thirds requirement, the Legislature and all other Defendants are entitled to summary judgment on Plaintiffs' state constitutional claims as a matter of law.

B. Even assuming for the sake of argument that AB 458 changed or reduced the amount of subsection 4 credits, the Legislature still could reasonably conclude that AB 458 was not subject to the two-thirds requirement.

In their motion for summary judgment, Plaintiffs argue that under the "plain text" of the two-thirds requirement, a bill that changes or reduces potential future tax credits is a bill that raises revenue under the two-thirds requirement. (*Pls.' MSJ at 15-17*.) However, although the plain text of the two-thirds requirement speaks directly with regard to changes in "taxes, fees, assessments and rates" and also "changes in the computation bases for taxes, fees, assessments and rates," the plain text is entirely silent with regard to changes in tax credits. Undoubtedly, the legislative framers of the two-thirds requirement could have expressly included changes in **tax credits** in the two-thirds requirement along with the other tax-related changes that they expressly included in the constitutional provision. Based on well-

established rules of construction, their legislative omission of changes in tax credits in the two-thirds requirement unravels Plaintiffs' reliance on the plain text of the constitutional provision.

Under the rules of construction, the Nevada Supreme Court has "repeatedly refused to imply provisions not expressly included in the legislative scheme." Zenor v. State Dep't of Transp., 134 Nev. 109, 110 (2018) (quoting State Indus. Ins. Sys. v. Wrenn, 104 Nev. 536, 539 (1988)). The Nevada Supreme Court has also stated that "it is not the business of this court to fill in alleged legislative omissions based on conjecture as to what the legislature would or should have done." Id. at 111 (quoting McKay v. Bd. of Cnty. Comm'rs, 103 Nev. 490, 492 (1987)).

In this case, the legislative framers of the two-thirds requirement could have expressly included changes in **tax credits** in the two-thirds requirement along with the other tax-related changes that they expressly included in the constitutional provision. Their legislative omission in Nevada's two-thirds requirement is particularly noteworthy given that changes in tax credits and tax exemptions are expressly included in similar supermajority requirements in other states. Ariz. Const. art. IX, § 22 (requiring a supermajority for "[a] reduction or elimination of a tax deduction, exemption, exclusion, credit or other tax exemption feature in computing tax liability."); Fla. Const. art. VII, § 19 (requiring a supermajority to "decrease or eliminate a state tax or fee exemption or credit."); La. Const. art. VII, § 2 (requiring a supermajority for "a repeal of an existing tax exemption.").

Furthermore, under the rule of *noscitur a sociis* ("it is known by its associates"), the meaning of particular terms in a constitutional or statutory provision may be ascertained by reference to the other terms that are associated with it in the provision. See Orr Ditch Co. v. Justice Court, 64 Nev. 138, 146 (1947) ("[T]he meaning of particular terms in a statute may be ascertained by reference to words associated with them in the statute."); Ford v. State, 127 Nev. 608, 622 n.8 (2011) ("[W]ords are known by—acquire meaning from—the company they keep."); United States v. Williams, 553 U.S. 285, 293 (2008) ("[A] word is given more precise content by the neighboring words with which it is associated.").

Additionally, under the rule of *ejusdem generis* ("of the same kind or class"), when a general term in a constitutional or statutory provision is part of a list of more specific terms, the general term may be interpreted as being restricted in meaning by the specific terms, so its scope includes only those things that are of the same kind, class or nature as the specific terms. See Orr Ditch Co., 64 Nev. at 147 ("[G]eneral terms in a statute may be regarded as limited by subsequent more specific terms . . . and [construed] as including only things or persons of the same kind, class, character, or nature as those specifically enumerated."); Phelps v. State Farm Mut. Auto. Ins., 112 Nev. 675, 682 (1996) ("This court has previously applied the rule of *ejusdem generis*, which translated means 'of the same kind, class or nature.'").

Finally, under the rule of *expressio unius est exclusio alterius* ("the expression of one thing is the exclusion of another"), when a constitutional or statutory provision expressly mentions one thing, it is presumed that the legislative framers intended to exclude all other things. See V & T R.R. v. Elliott, 5 Nev. 358, 364 (1870) ("The mention of one thing or person, is in law an exclusion of all other things or persons."); Sonia F. v. Dist. Court, 125 Nev. 495, 499 (2009). Therefore, when the legislative framers expressly mention particular subject matters within constitutional or statutory provisions, "omissions of [other] subject matters from [those] provisions are presumed to have been intentional." State Dep't of Tax'n v. DaimlerChrysler, 121 Nev. 541, 548 (2005).

In this case, the legislative framers of the two-thirds requirement expressly mentioned changes in "taxes, fees, assessments and rates" and also "changes in the computation bases for taxes, fees, assessments and rates." By expressly mentioning these types of tax-related changes in the two-thirds requirement, it must be presumed that the legislative framers intended to exclude all other changes that are not of the same kind, class or nature. Because changes in tax credits do not change the existing "computation bases" or statutory formulas used to calculate a taxpayer's liability for the underlying state taxes, changes in tax credits are not of the same kind, class or nature as changes in "taxes, fees,

assessments and rates" or "changes in the computation bases for taxes, fees, assessments and rates." Therefore, it must be presumed that the legislative framers of the two-thirds requirement did not intend to include changes in tax credits in the constitutional provision.

Accordingly, even assuming for the sake of argument that AB 458 changed or reduced the amount of subsection 4 credits, the Legislature could reasonably conclude that AB 458 was not subject to the two-thirds requirement because the legislative framers of the two-thirds requirement did not intend to include changes in tax credits in the constitutional provision. Because changes in tax credits do not change the existing "computation bases" or statutory formulas used to calculate a taxpayer's liability for the underlying state taxes, changes in tax credits are not of the same kind, class or nature as changes in "taxes, fees, assessments and rates" or "changes in the computation bases for taxes, fees, assessments and rates." Therefore, by expressly mentioning those tax-related changes in the plain text of the two-thirds requirement—while clearly omitting any references to changes in tax credits from the plain text—it must be presumed that the legislative framers did not intend to include any changes in tax credits in the two-thirds requirement.

Moreover, even if the legislative framers intended to include changes in tax credits in the constitutional provision, the Legislature still could reasonably conclude that AB 458 did not change—but maintained—the existing "computation bases" or statutory formulas used to calculate the underlying state taxes to which the subsection 4 credits are applicable. Because the subsection 4 credits are not part of the existing "computation bases" or statutory formulas used by the Department of Taxation to calculate a taxpayer's liability under the Modified Business Tax or MBT, AB 458 did not change—but maintained—those existing "computation bases" or statutory formulas and therefore did not change any "taxes, fees, assessments and rates" or "the computation bases for [any] taxes, fees, assessments and rates." Again, in passing AB 458, the Legislature acted on the Legislative Counsel's opinion that this is a reasonable interpretation of the two-thirds requirement. (*Leg.'s MSJ Ex. A.*) Because the Legislature

acted on the Legislative Counsel's opinion that this is a reasonable interpretation of the two-thirds requirement, "the Legislature is entitled to deference in its counseled selection of this interpretation." Nev. Mining, 117 Nev. at 540. Therefore, because the Legislature could reasonably conclude that AB 458 was not subject to the two-thirds requirement, the Legislature and all other Defendants are entitled to summary judgment on Plaintiffs' state constitutional claims as a matter of law.

C. The Legislature's reasonable interpretation of the two-thirds requirement is supported by: (1) contemporaneous extrinsic evidence of the purpose and intent of Nevada's two-thirds requirement; and (2) case law from other states interpreting similar supermajority requirements that served as the model for Nevada's two-thirds requirement.

As explained in the Legislature's motion for summary judgment, the Legislature's reasonable interpretation of the two-thirds requirement is supported by contemporaneous extrinsic evidence of the purpose and intent of Nevada's two-thirds requirement. The contemporaneous extrinsic evidence indicates that the two-thirds requirement was not intended to impair any existing revenues. And there is nothing in the contemporaneous extrinsic evidence to indicate that the two-thirds requirement was intended to apply to a bill which does not change—but maintains—the existing computation bases currently in effect for existing state taxes. The absence of such contemporaneous extrinsic evidence is consistent with the fact that: (1) such a bill does not raise new state taxes and revenues because it maintains the existing state taxes and revenues currently in effect; and (2) such a bill does not increase the existing state taxes and revenues currently in effect—but maintains them in their current state under the law—because the existing computation bases currently in effect are not changed by the bill. Furthermore, there is nothing in the contemporaneous extrinsic evidence to indicate that the two-thirds requirement was intended to apply to a bill which reduces or eliminates available tax exemptions or tax credits.

Finally, as explained in the Legislature's motion for summary judgment, the Legislature's reasonable interpretation of the two-thirds requirement is supported by case law from other states

interpreting similar supermajority requirements that served as the model for Nevada's two-thirds requirement. Based on the case law from the other states, the Legislature could reasonably interpret Nevada's two-thirds requirement in a manner that adopts and follows the judicial interpretations placed on the similar supermajority requirements from those other states. Under those judicial interpretations, the Legislature could reasonably conclude that Nevada's two-thirds requirement **does not** apply to a bill which reduces or eliminates available tax exemptions or tax credits, and "the Legislature is entitled to deference in its counseled selection of this interpretation." Nev. Mining, 117 Nev. at 540. Therefore, because the Legislature could reasonably conclude that AB 458 was not subject to the two-thirds requirement, the Legislature and all other Defendants are entitled to summary judgment on Plaintiffs' state constitutional claims as a matter of law.

CONCLUSION AND AFFIRMATION

Based on the foregoing, the Legislature requests that the Court enter an order: (1) denying Plaintiffs' Motion for Summary Judgment; (2) granting the Legislature's Motion for Summary Judgment; and (3) granting a final judgment in favor of the Legislature and all other Defendants on all causes of action and claims for relief alleged in Plaintiffs' Complaint filed on August 15, 2019.

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

DATED: This **6th** day of March, 2020.

Respectfully submitted,

By: /s/ Kevin C. Powers

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ADDENDUM

Assembly Bill No. 458–Committee on Education

CHAPTER 366

[Approved: June 3, 2019]

AN ACT relating to taxation; revising provisions governing the amount of credits the Department of Taxation is authorized to approve against the modified business tax for taxpayers who donate money to a scholarship organization; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Under existing law, financial institutions, mining businesses and other employers are required to pay an excise tax (the modified business tax) on wages paid by them. (NRS 363A.130, 363B.110) Existing law establishes a credit against the modified business tax equal to an amount which is approved by the Department of Taxation and which must not exceed the amount of any donation of money made by a taxpayer to a scholarship organization that provides grants on behalf of pupils who are members of a household with a household income of not more than 300 percent of the federally designated level signifying poverty to allow those pupils to attend schools in this State, including private schools, chosen by the parents or legal guardians of those pupils. (NRS 363A.139, 363B.119, 388D.270) Under existing law, the Department: (1) is required to approve or deny applications for the tax credit in the order in which the applications are received by the Department; and (2) is authorized to approve applications for each fiscal year until the amount of the tax credits approved for the fiscal year is the amount authorized by statute for that fiscal year. The amount of credits authorized for each fiscal year is equal to 110 percent of the amount authorized for the immediately preceding fiscal year, not including certain additional tax credits authorized for Fiscal Year 2017-2018. For Fiscal Year 2017-2018, the amount of credits authorized which are relevant for calculating the credits authorized in subsequent fiscal years is $6,050,000. Thus, for Fiscal Year 2018-2019, the amount of credits authorized is $6,655,000, plus any remaining amount of tax credits carried forward from the additional credit authorization made for Fiscal Year 2017-2018. (NRS 363A.139, 363B.119)

This bill eliminates the annual 110 percent increase in the amount of credits authorized and, instead, provides that the amount of credits authorized for each fiscal year is a total of $6,655,000, plus any remaining amount of tax credits carried forward from the additional credit authorization made for Fiscal Year 2017-2018.

EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~[omitted material]~~ is material to be omitted.

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

Section 1. **NRS 363A.139** is hereby amended to read as follows:

363A.139 1. Any taxpayer who is required to pay a tax pursuant to NRS 363A.130 may receive a credit against the tax otherwise due for any donation of money made by the taxpayer to a scholarship organization in the manner provided by this section.

2. To receive the credit authorized by subsection 1, a taxpayer who intends to make a donation of money to a scholarship organization must, before making such a donation, notify the scholarship organization of the taxpayer's intent to make the donation and to seek the credit authorized by subsection 1. A scholarship organization shall, before accepting any such donation, apply to the Department of Taxation for approval of the credit authorized by subsection 1 for the

donation. The Department of Taxation shall, within 20 days after receiving the application, approve or deny the application and provide to the scholarship organization notice of the decision and, if the application is approved, the amount of the credit authorized. Upon receipt of notice that the application has been approved, the scholarship organization shall provide notice of the approval to the taxpayer who must, not later than 30 days after receiving the notice, make the donation of money to the scholarship organization. If the taxpayer does not make the donation of money to the scholarship organization within 30 days after receiving the notice, the scholarship organization shall provide notice of the failure to the Department of Taxation and the taxpayer forfeits any claim to the credit authorized by subsection 1.

3. The Department of Taxation shall approve or deny applications for the credit authorized by subsection 1 in the order in which the applications are received.

4. Except as otherwise provided in subsection 5, the Department of Taxation may, for each fiscal year, approve applications for the credit authorized by subsection 1 until the total amount of the credits authorized by subsection 1 and approved by the Department of Taxation pursuant to this subsection ***and subsection 4 of NRS 363B.119*** is ~~[~~:

~~(a) For Fiscal Year 2015-2016, $5,000,000;~~

~~(b) For Fiscal Year 2016-2017, $5,500,000; and~~

~~(c) For each succeeding fiscal year, an amount equal to 110 percent of the amount authorized for the immediately preceding fiscal year.~~

~~➥]~~ ***$6,655,000.*** The amount of any credit which is forfeited pursuant to subsection 2 must not be considered in calculating the amount of credits authorized for any fiscal year.

5. In addition to the amount of credits authorized by subsection 4 for Fiscal Year 2017-2018, the Department of Taxation may approve applications for the credit authorized by subsection 1 for that fiscal year until the total amount of the credits authorized by subsection 1 and approved by the Department of Taxation pursuant to this subsection and subsection 5 of NRS 363B.119 is $20,000,000. The provisions of ~~[paragraph (c) of]~~ subsection 4 do not apply to the amount of credits authorized by this subsection and the amount of credits authorized by this subsection must not be considered when determining the amount of credits authorized for a fiscal year pursuant to ~~[that paragraph.]~~ ***subsection 4.*** If, in Fiscal Year 2017-2018, the amount of credits authorized by subsection 1 and approved pursuant to this subsection is less than $20,000,000, the remaining amount of credits pursuant to this subsection must be carried forward and made available for approval during subsequent fiscal years until the total amount of credits authorized by subsection 1 and approved pursuant to this subsection is equal to $20,000,000. The amount of any credit which is forfeited pursuant to subsection 2 must not be considered in calculating the amount of credits authorized pursuant to this subsection.

6. If a taxpayer applies to and is approved by the Department of Taxation for the credit authorized by subsection 1, the amount of the credit provided by this section is equal to the amount approved by the Department of Taxation pursuant to subsection 2, which must not exceed the amount of the donation made by the taxpayer to a scholarship organization. The total amount of the credit applied against the taxes described in subsection 1 and otherwise due from a taxpayer must not exceed the amount of the donation.

7. If the amount of the tax described in subsection 1 and otherwise due from a taxpayer is less than the credit to which the taxpayer is entitled pursuant to this section, the taxpayer may, after applying the credit to the extent of the tax otherwise due, carry the balance of the credit forward for not more than 5 years after the end of the calendar year in which the donation is made or until the balance of the credit is applied, whichever is earlier.

8. As used in this section, "scholarship organization" has the meaning ascribed to it in NRS 388D.260.

Sec. 2. NRS 363B.119 is hereby amended to read as follows:

363B.119 1. Any taxpayer who is required to pay a tax pursuant to NRS 363B.110 may receive a credit against the tax otherwise due for any donation of money made by the taxpayer to a scholarship organization in the manner provided by this section.

2. To receive the credit authorized by subsection 1, a taxpayer who intends to make a donation of money to a scholarship organization must, before making such a donation, notify the scholarship organization of the taxpayer's intent to make the donation and to seek the credit authorized by subsection 1. A scholarship organization shall, before accepting any such donation, apply to the Department of Taxation for approval of the credit authorized by subsection 1 for the donation. The Department of Taxation shall, within 20 days after receiving the application, approve or deny the application and provide to the scholarship organization notice of the decision and, if the application is approved, the amount of the credit authorized. Upon receipt of notice that the application has been approved, the scholarship organization shall provide notice of the approval to the taxpayer who must, not later than 30 days after receiving the notice, make the donation of money to the scholarship organization. If the taxpayer does not make the donation of money to the scholarship organization within 30 days after receiving the notice, the scholarship organization shall provide notice of the failure to the Department of Taxation and the taxpayer forfeits any claim to the credit authorized by subsection 1.

3. The Department of Taxation shall approve or deny applications for the credit authorized by subsection 1 in the order in which the applications are received.

4. Except as otherwise provided in subsection 5, the Department of Taxation may, for each fiscal year, approve applications for the credit authorized by subsection 1 until the total amount of the credits authorized by subsection 1 and approved by the Department of Taxation pursuant to this subsection ***and subsection 4 of NRS 363A.139*** is ~~[~~:

~~(a) For Fiscal Year 2015-2016, $5,000,000;~~

~~(b) For Fiscal Year 2016-2017, $5,500,000; and~~

~~(c) For each succeeding fiscal year, an amount equal to 110 percent of the amount authorized for the immediately preceding fiscal year.~~

~~➥]~~ ***$6,655,000.*** The amount of any credit which is forfeited pursuant to subsection 2 must not be considered in calculating the amount of credits authorized for any fiscal year.

5. In addition to the amount of credits authorized by subsection 4 for Fiscal Year 2017-2018, the Department of Taxation may approve applications for the credit authorized by subsection 1 for that fiscal year until the total amount of the credits authorized by subsection 1 and approved by the Department of Taxation pursuant to this subsection and subsection 5 of NRS 363A.139 is $20,000,000. The provisions of ~~[paragraph (c) of]~~ subsection 4 do not apply to the amount of credits authorized by this subsection and the amount of credits authorized by this subsection must not be considered when determining the amount of credits authorized for a fiscal year pursuant to ~~[that paragraph.]~~ ***subsection 4.*** If, in Fiscal Year 2017-2018, the amount of credits authorized by subsection 1 and approved pursuant to this subsection is less than $20,000,000, the remaining amount of credits pursuant to this subsection must be carried forward and made available for approval during subsequent fiscal years until the total amount of credits authorized by subsection 1 and approved pursuant to this subsection is equal to $20,000,000. The amount of any credit which is forfeited pursuant to subsection 2 must not be considered in calculating the amount of credits authorized pursuant to this subsection.

6. If a taxpayer applies to and is approved by the Department of Taxation for the credit authorized by subsection 1, the amount of the credit provided by this section is equal to the amount approved by the Department of Taxation pursuant to subsection 2, which must not exceed the amount of the donation made by the taxpayer to a scholarship organization. The total amount

of the credit applied against the taxes described in subsection 1 and otherwise due from a taxpayer must not exceed the amount of the donation.

7. If the amount of the tax described in subsection 1 and otherwise due from a taxpayer is less than the credit to which the taxpayer is entitled pursuant to this section, the taxpayer may, after applying the credit to the extent of the tax otherwise due, carry the balance of the credit forward for not more than 5 years after the end of the calendar year in which the donation is made or until the balance of the credit is applied, whichever is earlier.

8. As used in this section, "scholarship organization" has the meaning ascribed to it in NRS 388D.260.

Sec. 3. This act becomes effective upon passage and approval for the purpose of adopting regulations and performing any other administrative tasks that are necessary to carry out the provisions of this act, and on July 1, 2019, for all other purposes.

———

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Nevada Legislative Counsel Bureau, Legal Division, and that on the **6th** day of March, 2020, pursuant to NRCP 5(b), I served a true and correct copy of Intervenor-Defendant Nevada Legislature's Opposition to Plaintiffs' Motion for Summary Judgment, by means of the Eighth Judicial District Court's electronic filing system, directed to the following:

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TAB 13

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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, 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

CASE NO. A-19-800267-C

DEPT NO. XXXII

PLAINTIFFS' REPLY IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Hearing: April 14, 2020
Time: 1:30 P.M.
Department: XXXII

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.

PLAINTIFFS' REPLY IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Plaintiffs hereby reply, in support of Plaintiffs' Motion for Summary Judgment, to Defendants' respective oppositions to Plaintiffs' Motion.

DATED this 27th day of March, 2020.

By */s/ Joshua A. House*

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INTRODUCTION

A.B. 458 removed scholarship funding from low-income families and raised revenue for the state by repealing tax credits. But article 4, section 18(2) of the Nevada Constitution requires that bills raising revenue, like A.B. 458, receive a two-thirds supermajority vote in each legislative house. Because A.B. 458 raised revenue, but did not receive a two-thirds supermajority in the Senate, it is unconstitutional.

Defendants argue, in their respective oppositions to Plaintiffs' Motion for Summary Judgment, that A.B. 458's removal of tax credits did not require a supermajority vote. They also object to the relevance of Plaintiffs' supporting affidavits. Both their evidentiary and merits arguments are incorrect for the following reasons.

First, the Legislature's evidentiary objections should be overruled because the personalized impact of A.B. 458 on the Plaintiffs is relevant to establish Plaintiffs' standing to bring this suit.

Second, Defendants misread the plain text of the supermajority provision. It requires a supermajority vote not just for changes in "computation bases" or "new" taxes; it requires a supermajority for any bill that "creates, generates, or increases any public revenue in any form." Nev. Const. art. 4, § 18(2). Because repealing tax credits is one form of generating public revenue—as courts in other states have recognized—the supermajority provision applies to A.B. 458's repeal of tax credits.

Third, Plaintiffs' Motion showed that the purpose behind the supermajority requirement was to make it more difficult to raise public revenues. Defendants argue that repealing the tax credits does not raise revenues but rather reallocates existing public revenues from scholarship organizations to the general fund. This contradicts the U.S. Supreme

Court and numerous state courts, which have held that tax-credit-eligible donations, from private individuals, are private funds, not public revenues.

Fourth, A.B. 458 did not repeal inoperable or uncertain tax statutes; it repealed automatic, already effective tax credits. And this repeal—whatever impact it may have on the state's overall fiscal policy—required a supermajority.

For these reasons, and for the reasons stated in Plaintiffs' Motion for Summary Judgment, Plaintiffs' Motion should be granted.

LEGAL STANDARD

"Summary judgment is appropriate under NRCP 56 when the pleadings, depositions, answers to interrogatories, admissions, and affidavits, if any, that are properly before the court demonstrate that no genuine issue of material fact exists, and the moving party is entitled to judgment as a matter of law." *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005).[1]

Furthermore, "[t]axing statutes" like A.B. 458, "when of doubtful validity or effect[,] must be construed in favor of the taxpayers." *Dep't of Taxation v. Visual Commc'ns, Inc.*, 108 Nev. 721, 725, 836 P.2d 1245, 1247 (1992) (internal quotation marks omitted); *see also Harrah's Operating Co. v. Dep't of Taxation*, 130 Nev. Adv. Op. 129, 132, 321 P.3d 850, 852 (2014) ("[T]ax statutes are to be construed in favor of the taxpayer.").

[1] Based on Plaintiffs' comparison of Plaintiffs' Motion for Summary Judgment and Defendants' respective motions, there do not appear to be any genuine issues of material fact. Plaintiffs nevertheless reserve their right to challenge any factual disputes that arise before this Court's decision.

ARGUMENT

I. The Legislature's Evidentiary Objections Should Be Overruled Because A.B. 458's Harm to the Plaintiffs Is Relevant to Their Standing to Bring This Lawsuit.

The Legislature objects to various paragraphs in the affidavits supporting Plaintiffs' Motion. Leg. Opp. 9. It argues that "personalized impacts and potential future effects" regarding the application of AB 458 to Plaintiffs "are not relevant." Leg. Opp. 9–10.

The Legislature's objection should be overruled because the personalized impact of A.B. 458 on Plaintiffs is relevant to establish their standing to bring this suit. It was Defendants who made standing an issue in their Motion to Dismiss, arguing that Plaintiffs "must show a personal injury . . . fairly traced to" A.B. 458. Defs.' Mot. to Dismiss 7 (Oct. 7, 2019).

This Court found that Plaintiffs' Complaint sufficiently alleged standing. Order Denying Defs.' Mot. to Dismiss (Dec. 23, 2019). But Plaintiffs still have a burden to ***prove*** their standing allegations. *Cf. Trump v. Eighth Judicial Dist. Court*, 109 Nev. 687, 693, 857 P.2d 740, 744 (1993) ("If the plaintiff makes a prima facie case of jurisdiction prior to trial, the plaintiff must still prove personal jurisdiction at trial by a preponderance of the evidence."); *Washoe Cty. v. Wildeveld*, 103 Nev. 380, 382, 741 P.2d 810, 811 (1987) (holding "plaintiff . . . has the burden of proving," using evidence, that the court in which he filed was the proper venue). Accordingly, in their Motion for Summary Judgment, Plaintiffs submitted affidavits showing A.B. 458's personalized impacts. Those affidavits are relevant and will become more so if the standing issue is appealed.

The Legislature also argues that one particular affidavit, that of Plaintiff Bonnie Ybarra, includes hearsay. Leg. Opp. 10–11. It argues that "paragraphs 25–28" contain "out-of-court statements . . . to assert alleged matters relating to the operations of [her children's] school." Leg. Opp. 11.

This objection should also be overruled. Plaintiffs do not use the testimony in that paragraph to assert "matters relating to the operations of the school." Leg. Opp. 11. Instead, Plaintiffs cite those statements to provide context for Ybarra's financial situation and its effect on her decision-making. *See Carroll v. State*, 132 Nev. 269, 276, 371 P.3d 1023, 1028 (2016) (holding that an out-of-court "statement offered to provide context to" other testimony, "rather than for its own truth, is not hearsay"); *Wallach v. State*, 106 Nev. 470, 473, 796 P.2d 224, 227 (1990) ("A statement merely offered to show that the statement was made and the listener was affected by the statement . . . is admissible as non-hearsay."). Ybarra testified that A.B. 458 removed her family's scholarships and put her family into a very difficult financial situation. Pls.' MSJ 12. To provide context to that testimony, she testified that the school's decision to forgive the tuition she owes—$16,000—will not be possible next year.[2] That testimony is not hearsay. And, to the extent those paragraphs do contain hearsay, Plaintiffs have cured that objection by submitting an additional affidavit along with this brief. *See generally* Aff. of Mark Maddox Supp. Pls.' Reply.

[2] "Ybarra . . . cannot afford to pay the remaining $16,000. The private school agreed to reduce rates for Ybarra for this year, on the condition that she work at the school. But the school cannot offer this generous arrangement in the future. And, as of now, that school will not remain open after this school year, in part because so many students lost their scholarship funding." Pls.' MSJ 12–13.

II. The Supermajority Provision Applies to Tax-Credit Repeals Like A.B. 458.

As demonstrated in Plaintiffs' Motion for Summary Judgment, the plain text of article 4, section 18(2) requires a supermajority vote in each legislative house for repeals of tax credits. Pls.' MSJ 15–17. Defendants' arguments to the contrary are wrong for four reasons. ***First***, the Executive Defendants focus on "new taxes," and the Legislature focuses on "computation bases," but the supermajority provision's text is expressly "not limited to" those forms of creating, generating, or increasing public revenue. Nev. Const. art. 4, § 18(2). ***Second***, the Legislature misapplies various canons of construction to the supermajority provision. ***Third***, the Legislative Counsel Bureau is not due any special deference in its interpretation of the supermajority provision. And ***fourth***, other states consider tax-credit repeals to be revenue-raising bills.

A. Under basic dictionary definitions, a bill repealing tax credits is a bill that creates, generates, or increases public revenue.

Plaintiffs' Motion demonstrated that the plain text of article 4, section 18(2) applies to tax-credit repeals like A.B. 458. Pls.' MSJ 15–17. That is because article 4, section 18(2) requires a supermajority for any bill that "creates, generates, or increases ***any*** public revenue in ***any*** form." Nev. Const. art. 4, § 18(2) (emphasis added). Repealing tax credits increases public revenues, as Defendant Department of Taxation concluded in its fiscal note on A.B. 458: "The department has reviewed the bill and determined it would ***increase*** general fund revenue . . . ." Dep't of Tax'n, Fiscal Note on A.B. 458 (Nev. Apr. 4, 2019), https://www.

leg.state.nv.us/Session/80th2019/FiscalNotes/9327.pdf (Fiscal Note) (emphasis added).

The Executive Defendants argue that repealing a tax credit does not "create" or "generate" revenue because those terms only "apply to new taxes brought into existence." Exec. Opp. 8. And they argue that, if "rates" do not change, public revenue is not increased. *Id.* The Legislature likewise argues that tax-credit repeals do not create, generate, or increase revenue because they "do not change the existing 'computation bases' or statutory formulas." Leg. Opp. 17. Defendants' textual arguments misread the supermajority provision.

The Executive Defendants' focus on "new taxes" and "rates" is wrong because the supermajority provision is, on its face, not limited to "taxes" or "rates." The provision applies to any bill that "creates, generates, or increases any public revenue in ***any*** form, ***including but not limited to*** taxes, fees, assessments and rates, or changes in the computation bases for taxes, fees, assessments and rates." Nev. Const. art. 4, § 18(2) (emphasis added). As the text shows, the provision is "not limited to" new taxes or rates: fees are included, assessments are included, and "any [other] form" of public revenue is included. *Id.* Repealing a tax credit places a new obligation on taxpayers to pay more money to the state, thereby "creat[ing], generat[ing], or increas[ing] . . . public revenue" under article 4, section 18(2). *See* Pls.' MSJ 15–17; Pls.' Opp. 4–5.

For similar reasons, the Legislature's reliance on "computation bases" is misplaced. *See* Leg. Opp. 17–18. There is no textual basis for limiting the reach of article 4, section 18(2) to computation bases. Changes in computation bases are but one form of raising revenue in a

non-exhaustive list "not limited to" the enumerated forms of revenue generation. *Id.* Even if tax-credit repeals do not affect the "statutory formula," Leg. Opp. 18, they still result in additional taxes being paid to the state. As A.B. 458's sponsor put it, tax credits allow private businesses to donate money that would "otherwise be in the General Fund." Minutes of S. Comm. on Revenue & Econ. Dev. at 3, 80th Leg. (Nev. May 2, 2019), https://www.leg.state.nv.us/Session/80th2019/Minutes/Senate/RED/Final/1120.pdf. Because tax-credit repeals generate additional public revenue, Nevada's supermajority provision applies.

The Executive Defendants argue that the supermajority provision cannot apply to "any" revenue increases because "[s]imple revenue increases resulting from Nevada's population [growth] and business growth do not require supermajority votes." Exec. Opp. 8 & n.3. But that is true only because, in those cases, public revenue is not generated by a legislative bill. The supermajority provision applies only to "a bill." Nev. Const. art. 4, § 18(2). To state the obvious, the Legislature does not vote on population or business growth. Repealing tax credits, on the other hand, is a legislative action that forces taxpayers to give more money to the state. *See* Pls.' Opp. 13–14. The state's demand for additional tax revenues, by repealing a tax credit, requires a supermajority vote.

B. The Legislature misapplies the rules of construction.

The Legislature argues that, under the canons of construction, the supermajority provision should not be applied to tax-credit repeals. Leg. Opp. 15–17. But the Legislature misapplies each canon.

1. Refusal to imply what is not explicit

First, the Legislature argues that, under the rule of construction that courts "refuse to imply provisions not expressly included," this Court should not "imply" that A.B. 458's repeal of tax credits is a form of raising public revenue. Leg. Opp. 16. They argue that the supermajority provision could have, but did not, included the term "tax credits."

Yet there is no rule that when a provision includes an entire category—here, "any form of public revenue"—the provision must also list every example of that category. Indeed, to create a statute that is "expansive" and inclusive, legislatures will often use phrases like "other such" and "includes," indicating that a list is non-exhaustive. *See United States v. Gundy*, 842 F.3d 1156, 1175 (11th Cir. 2016) (stating "[t]he phrase 'other such . . .' cannot be part of a finite list because it is necessarily expansive"); *White v. Mederi Caretenders Visiting Servs.*, 226 So. 3d 774, 783 (Fla. 2017) ("[T]he qualifying phrase 'includes, but is not limited to' made clear that the Legislature intended to allow the protection of more interests than simply those set forth in the non-exhaustive list."). Although some states have taken the effort to list tax credits or tax exemptions in their supermajority provisions, Plaintiffs have shown that Nevada's supermajority provision is broader than those states' provisions. *See* Pls.' Opp. 8–9. Nevada's article 4, section 18(2) requires a supermajority for bills that raise "any public revenue ***in any form***" (emphasis added). It follows that nothing is being "implied" by concluding that repealing tax credits is one "form" of revenue generation.

2. Noscitur a Sociis *and* Esjudem Generis

Second, the Legislature argues that this court should apply the "known by its associates" and "of the same kind or class" rules of construction. Leg. Opp. 17. It argues that, "[b]ecause changes in tax credits do not change the existing 'computation bases' . . . changes in tax credits are not of the same kind, class or nature as changes in taxes, fees, assessments and rates." Leg. Opp. 17–18.

The Legislature's conclusion, however, does not follow from those rules of construction. The relevant category, or "kind," is not "computation bases." Instead, it is bills that "create[], generate[] or increase[] any public revenue." Nev. Const. art. 4, § 18(2). Taxes, fees, assessments, and rates are all examples of increases in public revenue. Repealing tax credits, which results in more taxes being paid to the state, is another way of increasing public revenue. It does not matter that repealing tax credits does not change computation bases; what matters is that it increases public revenue.

Furthermore, those narrowing rules of construction do not apply when the statute's text says it ought to be read broadly. Courts "need not apply *ejusdem generis* because [the Legislature] modified its list of examples with the phrase 'including, but not limited to.' That phrase mitigates the sometimes unfortunate results of rigid application of the *ejusdem generis* rule." *United States v. Migi*, 329 F.3d 1085, 1089 (9th Cir. 2003) (quotation marks omitted). Here, the constitutional text, by expressly stating it is "not limited to" the enumerated examples, demands that courts not construe it rigidly.

3. Expressio unius est exclusio alterius

Third, the Legislature argues that this Court should apply the canon of "*expressio unius est exclusion alterius*," Leg. Opp. 17–18, which says that the expression of one specific thing means the exclusion of other things not expressed, *Thomas v. Nev. Yellow Cab Corp.*, 130 Nev. 484, 488, 327 P.3d 518, 521 (2014). The Legislature argues that, by listing some types of public revenues, the Constitution is limited to those types.

But this rule does not apply because repealing tax credits ***does*** increase "tax" revenues—which is one of the categories expressly included. And, even aside from the fact that repealing tax credits raises tax revenues, the supermajority provision states it is "not limited to" the listed categories of revenue. This distinguishes other cases in which courts have used the *expressio unius* canon. For instance, in *Thomas* the Supreme Court held that if a constitutional provision listed three specific exceptions to a rule then those were the only exceptions permitted. *Id.* at 488, 327 P.3d at 521. Here, in contrast, the statute says that it is "not limited to" the listed forms of revenue. *Expressio unius* cannot limit the provision if the provision itself says it is "***not limited to***" the listed revenues.[3] Nev. Const. art. 4, § 18(2) (emphasis added).

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[3] *See, e.g.*, *Soc'y for Advancement of Educ., Inc. v. Gannett Co.*, No. 98 CIV. 2135 LMM, 1999 WL 33023, at *7 (S.D.N.Y. Jan. 21, 1999) ("The *expressio unius* maxim has no force in the face of directly contradictory language in the contract, such as the clause 'including but not limited to....'"); *Kissane v. City of Anchorage*, 159 F. Supp. 733, 736 (D. Alaska 1958) ("It will be noted that the Act provides that the 'public works' contemplated shall include but are not limited to those specifically named; hence the rule of '*expressio unius est exclusio alterius*' does not apply."); *City of Santa Ana v. City of Garden Grove*, 160 Cal. Rptr. 907, 910 (Ct. App. 1979) ("The '*expressio unius est exclusio alterius*' canon of statutory construction is inapplicable . . . . The attempted application of the canon overlooks the phrase 'but not limited to' . . . . Use of those words manifests a legislative intent that the statute not be given an '*expressio*

C. The Legislative Counsel Bureau's legal opinion does not deserve this Court's deference.

Defendants argue that this Court should defer to the Legislative Counsel Bureau's interpretation of article 4, section 18(2). Exec. Opp. 11–12; Leg. Opp. 4–5. The Legislature argues that such deference means this Court should focus on what the Legislature "could reasonably conclude" about the scope and meaning of article 4, section 18(2). Leg. Opp. 4–5, 13, 15, 18.

To the contrary, as Plaintiffs detailed in their Opposition to Defendants' motions, there is no reason for this Court to defer to what the Legislature's lawyers think the Legislature can do. Pls.' Opp. 6–7. There is no ambiguity in article 4, section 18(2): If a bill raises revenue, the supermajority requirement applies. This lack of ambiguity distinguishes *Nevada Mining Ass'n v. Erdoes*, in which "Nevada's change from Pacific standard time to Pacific daylight saving time on the first Sunday of April, midway through the regular session, ***created an ambiguity*** in the deadline [for the session's end]." 117 Nev. 531, 539, 26 P.3d 753, 758 (2001) (emphasis added). *Nevada Mining* is further distinguishable because the rule at issue was an arbitrary question of timekeeping regarding the legislature's schedule (whether the legislative session ended at midnight or one in the morning), not a substantive limitation on the Legislature's power. As Plaintiffs have shown, the supermajority requirement was put in place precisely to limit the power of the Nevada Legislature to raise revenue. *See* Pls.' MSJ 18; Pls.' Opp. 6–7.

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unius' construction.").

But even if the Legislative Counsel Bureau's interpretation deserved special deference, which it does not, its opinion on this matter did not actually analyze the question at issue. As Plaintiffs have demonstrated, the Bureau's opinion focused on whether removing a tax credit is a change in a "computation base." *See* Pls.' Opp. 7. But, as shown above in Part II.A., the focus on computation bases is far too narrow given the breadth of article 4, section 18(2). Instead, the real question is whether A.B. 458 "creates, generates, or increases any public revenue." Nev. Const. art. 4, § 18(2). If it does, it required a supermajority vote. This Court cannot defer to an opinion that did not opine on the actual issue presented.

Finally, the Executive Defendants cite the Federalist Papers for the proposition that Nevada courts should defer to the Legislature's interpretation and not engage in an independent look at the Constitution, "given that [the Legislature] relied on the specific advice of its counsel." Exec. Opp. 11–12. But nothing in the cited Federalist Paper says anything about the role of the judiciary or any "deference" due the Legislature's lawyers. *See generally* The Federalist No. 58.

If anything, the Federalist Papers portray a judiciary that looks incisively at the Constitution and independently interprets its meaning. In arguing for an independent, tenured judiciary, Alexander Hamilton wrote that "[i]f, then, the courts of justice are to be considered as the bulwarks of a limited Constitution against legislative encroachments . . . nothing will contribute so much as [judicial tenure] to that independent spirit in the judges which must be essential to the faithful performance of so arduous a duty." The Federalist No. 78. Hamilton goes on to say that judges have a "duty" to be "faithful guardians of the Constitution" against

"legislative invasions." *Id.* In sum, the Framers did not envision a judiciary that blindly defers to the Legislature. Instead, the Framers intended that judges independently judge the Constitution's application to the cases before them.

D. Other states consider tax-credit repeals to be revenue-raising.

Defendants argue that Oregon and Oklahoma, which also have supermajority provisions, do not require tax-credit repeals to receive a supermajority vote. Exec. Opp. 11; *see* Leg. Opp. 19–20. But in both of those states, repealing tax credits or tax exemptions, as A.B. 458 does here, is considered revenue-raising. Those states have merely refused to apply their supermajority requirements to such repeals because of ***other*** state law, not because the repeals do not raise revenue.

The Oklahoma Supreme Court stated that it "isn't seriously in doubt" that repealing exemptions increased state revenues. *Okla. Auto. Dealers Ass'n v. Okla. Tax Comm'n*, 401 P.3d 1152, 1155–56, 1158 (Okla. 2017) ("Why does government seek to close loopholes in its tax code? To collect more tax revenue, of course."). Likewise, the Oregon Supreme Court has said that tax exemption repeals "do[] generate revenue—as [the bill] does indeed here." *City of Seattle v. Dep't of Revenue*, 357 P.3d 979, 988 (Or. 2015).[4]

But despite finding tax-exemption repeals to be revenue-raising, both Oklahoma and Oregon courts refused to apply their constitutional requirements to tax exemptions. That is because those states' provisions

[4] Although *City of Seattle* concerned Oregon's origination clause, Oregon courts have applied that case's reasoning to Oregon's supermajority requirement. *See Boquist v. Dep't of Revenue*, No. TC 5332, 2019 WL 1314840, at *9 (Or. T.C. Mar. 21, 2019).

are narrower than Nevada's and apply only to "new taxes."[5] *Okla. Auto Dealers*, 401 P.3d at 1155. The Oklahoma Supreme Court applied an Oklahoma definition of "revenue bill" originating in "an unbroken line of decisions dating to near statehood," holding that revenue bills must levy new taxes. *Id.* at 1156. And in Oregon, the Supreme Court considered, after already determining that the bill raised revenue, whether the bill "possesse[d] the essential features of a bill levying a tax." *City of Seattle*, 357 P.3d at 987.

Nevada, in contrast, has no requirement that a bill has to be a new tax for it to be revenue-raising. *See* Pls.' Opp. 8–11. Furthermore, as Plaintiffs have shown, Nevada has a uniquely broad supermajority provision. *Id.* at 8–9. And, even in states with narrower provisions, tax-credit repeals are considered revenue-generating. *Id.* at 9–11.

Therefore, as the Oregon Supreme Court "easily concluded," repeal of a tax exemption or credit brings "money into the treasury." *Boquist v. Dep't of Revenue*, No. TC 5332, 2019 WL 1314840, at *4 (Or. T.C. Mar. 21, 2019) (quoting *City of Seattle*, 357 P.3d at 986). A.B. 458, by bringing money into the Nevada treasury, should have received a two-thirds supermajority vote.

III. Applying the Supermajority Provision to A.B. 458 furthers the provision's purpose of making it difficult to generate public revenues.

Plaintiffs' motion showed that the article 4, section 18(2) requires a supermajority because it was intended to make it difficult to increase

[5] In section II.A, Plaintiffs showed why Defendants' effort to recast Nevada's provision as applying only to new taxes fails. *See also* Pls.' Opp. 8.

public revenues, and that this purpose encompassed not just new public revenues but also changes to existing revenue streams. Pls.' Mot. 17–18.

Defendants respond that there is no evidence that the supermajority provision was intended to apply to bills that maintain existing "computation bases," Leg. Opp. 19, or "identical rate[s]," Exec. Opp. 10. But there is such evidence, in the form of the provision's plain language. As shown in Part II.A., above, Nevada's provision is broadly worded to include any bill that "creates, generates, or increases any public revenue in any form." Nev. Const. art. 4, § 18(2). The provision contains no language whatsoever that limits its scope to changes in "computation bases" or "rates." Further, as Plaintiffs have shown, the history of the supermajority provision shows it was intended to include changes to existing taxes. Pls.' MSJ 17–18; Pls.' Opp. 11–13.

Executive Defendants argue that the purpose underlying the supermajority provision is not served by applying it to A.B. 458, because "whether taxes are paid" to the state or donated to a scholarship organization, "the amount of money 'diverted' from the private sector remains the same." Exec. Opp. 10.

Executive Defendants' argument is wrong because, when private businesses donate to scholarship organizations that award scholarships to private schools, that money remains in private hands. But when the tax credits are unavailable, businesses must pay their taxes to the state. Because A.B. 458 has the effect of generating more public revenue, in the form of more taxes paid to the state treasury, it was required to receive a supermajority vote.

Executive Defendants' argument presumes that the money donated to private scholarship organizations is "public revenue" even if it remains

in private hands. But that is incorrect. The U.S. Supreme Court, like the overwhelming majority of state courts, has held that tax-credit-eligible donations are private, not public, funds. *Ariz. Christian Sch. Tuition Org. v. Winn*, 563 U.S. 125, 144 (2011); *see also* Pls.' MSJ 16 & n.68 (citing state cases). As the Arizona Supreme Court recognized, "to agree that a tax credit constitutes public money would require a finding that state ownership springs into existence at the point where taxable income is first determined." *Kotterman v. Killian*, 972 P.2d 606, 618 (Ariz. 1999). This, the court found, "is both artificial and premature." *Id.* Removing credits forces private businesses to give their private funds to the government instead of donating those funds to a private charity. That raises public revenues and, therefore, requires a supermajority vote.

IV. A.B. 458, by Repealing Automatic Tax Credits, Generates Additional Revenue for the State.

As demonstrated in Plaintiffs' Motion, A.B. 458 raises revenue. Pls.' MSJ 19–20. Defendants' attempts to evade this reality are unavailing for two reasons. ***First***, A.B. 458 repealed tax credits that were operative and certain, effective in 2015. This repeal required a supermajority. And ***second***, the supermajority requirement requires a bill-by-bill analysis. It does not ask this Court to make a judgment about all of Nevada's fiscal or educational policies.

A. A.B. 458 repealed automatic tax-credits that were effective April 13, 2015.

Defendants argue that because the tax credits for the 2019–20 fiscal year were repealed before July 1, 2019, no tax credits were actually repealed. Exec. Opp. 3–4, 8–9; Leg. Opp. 13–15. The tax credits, they argue, "would not lawfully go into effect and become legally operative and

binding until the beginning of the fiscal year on July 1, 2019." Leg. Opp. 13–14.

As Plaintiffs have shown, this argument is wrong as a matter of law. *See* Pls.' Opp. 17–18. When "statutory language is clear," courts "are not free to disregard [the Legislature's] express determination with respect to the effective date of the statutory changes." *In re Leibowitz*, 217 F.3d 799, 805 (9th Cir. 2000). In this case, before A.B. 458 amended it, NRS 363B.119(4) was both operative and "effective upon passage and approval" on April 13, 2015. 2015 Nev. Laws Ch. 22, § 9 (A.B. 165). This Court cannot disregard the statute's express "effective upon" date.

In addition, Defendants' argument, if successful, would allow the Legislature to avoid the supermajority provision whenever it wished. The Legislature could simply pass, before July 1, revenue increases for the next fiscal year. So long as the bill was effective the following fiscal year, the Legislature could—without a two-thirds vote—raise property taxes, change the means of calculating or assessing property taxes, or eliminate property tax exemptions. This interpretation would deprive the supermajority provision of any meaning and therefore must be rejected. *We the People Nev. v. Miller*, 124 Nev. 874, 881, 192 P.3d 1166, 1171 ("[T]he Nevada Constitution should be read as a whole, so as to give effect to . . . each provision.") (citations omitted); *Ex parte Shelor*, 33 Nev. 361, 111 P. 291, 293 (1910) ("[T]he court . . . must lean in favor of a construction that will render every word operative, rather than one which may make some words idle and nugatory.").

The Executive Defendants argue that A.B. 458 is no different than Nevada's automatic gas tax increases, which did not require a supermajority. Exec. Opp. 3–4. But those tax increases were passed

before Nevada had a supermajority provision. *See* NRS 365.185. In addition, as noted by academic commentators, it is "not clear whether the supermajority provision" would permit the Legislature to use automatic tax increases as a kind of "loophole." Max Minzner, *Entrenching Interests: State Supermajority Requirements to Raise Taxes*, 14 Akron Tax J. 43, 73 (1999). Finally, unlike gas taxes, A.B. 458 was not a tax increase triggered by an external *force majeure*, that is, future changes in federal gas taxes (which could have actually lowered Nevada taxes had federal taxes been increased). Instead, A.B. 458 directly repealed tax credits that would have been available just months after its passage. This direct increase of taxpayers' tax burden required a supermajority vote.

The fact remains that, before A.B. 458, the amount of tax credits available in future biennia was higher than the amount of tax credits now available. And to the extent there is any doubt about A.B. 458's operation, those doubts should be resolved in favor of Plaintiffs because they are taxpayers. "Taxing statutes when of doubtful validity or effect must be construed in favor of the taxpayers." *Dep't of Taxation v. Visual Commc'ns, Inc.*, 108 Nev. 721, 725, 836 P.2d 1245, 1247 (1992) (internal quotation marks omitted).[6] After A.B. 458, there are fewer tax credits for people and more revenues for the state. That fact is dispositive. A.B. 458

[6] Executive Defendants argue that this presumption in favor of the taxpayer does not apply because the cases cited by Plaintiffs are "not the dispute before this court between these parties." Exec. Opp. 7. That observation does not make Plaintiffs' legal argument any less true. Here, this Court is being asked whether A.B. 458, a tax statute, is unconstitutional. To the extent A.B. 458 is of "doubtful validity," it should be construed in favor of the Plaintiff taxpayers, which means finding it unconstitutional and leaving the Plaintiffs' tax credits in place. *See also Harrah's Operating Co.*, 130 Nev. at 132, 321 P.3d at 852 ("[T]ax statutes are to be construed in favor of the taxpayer.").

raises revenue and should have received a supermajority in the Nevada Senate.

B. The supermajority provision asks only whether A.B. 458 raises revenue, not whether other bills or complex fiscal policies result in increased revenues.

Executive Defendants argue that A.B. 458 does not raise revenue because repealing tax credits, thereby removing families' scholarships, results in the state having to spend more public money: The state must now pay to educate those families in public schools. Exec. Opp. 4–6. They thus argue that the scholarship program was saving the state money and that eliminating the tax credits will require the state to spend more on public education than it will collect in additional revenues. They note that the program's supporters agreed that eliminating the tax credits would result "in a net decrease in Nevada revenue." Exec. Opp. 4.

This argument first confuses expenses with revenues. Time will tell if the state's expenses go up as a result of A.B. 458.[7] But ***revenue***—with which article 4, section 18(2) is concerned—refers to income, not expenses. Even if expenses increase as Nevada spends more on public schools, that does not mean that revenues decrease. The Legislature can still raise revenues as expenses increase. Here, even if expenses go up under A.B. 458, it is still a bill that generates revenues. And because it generates revenues, it must receive a supermajority of votes to pass.

[7] Although irrelevant to the constitutional analysis, there is no reason that public school expenses must increase if tax credits disappear. Many families who do not receive scholarships may instead homeschool or obtain scholarships from other private sources.

In addition, Defendants' argument demonstrates why it is important to engage in a bill-by-bill analysis. As Plaintiffs argued in their Motion, the Constitution considers only one bill at a time. Pls.' MSJ 19. Article 4, section 18(2) asks only whether "***a bill***" received a two-thirds majority (emphasis added). The plain text does not say "bills" or "group of bills," but rather "a bill." Nevada's Constitution does not require this Court to engage in a complicated fiscal policy analysis to determine whether the donations and scholarships incentivized and generated by the tax credit program, coupled with the decisions of parents as to where to enroll their students, produces net revenue gains or losses. The Constitution asks merely whether a particular bill raises revenue. If so, then that bill needs a supermajority vote to pass each house of the Legislature.

It is irrelevant whether the Scholarship Program is a fiscally prudent education policy. As Defendants' briefs concede, "the court does not consider the merits, wisdom and public policy of the statute because such matters fall outside the scope of proper constitutional adjudication." Leg. Opp. 8. This Court should therefore ignore the "theoretical relationship between tax credits and revenue surplus," Exec. Opp. 5, and focus instead on whether A.B. 458 increases public revenues. As shown above and in Plaintiffs' other briefs, it does.

CONCLUSION

For the above reasons, Plaintiffs respectfully request that this Court deny Defendants' respective motions for summary judgment, grant Plaintiffs' Motion for Summary Judgment, and enjoin the enforcement of A.B. 458.

DATED this 27th day of March, 2020.

By */s/ Joshua A. House*

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Institute for Justice, and that on the 27th day of March, 2020, I caused to be served a true and correct copy of foregoing **PLAINTIFFS' REPLY IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT** in the following manner:

(ELECTRONIC SERVICE)

Pursuant to Administrative Order 14-2, the above-referenced document was electronically filed on the date hereof and served through the Notice of Electronic Filing automatically generated by that Court's facilities to those parties listed on the Court's Master Service List.

/s/ Claire Purple

An Employee of INSTITUTE FOR JUSTICE

AFFIDAVIT OF MARK MADDOX

STATE OF NEVADA)

) ss.

COUNTY OF CLARK)

Mark Maddox, being first duly sworn, deposes and says:

1. My name is Mark Maddox and I am the Executive Director of Operations at the Champion Center of Las Vegas doing business as Mountain View Christian Schools.

2. I have personal knowledge of the facts set forth herein, unless otherwise noted. If called as a witness, I could competently testify to the following from personal knowledge.

3. Due to the amount of scholarships that families lost in July 2019, when EFNN determined it could no longer continue funding those scholarships (which was over $240,000 in lost scholarships), Mountain View Christian Schools determined it could no longer continue operations at its current facility under its current ownership.

4. Mountain View Christian Schools has since sold its building and in May it will cease to exist as an entity owned by Champion Center of Las Vegas doing business as Mountain View Christian Schools.

5. Mountain View Christian Schools is in the process of trying to find a smaller, more affordable location that can accommodate its students and may continue doing business as a new legal entity next year.

6. The representations herein are true and correct to the best of my knowledge.

DATED this 25 day of March, 2020.

Mark Maddox

SUBSCRIBED and SWORN to before me
on this 25 day of March, 2020.

NOTARY PUBLIC in and for said
County and State

Lorena Romero
NOTARY PUBLIC
STATE OF NEVADA
Appt. No. 06-104734-1
My Appt. Expires December 26, 2022

TAB 14

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DISTRICT COURT

CLARK COUNTY, NEVADA

FLOR MORENCY; EKYSHA NEWELL; BONNIE YBARRA; AAA SCHOLARSHIP FOUNDATION, INC.; SKLAR WILLIAMS PLLC; ENVIRONMENTAL DESIGN GROUP, LLC, Plaintiffs, vs. STATE OF NEVADA, *ex rel.*, DEPARTMENT OF EDUCATION; *et al.* Defendants.	Case No. A-19-800267-C Dept. No. XXXII Hearing Date: April 14, 2020 Hearing Time: 1:30 p.m.

EXECUTIVE DEFENDANTS' REPLY SUPPORTING THEIR MOTION FOR SUMMARY JUDGMENT

Pursuant to Rule 56, Defendants State of Nevada, *ex rel.*, DEPARTMENT OF EDUCATION; JHONE EBERT, in her official capacity as executive head of the DEPARTMENT OF EDUCATION; 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, 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, and MELANIE YOUNG, in her official capacity as the Executive Director and Chief Administrative Officer of the DEPARTMENT OF TAXATION (collectively the "Executive Defendants") hereby reply in support of their motion for summary judgment.

This Reply is made and based upon the following Memorandum of Points and Authorities, all the papers and pleadings on file herein, and any such argument that the Court chooses to entertain.

DATED this 27th day of March, 2020.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

COVID-19 has challenged Nevada's people and its economy. All casinos remain closed. All schools remain closed. All non-essential businesses remain closed. Nevada's finances are being stretched to the limits.

Only a few months ago, the 2019 Legislature significantly increased the total amount of Voucher Program tax credits for the upcoming biennium, while freezing potential future tax credit increases. By way of this lawsuit, Plaintiffs seek even more tax credits, indefinitely into the future.

Under these undisputed circumstances, Plaintiffs seek judicial resolution of their policy disagreement with the 2019 Legislature's decision to freeze future increases in tax expenditures for the private Voucher Program. Plaintiffs contend the 2019 Legislature has violated Nevada's supermajority provision.

As such, Plaintiffs bear the burden of demonstrating that passing Assembly Bill 458 violated the supermajority provision. Plaintiffs fail for multiple reasons.

First, passage of Assembly Bill 458 complied with the plain language of Nevada's supermajority provision because it did not "create, generate, or increase" any "public revenue." The bill did not change the Modified Business Tax (the "MBT") in any way. It kept the base level of Voucher Program tax credits the same as it had been in the prior fiscal year, allowing the same eligible children to apply for the same vouchers and the same businesses to seek the same first-come, first-served MBT tax credits from the same scholarship organizations.

Second, to the extent there is any ambiguity requiring interpretation, the supermajority provision should be interpreted narrowly, consistent with the intent that it apply to new taxes and increased tax rates, not to the continuation of existing tax credits at existing rates from one year to the next. Review of other state courts facing the same question uniformly did not apply supermajority requirements to freezing tax credits.

. . .

Third, to the extent the Legislature's interpretation (on the advice of its counsel) is reasonable, this Court should defer to that reasonable interpretation because the Legislature is, by constitutional design, the most responsive branch to the People. If Plaintiffs wish to have a policy dispute with the Legislature over its treatment of the Voucher Program, let them have it with the People, who are the ultimate sovereign for Nevada.

Under these circumstances, the Executive Defendants' motion should be granted.

II. FACTUAL BACKGROUND

Plaintiffs' opposition mistakenly presumes that Assembly Bill 458 increased revenue between fiscal years. As set forth in the Executive Defendants' opposition, this is mistaken for at least three reasons:

- Assembly Bill 458 did not decrease the "subsection 4" tax credits (*see* Exec. Opp. at 3:24-4:7);
- The 2019 Legislature, through passage of Senate Bill 551, caused an overall increase in Voucher Program tax credits (*see id.* at 4:8-13);[1]
- According to its supporters, decreasing expenditures on the Voucher Program results in decreased net revenue for Nevada (*see id.* at 4:14-6:3).

In their opposition, Plaintiffs create a chart identifying what they contend is a "post-A.B. 458 difference" in future years outside the current budget biennium for the Voucher Program. Opp. at 16:15-17:6. This chart ignores the fact that potential future tax credits were not legally operative until July 1, 2019 (*see* Leg. Mot. at 4:16-6:6). None of us can predict the future; judging whether tax credits increase or decrease should be relative to budget year, not indefinitely into the future. Similarly, no one can predict or presume whether or how a future legislature would treat the Voucher Program. This is generally

[1] Plaintiffs argue the formal distinction between one and two appropriation bills at the close of the same legislative session, while at the same time contending that this Court should distinguish *Nevada Mining* because it only dealt with "an arbitrary question," rather than "a substantive limitation on the power of the Legislature." Opp. at 6:20-23. Plaintiffs cannot have both sides of the form/substance argument. They cannot both ignore the true intent of the 2019 Legislature on Voucher Program funding and avoid the deference required by *Nevada Mining*.

why prior legislatures cannot bind future legislatures by statute.[2] *See, e.g.,* NEV. CONST. art. 9, §§ 2-3. This is also why narrowly interpreting the supermajority provision by measuring "any increase" from one fiscal year to the next makes sense.

Plaintiffs' contention that this has no limitation because it would allow the Legislature to avoid the supermajority provision whenever it wished (*see* Opp. at 17:18-18:4) is simply untrue. If the Nevada Legislature wished to create a new tax for the upcoming biennial budget, such as the Warren "wealth tax," it would require supermajority approval. If the Nevada Legislature wished to increase the Commerce Tax rate for the upcoming biennial budget, it would require supermajority approval. Both address the reason for the supermajority provision: ensuring "no new taxes" is not a broken promise absent supermajority consensus.

Under these facts, Plaintiffs are not entitled to summary judgment on their theory that passing Assembly Bill 458 violated Nevada's supermajority requirement.

III. LEGAL ANALYSIS

A. Standard of Review

In Nevada, the constitutionality of a statute is a question of law. "Statutes are presumed to be valid, and the burden is on the challenging party to demonstrate that a statute is unconstitutional." *Cornellia v. Justice Court*, 132 Nev. ___, 377 P.3d 97, 100 (2016). Here, Plaintiffs bear this burden.

The Executive Defendants have already addressed Plaintiffs' efforts to shift this burden and why they fail. *See* Exec. Opp. at 6:16-7:18. There is no need to repeat this argument again.

. . .

. . .

[2] Plaintiffs' motion dismisses this issue by noting that the additional tax credits are only for the current biennium. Mot. at 19:18-19. However, as addressed in more detail by the Legislature in its motion for summary judgment, each legislature controls the use of public funds for the current biennium, and generally cannot bind the decisions of future legislatures by statute. At minimum, this again highlights why this case is not ripe for consideration because the purported harm associated with decreased tax credits does not yet exist.

Here, this Court is not faced with a case concerning "doubtful validity" associated with legislative silence as to the scope or applicability of a tax. These parties do not have a disagreement about the scope or applicability of a tax. Instead, they have a disagreement as to the applicability and meaning of the Nevada Constitution as it pertains to the power of the Legislature. Accordingly, the purported "deference" argued by Plaintiffs does not apply to their burden to demonstrate a constitutional violation relative to the Legislature.

B. Assembly Bill 458 Complies with the Plain Language of the Supermajority Provision

The Executive Defendants' opposition addressed the plain and ordinary meaning of "creates, generates, or increases." *See* Exec. Opp. at 7:21-8:3.

Based on those circumstances, the Executive Defendants are left to assume that any argument Plaintiffs have on the plain language of the supermajority provision necessarily relies on the term "increase," which means "to become progressively greater" or to "make greater." Nothing within the supermajority provision defines how to measure an "increase" in "public revenue." Simple revenue increases resulting from Nevada's population and business growth do not require supermajority votes, as demonstrated by prior Economic Forum projections.[3] For instance, the 2017 Economic Forum forecast shows a 7.6% increase in the total MBT before tax credits between FY 2016 and FY 2017.[4] As such increases have not required supermajority approval, Plaintiffs' interpretation of "any" is overbroad and outside the understanding of Nevada's governmental system.

. . .

. . .

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[3] Plaintiffs' reliance on *In re Opinion of the Justices*, 575 A.2d 1186 (Del. 1990), in support of the "any" argument is also misplaced. The Executive Defendants already addressed this in their Opposition (*see* Exec. Opp. at 8:19-23 n.3) and will not repeat these arguments again here.

[4] *See General Fund Revenues – Economic Forum's Forecast for FY 2017, FY 2018, and FY 2019 Approved at the May 1, 2017, Meeting, Adjusted for Measures Approved by the 2017 Legislature (79th Session)*, available at: https://www.leg.state.nv.us/Division/fiscal/Economic%20Forum/EF%20May%202017%20Forecast%20with%20Legislative%20Adjustments%20(updated%2011-9-2017).pdf and attached hereto as **Exhibit A**.

Continuing existing taxes and fees at existing rates from one fiscal year to the next does not "make greater" "public revenue." At worst, the supermajority provision is ambiguous for failing to identify the appropriate baseline from which to measure an "increase."

Further, there is no "slippery slope" and the narrow interpretation does not render the provision "meaningless and inoperative." Opp. at 16. Instead, it narrowly interprets the Constitution as a limitation upon any legislative enactment that "creates, generates, or increases" tax rates or revenue from the baseline of one fiscal year to the next. If the supermajority provision had been intended to apply to enactments that maintain tax rates or revenue through the repeal of yet-inoperative provisions of law, it would have included a limitation upon the Legislature's ability to repeal prospective and still inoperative changes to tax rates, deductions, or exemptions. But there is no such language in the text of the Nevada Constitution.

The supermajority provision, as intended, applies to existing rates and revenue streams, not projected rates and revenue streams. For example, it would require supermajority support for creating a new tax that did not previously exist, such as a wealth tax. The supermajority provision, as intended, would require supermajority support for increasing rates on existing taxes, such as the MBT. However, Defendants' interpretation, as intended by the initiative, would not apply to continuing existing taxes at existing rates from one fiscal year to the next. This interpretation is reasonable, based on the information before this Court.

Here, as addressed in the Legislature's motion for summary judgment, Plaintiffs presume an "existing tax structure" of decreased revenues from increased tax credits that had not yet existed. Because this provision was never in effect at the increased amounts as a matter of law, as set forth by the Legislature's counsel in its May 8, 2019 memorandum, Assembly Bill 458 maintains the existing "subsection 4" tax credit amount and accompanying revenue structure. *See* Leg. Mot. at 4:16-6:6; **Exhibit C** to the Executive Defendants' Motion.

Plaintiff's reliance on a fiscal note (*see* Mot. at 17:4-6) does not account for the continuity in the computational basis for the MBT. And the total amounts of the existing "subsection 4" tax credits remained the same between fiscal years, subject to the identical first-come, first-served process under the Voucher Program. Even without consideration of the Legislature's near simultaneous decrease in revenue from substantially increasing overall Voucher Program tax credits, Assembly Bill 458 does not "create, generate, or increase" any public revenue in any form relative to the prior fiscal year.[5] Because this complies with the plain language of the Nevada Constitution, the Court should enter judgment against Plaintiffs and in favor of Defendants.

C. The Legislature's Interpretation is Reasonable and Entitled to Deference

Plaintiffs disagree with the reasonableness of the Legislature's interpretation of the supermajority provision. For the reasons set forth below, the Legislature is entitled to deference in its reasonable interpretation of Nevada's supermajority provision, especially given the Legislature's reliance upon the specific advice of its counsel.[6]

1. The History, Public Policy and Reason behind the Supermajority Provision Supports Defendants' Narrow Interpretation

Plaintiffs do not seriously challenge the history, public policy, and reason behind the supermajority provision. Following President Bush's broken promise of "no new taxes," supermajority provisions (including Nevada's) proliferated throughout the United States. As noted by Plaintiffs, the supermajority provision was proposed "to increase certain existing taxes or impose certain new taxes." Opp. at 12:2-8. No reference was made to tax

[5] The Executive Defendants have already stated its argument regarding the overall 2019 Legislature increase in Voucher Program tax credits in the motion to dismiss briefing and its motion for summary judgment. For brevity, its argument will not be repeated here.

[6] Plaintiffs' opposition mistakenly contends that the Executive Defendants have ignored the plain language of the supermajority provision. Opp. at 12:15-13:13. Prior to addressing any interpretation of the supermajority provision, the Executive Defendants have (and continue) to argue that the plain language does not apply to freezing tax credits. However, if this court believes that there is an ambiguity, such as how to measure an increase, the court is required to consider the history, public policy, and reason behind the supermajority provision. As set forth throughout the briefing, such history, public policy, and reason supports the Legislature's interpretation, rather than Plaintiffs.

exemptions or tax credits in the initiative materials. Simply put, the purpose of Nevada's supermajority provision is not preserving tax exemptions and, to the extent a court considers matters outside the plain language, it supports the Executive Defendants' interpretation that it does not apply to this case, where Assembly Bill 458 neither increases existing taxes nor imposes new taxes.

Instead of remaining faithful to the undisputed historical record, Plaintiffs attempt to broaden the public policy and reason behind the supermajority provision to account for their desire that it apply to the elimination of tax credits. These efforts are each mistaken, as already addressed by the Executive Defendants' prior opposition.

Under such circumstances, the Executive Defendants' interpretation of the supermajority provision is most reasonable.

2. Other States' Interpretation of Similar Provisions Supports Defendants' Narrow Interpretation

Nevada is not alone in having a supermajority provision. Nevada's "founding father" for the supermajority provision recognized that it was borrowed from what other states did, addressing the same concern over "no new taxes" arising from the presidency of George H.W. Bush. Other states have consistently interpreted these provisions narrowly as a limited exception to majoritarian rule. Plaintiffs have not identified any state interpreting a supermajority provision in a contrary fashion for continuing existing tax credits into future fiscal years or from elimination of tax credits.[7] Review of the applicable plain language highlights why.

As addressed in the Executive Defendants' opposition, "increase" is Plaintiffs' sole possible plain language argument for their reading of the supermajority provision applying to the freeze of "subsection 4" tax credits. In this context, there is no meaningful distinction between "raising revenue" and "increase public revenue." Seeing how other states interpret

[7] Plaintiffs' opposition repeatedly references that other states exclude assessments and fees. *See* Opp. at 9:3-13. However, this does not impact the question here, which is whether any such supermajority provision applies to require supermajorities to reduce tax credits. As set forth in this section, none apply other than for states that specifically enumerate tax credits or exemptions.

"raising revenue" may be instructive for a court when attempting to analyze Nevada's similar supermajority provision. Neither Oklahoma nor Oregon limit the term "raising," similar to how Nevada does not limit the term "increase." There is no conflict amongst these supermajority provisions.

Under such circumstances, Oregon's conclusion that eliminating a tax exemption for out-of-state electric utility facilities was not subject to its constitutional supermajority provision is persuasive authority supporting narrow interpretation of Nevada's supermajority provision. *City of Seattle v. Or. Dep't of Revenue*, 357 P.3d 979, 980 (Or. 2015). While Plaintiffs argue that Oregon's precedent is premised on a narrower supermajority provision (see Opp. at 11:8-15), Oregon's supermajority provision simply states that "Three-fifths of all members elected to each House shall be necessary to pass bills for raising revenue." OR. CONST. art. IV, Sec. 25(2). For purposes of raising revenue, there is no textual difference between Nevada and Oregon's supermajority provision.

Similarly, Oklahoma's analysis that deleting the "expiration date of [a] specified tax rate levy" was not subject to its supermajority provision is also persuasive authority for a court to consider when interpreting Nevada's supermajority provision. *Fent v. Fallin*, 345 P.3d 1113, 1114-17 n.6 (Okla. 2014). Oklahoma's analysis that eliminating exemptions from taxation (akin to eliminating Voucher Program tax credits) was not subject to its supermajority requirement is also persuasive authority supporting narrow interpretation of Nevada's supermajority provision. *Okla. Auto Dealers Ass'n. v. Okla. Tax Comm'n.*, 401 P.3d 1152, 1155 (Okla. 2017). While Plaintiffs argue that Oklahoma's decisions are premised on a narrower supermajority provision (Opp. at 11:1-8), Oklahoma's supermajority provision states that "[a]ny revenue bill …may become law…if such bill receives [supermajority] approval." OKLA. CONST. art. 5, § 33. For purposes of raising revenue, there is no textual difference between Nevada and Oklahoma's supermajority provision. There is no textual reason why Nevada should not recognize the same distinction between revenue bills and tax exemptions for purposes of its supermajority provision.

Plaintiffs' citations to other states' supermajority provisions do not undermine the Executive Defendants' reading of Nevada's provision – they reinforce it. As Plaintiffs point out, Arizona, Florida and Louisiana all have constitutional provisions that explicitly refer to reductions in tax credits or exemptions. Opp. at 9:20-10:4.[8] Nevada's supermajority provision could have done the same thing. That the drafters of Nevada's provision chose a different course by not explicitly referring to tax credits or exemptions shows that the provision does not apply to reductions in tax credits or exemptions. *See Comm'r v. Beck's Estate*, 129 F.2d 243, 245 (2d Cir. 1942) (rejecting an interpretation that violated "[t]he familiar 'easy-to-say-so-if-that-is-what-was-meant' rule of statutory interpretation").

Furthermore, Plaintiffs' argument that "Nevada's provision was based" is factually impossible. Florida's supermajority provision was adopted in 2018, twenty-two years after Nevada adopted its supermajority provision. With due respect to Nevada's "founding father" of the supermajority provision, now-former Governor Gibbons could not have contemplated Florida's 2018 supermajority provision or "based" it on what Florida ultimately did in 2018.

In *Arpaio v. Maricopa County Bd. of Supervisors*, 238 P.3d 626, 632 (Ariz. 2010), the Arizona Supreme Court recognized that the intent of its supermajority provision "was to prevent the legislature from enacting without a super-majority vote any statute that increases the overall burden on the tax and fee paying public." *Id.* On that basis, the Arizona court rejected Sherriff Arpaio's challenge of funds already within the government's possession as a violation of the supermajority provision. *Id.* Similarly here, where the overall burden on the tax- and fee-paying public is the same, with the sole difference being . . .

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[8] Specifically, Plaintiffs cite article 9, section 22 of the Arizona Constitution; article 7, section 19 of the Florida Constitution; and article 7, section 2 of the Louisiana Constitution. Opp. at 9:20-:10:1. The Arizona provision explicitly applies to the "reduction or elimination of a tax deduction, exemption, exclusion, credit or other tax exemption feature." ARIZ. CONST. art. 9, § 22(B)(3). The Florida provision explicitly applies to laws "decreas[ing] or eliminate[ing] a state tax or fee exemption or credit." FLA. CONST. art. 7, § 19(d)(2)(c). And the Louisiana provision explicitly applies to the "repeal of an existing tax exemption." LA. CONST. art. 7, § 2. There is no analogous language in Nevada's supermajority provision. *See* NEV. CONST. art. 4, § 2.

funds spent as tax expenditures versus state appropriations, the Arizona decision supports the Executive Defendants' interpretation of the Nevada supermajority provision.

Likewise, Louisiana courts have not applied the supermajority provision to suspension of tax exemptions. *See La. Chem. Ass'n v. State ex rel. La. Dep't of Revenue*, 217 So. 3d 455, 462-63 (La. Ct. App. 2017). The Executive Defendants' position is even stronger because here, the subsection 4 tax credits have not even been suspended by the Nevada Legislature. Instead, the subsection 4 tax credits have been frozen at the existing level from the prior biennial budget, with a significant increase in other Voucher Program tax credits by Senate Bill 551.

Plaintiffs' failure to find contrary persuasive authority pertaining to the elimination of a tax exemption as subject to a supermajority provision highlights the reasonableness of the Legislature's interpretation.

3. The Legislature, Relying on the Specific Advice of its Counsel, is Entitled to Deference

Finally, the Legislature is entitled to deference in its interpretation of Nevada's supermajority provision, given that it relied upon the specific advice of its counsel, and its interpretation was a reasonable one. *Nev. Mining Ass'n v. Erdoes*, 117 Nev. 531, 540 (2001).

Nevada courts do this because of the significant power vested in the Legislature under the Nevada Constitution, consistent with constitutional requirements for republican forms of government and majoritarian rule. As noted by James Madison in the Federalist Papers:

> In all cases where justice of the general good might require new laws to be passed, or active measures to be pursued, the fundamental principle of free government would be reversed. It would be no longer the majority that would rule; the power would be transferred to the minority. Were the defensive privilege limited to particular cases, an interested minority might take advantage of it to screen themselves from equitable sacrifices to the general weal, or in particular circumstances to extort unreasonable indulgences.

THE FEDERALIST NO. 58, at 397 (James Madison).

. . .

Here, the parties disagree with how the Legislature interprets Nevada's Constitution. Because the Legislature's interpretation is reasonable (for the reasons set forth above) and the Legislature relied upon the specific advice of their counsel, this Court should defer to the Legislature's interpretation. Even if it would not be this Court's preferred interpretation, deferring to the Legislature will allow Nevada's true sovereign, the People, to ultimately decide the wisdom of the 2019 Legislature's decisions at the ballot box.

IV. CONCLUSION

This Court should award Defendants summary judgment because the passage of Assembly Bill 458 complies with Article IV, Section 18(2) of the Nevada Constitution.

DATED this 27th day of March, 2020.

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CERTIFICATE OF SERVICE

I hereby certify that I served the **EXECUTIVE DEFENDANTS' REPLY SUPPORTING THEIR MOTION FOR SUMMARY JUDGMENT** by United States Mail, First Class, and this Court's electronic filing system on the 27th day of March, 2020, upon the following counsel of record:

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INDEX OF EXHIBITS

EXHIBIT NO.	EXHIBIT DESCRIPTION	NUMBER OF PAGES
A	General Fund Revenues	9

Exhibit A

Exhibit A

GENERAL FUND REVENUES - ECONOMIC FORUM MAY 1, 2017, FORECAST
ACTUAL: FY 2014 THROUGH FY 2016 AND FORECAST: FY 2017 THROUGH FY 2019
ECONOMIC FORUM'S FORECAST FOR FY 2017, FY 2018, AND FY 2019 APPROVED AT THE MAY 1, 2017, MEETING

	DESCRIPTION	FY 2014 ACTUAL	% Change	FY 2015 ACTUAL	% Change	FY 2016 ACTUAL	% Change	ECONOMIC FORUM MAY 1, 2017, FORECAST FY 2017 FORECAST	% Change	FY 2018 FORECAST	% Change	FY 2019 FORECAST	% Change
	TAXES												
	MINING TAX												
3064	Net Proceeds of Minerals [1-12][2-12][1-14][2-14][2-16][3-16]	$26,221,970	-76.4%	$51,733,594	97.3%	$34,674,918	-33.0%	$18,774,000	-45.9%	$45,716,000	143.5%	$46,034,000	0.7%
3241	Net Proceeds Penalty			$0		$0		$0		$0		$0	
3245	Centrally Assessed Penalties		-100.0%	$21		$68,648		$6,200	-91.0%	$7,500	21.0%	$7,500	0.0%
	TOTAL MINING TAXES AND FEES	$26,221,970	-76.4%	$51,733,615	97.3%	$34,743,566	-32.8%	$18,780,200	-45.9%	$45,723,500	143.5%	$46,041,500	0.7%
	SALES AND USE												
3001	Sales & Use Tax	$931,319,687	4.8%	$994,764,970	6.8%	$1,036,549,227	4.2%	$1,087,212,000	4.9%	$1,154,724,000	6.2%	$1,214,518,000	5.2%
3002	State Share - LSST [4-12][3-14][4-16]	$9,194,669	4.6%	$9,726,146	5.8%	$10,155,240	4.4%	$10,600,000	4.4%	$11,259,000	6.2%	$11,842,000	5.2%
3003	State Share - BCCRT	$4,088,755	5.0%	$4,334,753	6.0%	$4,506,053	4.0%	$4,757,000	5.6%	$5,052,000	6.2%	$5,314,000	5.2%
3004	State Share - SCCRT	$14,305,300	5.0%	$15,166,566	6.0%	$15,764,607	3.9%	$16,648,000	5.6%	$17,682,000	6.2%	$18,597,000	5.2%
3005	State Share - PTT	$8,797,760	6.9%	$9,461,562	7.5%	$10,028,644	6.0%	$10,591,000	5.6%	$11,249,000	6.2%	$11,831,000	5.2%
	TOTAL SALES AND USE	$967,706,171	4.8%	$1,033,453,997	6.8%	$1,077,003,772	4.2%	$1,129,808,000	4.9%	$1,199,966,000	6.2%	$1,262,102,000	5.2%
	GAMING - STATE												
3041	Percent Fees - Gross Revenue: Before Tax Credits	$682,311,672	0.5%	$693,232,048	1.6%	$700,773,974	1.1%	$730,974,000	4.3%	$746,753,000	2.2%	$768,683,000	2.9%
	Tax Credit Programs:												
	Film Transferrable Tax Credits [TC-1]			$0		-$4,288,194		$0		$0		$0	
	Economic Development Transferrable Tax Credits [TC-2]			$0		-$20,461,554		$0		$0		$0	
	Catalyst Account Transferrable Tax Credits [TC-4]			$0		$0		$0		$0		$0	
	Total - Tax Credit Programs			$0		-$24,749,748		$0		$0		$0	
	Percent Fees - Gross Revenue: After Tax Credits	$682,311,672		$693,232,048		$676,024,226		$730,974,000	8.1%	$746,753,000	2.2%	$768,683,000	2.9%
3032	Pari-mutuel Tax	$2,758	-10.1%	$2,964	7.5%	$3,261	10.0%	$3,400	4.3%	$3,600	5.9%	$3,700	2.8%
3181	Racing Fees	$9,258	6.4%	$7,456	-19.5%	$9,293	24.6%	$9,900	6.5%	$10,000	1.0%	$10,000	0.0%
3247	Racing Fines/Forfeitures	$0		$500		$700		$0	-100.0%	$0		$0	
3042	Gaming Penalties	$7,862,472	439.7%	$337,544	-95.7%	$4,069,112	1105.5%	$2,100,000	-48.4%	$775,000	-63.1%	$775,000	0.0%
3043	Flat Fees-Restricted Slots [5-12]	$8,305,289	-1.2%	$8,291,051	-0.2%	$8,225,963	-0.8%	$8,150,000	-0.9%	$8,128,000	-0.3%	$8,193,000	0.8%
3044	Non-Restricted Slots [5-12]	$11,383,000	-7.4%	$11,164,523	-1.9%	$10,861,213	-2.7%	$10,660,000	-1.9%	$10,558,000	-1.0%	$10,458,000	-0.9%
3045	Quarterly Fees-Games	$6,410,111	-0.6%	$6,522,917	1.8%	$6,450,491	-1.1%	$6,451,000	0.0%	$6,454,000	0.0%	$6,463,000	0.1%
3046	Advance License Fees	$672,263	-49.9%	$1,733,482	157.9%	$1,780,785	2.7%	$1,020,000	-42.7%	$750,000	-26.5%	$800,000	6.7%
3048	Slot Machine Route Operator	$37,000	-8.6%	$35,000	-5.4%	$34,000	-2.9%	$33,500	-1.5%	$33,000	-1.5%	$32,500	-1.5%
3049	Gaming Info Systems Annual	$18,000	0.0%	$42,000	133.3%	$42,000	0.0%	$36,000	-14.3%	$36,000	0.0%	$36,000	0.0%
3028	Interactive Gaming Fee - Operator	$604,167	38.1%	$500,000	-17.2%	$500,000	0.0%	$500,000	0.0%	$500,000	0.0%	$500,000	0.0%
3029	Interactive Gaming Fee - Service Provider	$75,000	177.8%	$61,000	-18.7%	$63,000	3.3%	$56,000	-11.1%	$55,000	-1.8%	$54,000	-1.8%
3030	Interactive Gaming Fee - Manufacturer	$700,000	-9.7%	$200,000	-71.4%	$175,000	-12.5%	$100,000	-42.9%	$100,000	0.0%	$100,000	0.0%
3033	Equip Mfg. License	$290,000	6.0%	$281,000	-3.1%	$279,500	-0.5%	$273,500	-2.1%	$273,000	-0.2%	$272,000	-0.4%
3034	Race Wire License	$29,736	-14.8%	$28,406	-4.5%	$36,391	28.1%	$15,000	-58.8%	$16,000	6.7%	$17,000	6.3%
3035	Annual Fees on Games	$105,341	-0.7%	$107,822	2.4%	$115,214	6.9%	$124,700	8.2%	$117,000	-6.2%	$115,300	-1.5%
	TOTAL GAMING - STATE: BEFORE TAX CREDITS	$718,816,067	1.2%	$722,547,713	0.5%	$733,419,897	1.5%	$760,507,000	3.7%	$774,561,600	1.8%	$796,512,500	2.8%
	Tax Credit Programs					-$24,749,748		$0		$0		$0	
	TOTAL GAMING - STATE: AFTER TAX CREDITS	$718,816,067	1.2%	$722,547,713	0.5%	$708,670,149	-1.9%	$760,507,000	7.3%	$774,561,600	1.8%	$796,512,500	2.8%
	LIVE ENTERTAINMENT TAX (LET)												
3031G	Live Entertainment Tax-Gaming [5-16]	$139,156,240	10.7%	$130,861,416	-6.0%	$111,994,620	-14.4%	$101,737,000	-9.2%	$106,663,000	4.8%	$109,398,000	2.6%
3031NG	Live Entertainment Tax-Nongaming [5-16]	$14,979,978	28.0%	$14,965,649	-0.1%	$16,536,346	10.5%	$25,149,000	52.1%	$26,150,000	4.0%	$27,233,000	4.1%
	TOTAL LET	$154,136,218	12.2%	$145,827,065	-5.4%	$128,530,966	-11.9%	$126,886,000	-1.3%	$132,813,000	4.7%	$136,631,000	2.9%
	COMMERCE TAX												
	Commerce Tax [6-16]					$143,507,593		$203,411,000	41.7%	$186,046,000	-8.5%	$194,976,000	4.8%
	TRANSPORTATION CONNECTION EXCISE TAX												
	Transportation Connection Excise Tax [7-16]					$11,898,532		$22,832,000	91.9%	$18,848,000	-17.4%	$24,819,000	31.7%
	CIGARETTE TAX												
3052	Cigarette Tax [8-16]	$79,628,983	-4.1%	$92,774,433	16.5%	$153,033,176	65.0%	$174,999,000	14.4%	$172,577,000	-1.4%	$170,155,000	-1.4%

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	DESCRIPTION	FY 2014 ACTUAL	% Change	FY 2015 ACTUAL	% Change	FY 2016 ACTUAL	% Change	ECONOMIC FORUM MAY 1, 2017, FORECAST FY 2017 FORECAST	% Change	FY 2018 FORECAST	% Change	FY 2019 FORECAST	% Change
	TAXES - CONTINUED												
	MODIFIED BUSINESS TAX (MBT)												
	MBT - NONFINANCIAL BUSINESSES (MBT-NFI) [6-12][4-14][9-16][10-16][11-16][12-16]												
3069	MBT - Nonfinancial: Before Tax Credits	$361,095,880	-0.6%	$387,769,692	7.4%	$517,135,234	33.4%	$558,908,000	8.1%	$587,972,000	5.2%	$615,734,000	4.7%
	Commerce Tax Credits [13-16]					$0		$0		$0		$0	
	MBT - Nonfinancial: After Commerce Tax Credits			$387,769,692		$517,135,234		$558,908,000	8.1%	$587,972,000	5.2%	$615,734,000	4.7%
	Tax Credit Programs:												
	Film Transferrable Tax Credits [TC-1]			$0		-$82,621		$0		$0		$0	
	Economic Development Transferrable Tax Credits [TC-2]			$0		$0		$0		$0		$0	
	Catalyst Account Transferrable Tax Credits [TC-4]			$0		$0		$0		$0		$0	
	Education Choice Scholarship Tax Credits [TC-5]			$0		-$4,401,540		$0		$0		$0	
	College Savings Plan Tax Credits [TC-6]			$0		$0		$0		$0		$0	
	Total - Tax Credit Programs			$0		-$4,484,161		$0		$0		$0	
	MBT - Nonfinancial: After Tax Credit Programs	$361,095,880		$387,769,692		$512,651,073		$558,908,000	9.0%	$587,972,000	5.2%	$615,734,000	4.7%
	MBT - FINANCIAL BUSINESSES (MBT-FI) [12-16]												
3069	MBT - Financial: Before Tax Credits	$23,789,898	1.8%	$24,144,270	1.5%	$27,188,910	12.6%	$28,224,000	3.8%	$29,819,000	5.7%	$31,372,000	5.2%
	Commerce Tax Credits [13-16]					$0		$0		$0		$0	
	MBT - Financial: After Commerce Tax Credits			$24,144,270		$27,188,910		$28,224,000	3.8%	$29,819,000	5.7%	$31,372,000	5.2%
	Tax Credit Programs:												
	Film Transferrable Tax Credits [TC-1]			$0		$0		$0		$0		$0	
	Economic Development Transferrable Tax Credits [TC-2]			$0		$0		$0		$0		$0	
	Catalyst Account Transferrable Tax Credits [TC-4]			$0		$0		$0		$0		$0	
	Education Choice Scholarship Tax Credits [TC-5]			$0		$0		$0		$0		$0	
	College Savings Plan Tax Credits [TC-6]			$0		$0		$0		$0		$0	
	Total - Tax Credit Programs			$0		$0		$0		$0		$0	
	MBT - Financial: After Tax Credit Programs	$23,789,898		$24,144,270		$27,188,910		$28,224,000	3.8%	$29,819,000	5.7%	$31,372,000	5.2%
	MBT - MINING BUSINESSES (MBT-MINING) [11-16]												
3069	MBT - Mining: Before Tax Credits					$21,938,368		$22,234,000	1.3%	$22,775,000	2.4%	$23,403,000	2.8%
	Commerce Tax Credits [13-16]					$0		$0		$0		$0	
	MBT - Mining: After Commerce Tax Credits					$21,938,368		$22,234,000	1.3%	$22,775,000	2.4%	$23,403,000	2.8%
	Tax Credit Programs:												
	Film Transferrable Tax Credits [TC-1]					$0		$0		$0		$0	
	Economic Development Transferrable Tax Credits [TC-2]					$0		$0		$0		$0	
	Catalyst Account Transferrable Tax Credits [TC-4]					$0		$0		$0		$0	
	Education Choice Scholarship Tax Credits [TC-5]					$0		$0		$0		$0	
	College Savings Plan Tax Credits [TC-6]					$0		$0		$0		$0	
	Total - Tax Credit Programs					$0		$0		$0		$0	
	MBT - Mining - After Tax Credit Programs					$21,938,368		$22,234,000	1.3%	$22,775,000	2.4%	$23,403,000	2.8%
	TOTAL MBT - NFI, FI, & MINING												
	TOTAL MBT: BEFORE TAX CREDITS	$384,885,778	-0.4%	$411,913,962	7.0%	$566,262,513	37.5%	$609,366,000	7.6%	$640,566,000	5.1%	$670,509,000	4.7%
	TOTAL COMMERCE TAX CREDITS [13-16]					$0		-$76,227,000		-$88,763,000		-$93,023,000	
	TOTAL MBT: AFTER COMMERCE TAX CREDITS			$411,913,962		$566,262,513		$533,139,000	-5.8%	$551,803,000	3.5%	$577,486,000	4.7%
	Tax Credit Programs:												
	Film Transferrable Tax Credits [TC-1]			$0		-$82,621		$0		$0		$0	
	Economic Development Transferrable Tax Credits [TC-2]			$0		$0		$0		$0		$0	
	Catalyst Account Transferrable Tax Credits [TC-4]			$0		$0		$0		$0		$0	
	Education Choice Scholarship Tax Credits [TC-5]			$0		-$4,401,540		-$6,098,460		-$6,050,000		-$6,655,000	
	College Savings Plan Tax Credits [TC-6]			$0		$0		-$69,000		-$138,000		-$207,000	
	Total - Tax Credit Programs			$0		-$4,484,161		-$6,167,460		-$6,188,000		-$6,862,000	
	TOTAL MBT: AFTER TAX CREDIT PROGRAMS	$384,885,778		$411,913,962		$561,778,352		$526,971,540	-6.2%	$545,615,000	3.5%	$570,624,000	4.6%

GENERAL FUND REVENUES - ECONOMIC FORUM MAY 1, 2017, FORECAST
ACTUAL: FY 2014 THROUGH FY 2016 AND FORECAST: FY 2017 THROUGH FY 2019
ECONOMIC FORUM'S FORECAST FOR FY 2017, FY 2018, AND FY 2019 APPROVED AT THE MAY 1, 2017, MEETING

	DESCRIPTION	FY 2014 ACTUAL	% Change	FY 2015 ACTUAL	% Change	FY 2016 ACTUAL	% Change	ECONOMIC FORUM MAY 1, 2017, FORECAST: FY 2017 FORECAST	% Change	FY 2018 FORECAST	% Change	FY 2019 FORECAST	% Change
	TAXES - CONTINUED												
	INSURANCE TAXES												
3061	Insurance Premium Tax: Before Tax Credits [1-16]	$263,531,578	6.0%	$305,075,537	15.8%	$335,118,754	9.8%	$378,200,000	12.9%	$395,753,000	4.6%	$410,610,000	3.8%
	Tax Credit Programs:												
	Film Transferrable Tax Credits [TC-1]			$0		$0		$0		$0		$0	
	Economic Development Transferrable Tax Credits [TC-2]			$0		$0		$0		$0		$0	
	Catalyst Account Transferrable Tax Credits [TC-4]			$0		$0		$0		$0		$0	
	Nevada New Markets Job Act Tax Credits [TC-3]			-$12,410,882		-$26,005,450		-$24,000,000		-$24,000,000		-$22,000,000	
	Total - Tax Credit Programs			-$12,410,882		-$26,005,450		-$24,000,000		-$24,000,000		-$22,000,000	
	Insurance Premium Tax: After Tax Credit Programs	$263,531,578		$292,664,655		$309,113,304		$354,200,000	14.6%	$371,753,000	5.0%	$388,610,000	4.5%
3062	Insurance Retaliatory Tax	$234,807	-3.1%	$355,819	51.5%	$185,855	-47.8%	$192,000	3.3%	$204,100	6.3%	$204,100	0.0%
3067	Captive Insurer Premium Tax	$755,517	19.0%	$901,712	19.4%	$923,869	2.5%	$1,082,000	17.1%	$1,121,000	3.6%	$1,160,000	3.5%
	TOTAL INSURANCE TAXES: BEFORE TAX CREDITS	$264,521,903	6.1%	$306,333,069	15.8%	$336,228,478	9.8%	$379,474,000	12.9%	$397,078,100	4.6%	$411,974,100	3.8%
	TAX CREDIT PROGRAMS			-$12,410,882		-$26,005,450		-$24,000,000		-$24,000,000		-$22,000,000	
	TOTAL INSURANCE TAXES: AFTER TAX CREDITS	$264,521,903	6.1%	$293,922,187	11.1%	$310,223,028	5.5%	$355,474,000	14.6%	$373,078,100	5.0%	$389,974,100	4.5%
	REAL PROPERTY TRANSFER TAX (RPTT)												
3055	Real Property Transfer Tax	$60,047,457	9.2%	$64,214,342	6.9%	$75,794,844	18.0%	$82,042,000	8.2%	$86,628,000	5.6%	$89,723,000	3.6%
	GOVERMENTAL SERVICES TAX (GST)												
3051	Governmental Services Tax [5-14][14-16]	$62,267,322	-1.9%	$62,865,504	1.0%	$66,731,895	6.2%	$38,153,000	-42.8%				
	OTHER TAXES												
3113	Business License Fee [7-12][6-14][15-16]	$72,166,482	4.6%	$75,359,976	4.4%	$103,045,619	36.7%	$104,646,000	1.6%	$105,559,000	0.9%	$106,341,000	0.7%
3050	Liquor Tax	$41,838,536	4.9%	$42,707,046	2.1%	$43,944,413	2.9%	$42,930,000	-2.3%	$43,588,000	1.5%	$44,091,000	1.2%
3053	Other Tobacco Tax	$11,620,286	12.3%	$11,458,040	-1.4%	$13,131,919	14.6%	$14,488,000	10.3%	$15,086,000	4.1%	$15,671,000	3.9%
4862	HECC Transfer	$5,000,000	0.0%	$5,000,000	0.0%	$5,000,000	0.0%	$5,000,000	0.0%	$5,000,000	0.0%	$5,000,000	0.0%
3065	Business License Tax	$2,814	-4.3%	$1,850	-34.3%	$243	-86.9%	$300	23.4%	$0		$0	
3068	Branch Bank Excise Tax	$2,788,166	-7.0%	$3,129,940	12.3%	$2,786,429	-11.0%	$2,772,000	-0.5%	$2,789,000	0.6%	$2,803,000	0.5%
	TOTAL TAXES: BEFORE TAX CREDITS	$2,851,648,150	0.2%	$3,029,320,553	6.2%	$3,495,063,854	15.4%	$3,716,094,500	6.3%	$3,826,829,200	3.0%	$3,977,349,100	3.9%
	TOTAL COMMERCE TAX CREDITS [13-16]					$0		-$76,227,000		-$88,763,000		-$93,023,000	
	TOTAL TAXES: AFTER COMMERCE TAX CREDITS			$3,029,320,553		$3,495,063,854		$3,639,867,500	4.1%	$3,738,066,200	2.7%	$3,884,326,100	3.9%
	Tax Credit Programs:												
	Film Transferrable Tax Credits [TC-1]			$0		-$4,370,815		-$3,908,259		-$1,720,926		$0	
	Economic Development Transferrable Tax Credits [TC-2]			$0		-$20,461,554		-$36,475,946		-$31,087,500		-$44,600,000	
	Catalyst Account Transferrable Tax Credits [TC-4]			$0		$0		-$355,000		-$2,000,000		-$2,000,000	
	Nevada New Markets Job Act Tax Credits [TC-3]			-$12,410,882		-$26,005,450		-$24,000,000		-$24,000,000		-$22,000,000	
	Education Choice Scholarship Tax Credits [TC-5]			$0		-$4,401,540		-$6,098,460		-$6,050,000		-$6,655,000	
	College Savings Plan Tax Credits [TC-6]			$0		$0		-$69,000		-$138,000		-$207,000	
	Total - Tax Credit Programs			-$12,410,882		-$55,239,359		-$70,906,665		-$64,996,426		-$75,462,000	
	TOTAL TAXES: AFTER TAX CREDITS	$2,851,648,150	0.2%	$3,016,909,671	5.8%	$3,439,824,495	14.0%	$3,568,960,835	3.8%	$3,673,069,774	2.9%	$3,808,864,100	3.7%

GENERAL FUND REVENUES - ECONOMIC FORUM MAY 1, 2017, FORECAST
ACTUAL: FY 2014 THROUGH FY 2016 AND FORECAST: FY 2017 THROUGH FY 2019
ECONOMIC FORUM'S FORECAST FOR FY 2017, FY 2018, AND FY 2019 APPROVED AT THE MAY 1, 2017, MEETING

	DESCRIPTION	FY 2014 ACTUAL	% Change	FY 2015 ACTUAL	% Change	FY 2016 ACTUAL	% Change	ECONOMIC FORUM MAY 1, 2017, FORECAST FY 2017 FORECAST	% Change	FY 2018 FORECAST	% Change	FY 2019 FORECAST	% Change
	LICENSES												
3101	Insurance Licenses	$17,925,429	7.8%	$18,347,454	2.4%	$19,913,616	8.5%	$19,316,000	-3.0%	$19,703,000	2.0%	$20,097,000	2.0%
3120	Marriage License	$371,684	-1.8%	$371,099	-0.2%	$367,116	-1.1%	$365,000	-0.6%	$363,500	-0.4%	$362,200	-0.4%
	SECRETARY OF STATE												
3105	UCC	$1,714,724	1.7%	$1,740,910	1.5%	$1,915,810	10.0%	$1,751,000	-8.6%	$1,761,000	0.6%	$1,774,000	0.7%
3129	Notary Fees	$544,060	-4.8%	$516,832	-5.0%	$514,489	-0.5%	$538,100	4.6%	$543,300	1.0%	$548,500	1.0%
3130	Commercial Recordings [16-16]	$66,661,943	2.5%	$68,833,079	3.3%	$73,701,665	7.1%	$74,469,000	1.0%	$75,120,000	0.9%	$75,751,000	0.8%
3131	Video Service Franchise	$3,525	-50.2%	$1,550	-56.0%	$525	-66.1%	$3,300	528.6%	$800	-75.8%	$800	0.0%
3121	Domestic Partnership Registry Fee	$51,621	17.4%	$36,437	-29.4%	$28,790	-21.0%	$22,700	-21.2%	$19,300	-15.0%	$16,400	-15.0%
3152	Securities	$25,947,110	5.5%	$27,029,365	4.2%	$27,978,707	3.5%	$27,923,000	-0.2%	$27,923,000	0.0%	$28,136,000	0.8%
	TOTAL SECRETARY OF STATE	$94,922,982	3.2%	$98,158,173	3.4%	$104,139,985	6.1%	$104,707,100	0.5%	$105,367,400	0.6%	$106,226,700	0.8%
3172	Private School Licenses [7-14]	$284,569	15.0%	$255,613	-10.2%	$236,690	-7.4%	$212,600	-10.2%	$212,600	0.0%	$210,900	-0.8%
3173	Private Employment Agency	$11,400	-2.6%	$11,000	-3.5%	$14,800	34.5%	$14,500	-2.0%	$13,200	-9.0%	$13,200	0.0%
	REAL ESTATE												
3161	Real Estate License [17-16]	$1,372,080	-59.7%	$1,383,840	0.9%	$2,137,010	54.4%	$2,256,000	5.6%	$2,159,000	-4.3%	$2,199,000	1.9%
3162	Real Estate Fees	$4,820	66.8%	$3,643	-24.4%	$4,710	29.3%	$2,900	-38.4%	$3,300	13.8%	$3,200	-3.0%
	TOTAL REAL ESTATE	$1,376,900	-59.6%	$1,387,483	0.8%	$2,141,720	54.4%	$2,258,900	5.5%	$2,162,300	-4.3%	$2,202,200	1.8%
3102	Athletic Commission Fees [18-16]	$5,334,498	37.9%	$8,922,606	67.3%	$5,041,720	-43.5%	$3,191,000	-36.7%	$4,200,000	31.6%	$4,200,000	0.0%
	TOTAL LICENSES	$120,227,462	3.2%	$127,453,427	6.0%	$131,855,647	3.5%	$130,065,100	-1.4%	$132,022,000	1.5%	$133,312,200	1.0%
	FEES AND FINES												
3200	Vital Statistics Fees [8-14]												
3203	Divorce Fees	$174,376	1.8%	$175,202	0.5%	$170,348	-2.8%	$169,300	-0.6%	$168,400	-0.5%	$167,400	-0.6%
3204	Civil Action Fees	$1,325,805	0.1%	$1,291,308	-2.6%	$1,316,607	2.0%	$1,287,000	-2.2%	$1,274,000	-1.0%	$1,277,000	0.2%
3242	Insurance Fines	$723,272	-40.2%	$505,360	-30.1%	$349,206	-30.9%	$988,500	183.1%	$450,000	-54.5%	$450,000	0.0%
3103MD	Medical Plan Discount Reg. Fees					$1,500		$1,500		$1,500		$1,500	
	REAL ESTATE FEES												
3107IOS	IOS Application Fees	$7,840	-10.8%	$6,030	-23.1%	$5,700	-5.5%	$6,900	21.1%	$5,900	-14.5%	$5,900	0.0%
3165	Land Co Filing Fees [19-16]	$167,495	27.5%	$157,592	-5.9%	$28,530	-81.9%	$25,900	-9.2%	$27,200	5.0%	$27,200	0.0%
3167	Real Estate Adver Fees	$590	-78.5%	$210	-64.4%	$2,010	857.1%	$6,700	233.3%	$0		$0	
3169	Real Estate Reg Fees	$15,700	-12.8%	$15,700	0.0%	$8,550	-45.5%	$4,100	-52.0%	$4,100	0.0%	$4,100	0.0%
4741	Real Estate Exam Fees	$174,117	1.7%	$174,117	0.0%	$387,294	122.4%	$398,400	2.9%	$335,400	-15.8%	$323,200	-3.6%
3171	CAM Certification Fee												
3178	Real Estate Accred Fees	$86,475	7.9%	$95,675	10.6%	$93,450	-2.3%	$85,400	-8.6%	$88,200	3.3%	$88,200	0.0%
3254	Real Estate Penalties	$36,835	-64.6%	$25,455	-30.9%	$65,595	157.7%	$86,600	32.0%	$63,700	-26.4%	$63,700	0.0%
3190	A.B. 165, Real Estate Inspectors	$60,150	18.8%	$46,960	-21.9%	$53,860	14.7%	$60,000	11.4%	$61,000	1.7%	$61,500	0.8%
	TOTAL REAL ESTATE FEES	$549,202	-3.1%	$521,739	-5.0%	$644,989	23.6%	$674,000	4.5%	$585,500	-13.1%	$573,800	-2.0%
3066	Short Term Car Lease [8-12]	$46,151,238	0.9%	$48,754,438	5.6%	$51,914,285	6.5%	$53,887,000	3.8%	$55,584,000	3.1%	$56,964,000	2.5%
3103AC	Athletic Commission Licenses/Fines	$234,245	8.5%	$213,145	-9.0%	$468,376	119.7%	$123,700	-73.6%	$123,700	0.0%	$123,700	0.0%
3205	State Engineer Sales [9-14]												
3206	Supreme Court Fees	$216,785	12.2%	$186,560	-13.9%	$201,305	7.9%	$217,400	8.0%	$228,200	5.0%	$232,700	2.0%
3115	Notice of Default Fee	$1,706,387	-38.3%	$1,755,460	2.9%	$1,400,099	-20.2%	$1,076,000	-23.1%	$911,100	-15.3%	$857,300	-5.9%
3271	Misc Fines/Forfeitures	$3,125,839	-72.0%	$9,564,851	206.0%	$2,735,813	-71.4%	$1,650,000	-39.7%	$1,750,000	6.1%	$1,750,000	0.0%
	TOTAL FEES AND FINES	$54,207,150	-19.1%	$62,968,063	16.2%	$59,202,527	-6.0%	$60,074,400	1.5%	$61,076,400	1.7%	$62,397,400	2.2%

GENERAL FUND REVENUES - ECONOMIC FORUM MAY 1, 2017, FORECAST
ACTUAL: FY 2014 THROUGH FY 2016 AND FORECAST: FY 2017 THROUGH FY 2019
ECONOMIC FORUM'S FORECAST FOR FY 2017, FY 2018, AND FY 2019 APPROVED AT THE MAY 1, 2017, MEETING

	DESCRIPTION	FY 2014 ACTUAL	% Change	FY 2015 ACTUAL	% Change	FY 2016 ACTUAL	% Change	ECONOMIC FORUM MAY 1, 2017, FORECAST FY 2017 FORECAST	% Change	FY 2018 FORECAST	% Change	FY 2019 FORECAST	% Change
	USE OF MONEY AND PROP												
	OTHER REPAYMENTS												
4403	Forestry Nurseries Fund Repayment (05-M27)	$20,670		$20,670		$20,670		$20,670		$20,670		$20,670	
4408	Comp/Fac Repayment	$23,744		$23,744		$23,744		$23,744		$23,744		$13,032	
4408	CIP 95-M1, Security Alarm	$2,998		$2,998		$2,998		$2,998		$0		$0	
4408	CIP 95-M5, Facility Generator	$6,874		$6,874		$6,874		$6,874		$0		$0	
4408	CIP 95-S4F, Advance Planning	$1,000		$1,000		$1,000		$1,000		$0		$0	
4408	CIP 97-C26, Capitol Complex Conduit System, Phase I	$62,542		$62,542		$62,542		$62,542		$62,542		$62,542	
4408	CIP 97-S4H, Advance Planning Addition to Computer Facility	$9,107		$9,107		$9,107		$9,107		$9,107		$9,107	
4408	EITS Repayment - State Microwave Communications System [1-18]							$0		$57,900		$57,900	
4409	Motor Pool Repay - LV [10-14]	$62,500		$125,000		$125,000		$125,000		$125,000		$125,000	
4402	State Personnel IFS Repayment; S.B. 201, 1997 Legislature	$202,987		$202,988		$0		$0		$0		$0	
	TOTAL OTHER REPAYMENTS	$392,422	-13.5%	$454,923	15.9%	$251,935	-44.6%	$251,935	0.0%	$298,963	18.7%	$288,251	-3.6%
	INTEREST INCOME												
3290	Treasurer [9-12]	$589,930	-5.7%	$916,780	55.4%	$1,247,554	36.1%	$2,700,000	116.4%	$4,531,000	67.8%	$6,155,000	35.8%
3291	Other	$4,156	-46.2%	$5,363	29.0%	$18,411	243.3%	$36,400	97.7%	$32,400	-11.0%	$32,400	0.0%
	TOTAL INTEREST INCOME	$594,086	-6.2%	$922,143	55.2%	$1,265,964	37.3%	$2,736,400	116.2%	$4,563,400	66.8%	$6,187,400	35.6%
	TOTAL USE OF MONEY & PROP	$986,508	-9.2%	$1,377,066	39.6%	$1,517,900	10.2%	$2,988,335	96.9%	$4,862,363	62.7%	$6,475,651	33.2%
	OTHER REVENUE												
3059	Hoover Dam Revenue	$300,000	0.0%	$300,000	0.0%	$300,000	0.0%	$300,000	0.0%	$300,000	0.0%	$300,000	0.0%
	MISC SALES AND REFUNDS												
4794	GST Commissions and Penalties / DMV [10-12][11-14][20-16]			$28,761,000									
3047	Expired Slot Machine Wagering Vouchers [11-12]	$7,486,068	4.1%	$8,383,408	12.0%	$8,778,021	4.7%	$8,781,000	0.0%	$8,828,000	0.5%	$9,134,000	3.5%
3107	Misc Fees	$298,822	-2.1%	$318,681	6.6%	$347,803	9.1%	$341,800	-1.7%	$323,900	-5.2%	$324,400	0.2%
3109	Court Admin Assessments [13-12][12-14][21-16]	$2,511,100	-39.0%	$2,428,655	-3.3%	$0	-100.0%	$0		$0		$0	
3114	Court Administrative Assessment Fee	$2,335,123	-7.0%	$2,135,726	-8.5%	$2,012,172	-5.8%	$2,109,000	4.8%	$2,113,000	0.2%	$2,118,000	0.2%
3168	Declare of Candidacy Filing Fee	$92,200	143.0%	$12,384	-86.6%	$35,975	190.5%	$21,000	-41.6%	$40,000	90.5%	$12,500	-68.8%
3202	Fees & Writs of Garnishments	$2,535	-2.7%	$2,140	-15.6%	$2,190	2.3%	$2,200	0.5%	$2,200	0.0%	$2,200	0.0%
3220	Nevada Report Sales	$3,480	-59.6%	$6,120	75.9%	$11,495	87.8%	$17,200	49.6%	$23,000	33.7%	$17,200	-25.2%
3222	Excess Property Sales	$46,603	74.0%	$97,446	109.1%	$17,668	-81.9%	$5,100	-71.1%	$130,100	2451.0%	$5,100	-96.1%
3240	Sale of Trust Property	$3,447	-26.9%	$3,990	15.8%	$850	-78.7%	$8,000	840.8%	$6,000	-25.0%	$6,000	0.0%
3243	Insurance - Misc	$416,576	6.6%	$423,928	1.8%	$371,455	-12.4%	$400,000	7.7%	$400,000	0.0%	$400,000	0.0%
3274	Misc Refunds	$30,729	-66.1%	$113,081	268.0%	$31,709	-72.0%	$1,500,000	4630.5%	$75,000	-95.0%	$75,000	0.0%
3276	Cost Recovery Plan [13-14]	$8,883,972	4.9%	$8,486,081	-4.5%	$10,572,088	24.6%	$9,908,000	-6.3%	$9,618,000	-2.9%	$10,224,000	6.3%
	TOTAL MISC SALES & REF	$22,110,653	-67.2%	$51,172,638	131.4%	$22,181,427	-56.7%	$23,093,300	4.1%	$21,559,200	-6.6%	$22,318,400	3.5%
3255	Unclaimed Property [14-12]	$17,466,436	-46.9%	$24,301,834	39.1%	$38,960,791	60.3%	$27,919,000	-28.3%	$28,119,000	0.7%	$28,389,000	1.0%
	TOTAL OTHER REVENUE	$39,877,089	-60.4%	$75,774,472	90.0%	$61,442,218	-18.9%	$51,312,300	-16.5%	$49,978,200	-2.6%	$51,007,400	2.1%
	TOTAL GENERAL FUND REVENUE: BEFORE TAX CREDITS	$3,066,946,360	-2.1%	$3,296,893,581	7.5%	$3,749,082,146	13.7%	$3,960,534,635	5.6%	$4,074,768,163	2.9%	$4,230,541,751	3.8%
	TOTAL COMMERCE TAX CREDITS [13-16]					$0		-$76,227,000		-$88,763,000		-$93,023,000	
	TOTAL GENERAL FUND REVENUE: AFTER COMMERCE TAX CREDITS			$3,296,893,581		$3,749,082,146		$3,884,307,635	3.6%	$3,986,005,163	2.6%	$4,137,518,751	3.8%
	TAX CREDIT PROGRAMS:												
	FILM TRANSFERRABLE TAX CREDITS [TC-1]			$0.00		-$4,370,815		-$3,908,259		-$1,720,926		$0	
	ECONOMIC DEVELOPMENT TRANSFERRABLE TAX CREDITS [TC-2]			$0		-$20,461,554		-$36,475,946		-$31,087,500		-$44,600,000	
	CATALYST ACCOUNT TRANSFERRABLE TAX CREDITS [TC-4]			$0		$0		-$355,000		-$2,000,000		-$2,000,000	
	NEVADA NEW MARKET JOBS ACT TAX CREDITS [TC-3]			-$12,410,882		-$26,005,450		-$24,000,000		-$24,000,000		-$22,000,000	
	EDUCATION CHOICE SCHOLARSHIP TAX CREDITS [TC-5]			$0		-$4,401,540		-$6,098,460		-$6,050,000		-$6,655,000	
	COLLEGE SAVINGS PLAN TAX CREDITS [TC-6]			$0		$0		-$69,000		-$138,000		-$207,000	
	TOTAL- TAX CREDIT PROGRAMS			-$12,410,882		-$55,239,359		-$70,906,665		-$64,996,426		-$75,462,000	
	TOTAL GENERAL FUND REVENUE: AFTER TAX CREDITS	$3,066,946,360	-2.1%	$3,284,482,699	7.1%	$3,693,842,787	12.5%	$3,813,400,970	3.2%	$3,921,008,737	2.8%	$4,062,056,751	3.6%

GENERAL FUND REVENUES - ECONOMIC FORUM MAY 1, 2017, FORECAST
ACTUAL: FY 2014 THROUGH FY 2016 AND FORECAST: FY 2017 THROUGH FY 2019
ECONOMIC FORUM'S FORECAST FOR FY 2017, FY 2018, AND FY 2019 APPROVED AT THE MAY 1, 2017, MEETING

DESCRIPTION	FY 2014 ACTUAL	% Change	FY 2015 ACTUAL	% Change	FY 2016 ACTUAL	% Change	ECONOMIC FORUM MAY 1, 2017, FORECAST: FY 2017 FORECAST	% Change	FY 2018 FORECAST	% Change	FY 2019 FORECAST	% Change

NOTES:

FY 2012

[1-12] S.B. 493 clarifies and eliminates certain deductions allowed against gross proceeds to determine net proceeds for the purpose of calculating the Net Proceeds of Minerals (NPM) tax liability. All of the deduction changes are effective beginning with the NPM tax payments due in FY 2012 based on calendar year 2012 mining activity and are permanent, except for the elimination of the deduction for health and industrial insurance expenses, which are effective for FY 2012 and FY 2013 only. Deduction changes are estimated to generate $11,919,643 in addtional revenue in both FY 2012 and FY 2013.

[2-12] A.B. 561 extends the June 30, 2011, sunset (approved in S.B. 429 (2009)) to June 30, 2013, on the Net Proceeds of Minerals (NPM) tax, which continues the payment of taxes in the current fiscal year based on the estimated net proceeds for the current calendar year with a true-up against actual net proceeds for the calendar year in the next fiscal year. The two-year extension of the sunset is estimated to yield $69,000,000 in FY 2012 only as tax payments are required in FY 2013 with or without the extension of the sunset.

[3-12] S.B 493 repeals the Mining Claims Fee, approved in A.B. 6 (26th Special Session), requiring payment of the fee in FY 2011 only with the June 30, 2011, sunset. S.B. 493 establishes provisions for entities that paid the Mining Claims Fee to apply to the Department of Taxation for a credit against their Modified Business Tax (MBT) liability or for a refund. No estimate of the impact in FY 2012 and FY 2013 from Mining Claims Fee credits was prepared so no adjustment was made to the Economic Forum May 2, 2011, forecast for MBT - Nonfinancial tax collections.

[4-12] Extension of the sunset on the 0.35% increase in the Local School Support Tax (LSST) in A.B. 561 from June 30, 2011, to June 30, 2013, generates additional revenue from the 0.75% General Fund Commission assessed against LSST proceeds before distribution to school districts in each county. Estimated to generate $1,052,720 in FY 2012 and $1,084,301 in FY 2013.

[5-12] A.B. 500 reduces the portion of the quarterly licensing fees imposed on restricted and non-restricted slot machines from $2 to $1 per slot machine that is dedicated to the Account to Support Programs for the Prevention and Treatment of Problem Gambling. The other $1 is deposited in the State General Fund in FY 2012 and FY 2013, due to the June 30, 2013, sunset in A.B. 500. Estimated to generate $682,982 in FY 2012 and $692,929 in FY 2013 from non-restricted slot machines and $75,970 in FY 2012 and $77,175 in FY 2013 from restricted slot machines.

[6-12] A.B. 561 changes the structure and tax rate for the Modified Business Tax on General Business (nonfinancial institutions) for FY 2012 and FY 2013 by exempting taxable wages (gross wages less allowable health care expenses) paid by an employer to employees up to and including $62,500 per quarter and taxable wages exceeding $62,500 per quarter are taxed at 1.17%, effective July 1, 2011. These provisions for the MBT-General Business sunset effective June 30, 2013, at which time the tax rate will be 0.63% on all taxable wages per quarter. Estimated to generate an additional $117,981,497 in FY 2012 and $119,161,117 in FY 2013.

[7-12] A.B. 561 extends the sunset from June 30, 2011, (approved in S.B. 429 (2009 Session)) to June 30, 2013, on the $100 increase in the Business License Fee (BLF) from $100 to $200 for the initial and annual renewal. Estimated to generate an additional $29,949,000 in FY 2012 and $30,100,000 in FY 2013.

[8-12] A.B. 561 requires the 1% portion of the 10% Short-term Car Rental Tax, currently dedicated to the State Highway Fund based on A.B. 595 (2007 Session), to be deposited in the State General Fund along with the other 9%. This change is effective July 1, 2011, and is permanent. Estimated to generate $4,402,222 in FY 2012 and $4,457,778 in FY 2013.

[9-12] The Legislature approved funding for the State Treasurer's Office to use a subscription rating service to allow for more effective investment in corporate securities, which is anticipated to generate additional interest income from the Treasurer's Office investment of the State General Fund. Estimated to generate $105,313 in FY 2012 and $244,750 in FY 2013.

[10-12] S.B. 503 requires the proceeds from the commission retained by the Department of Motor Vehicles from the amount of Governmental Services Tax (GST) collected and any penalties for delinquent payment of the GST to be transferred to the State General Fund in FY 2012 and FY 2013. S.B. 503 specifies that the amount transferred shall not exceed $20,894,228 from commissions and $4,672,213 from penalties in both FY 2012 and FY 2013.

[11-12] A.B. 219 requires 75 percent of the value of expired slot machine wagering vouchers retained by nonrestricted gaming licensees to be remitted to the Gaming Commission for deposit in the State General Fund on a quarterly basis. Based on the expiration period of 180 days for slot machine wagering vouchers and the effective date of July 1, 2011, only one quarterly payment will be made in FY 2012 with four quarterly payments made in FY 2013 and going forward. Estimated to generate $3,332,750 in FY 2012 and $13,331,000 in FY 2013.

[12-12] A.B. 529 requires transfer of $19,112,621 in FY 2012 and $19,218,718 in FY 2013 from the Supplemental Account for Medical Assistance to Indigent Persons in the Fund for Hospital Care to Indigent Persons to the State General Fund.

[13-12] A.B. 531 (2009 Session) requires the deposit of the portion of the revenue generated from Court Administrative Assessment Fees to be deposited in the State General Fund.

[14-12] S.B. 136 reduces the period from 3 to 2 years after which certain types of unclaimed property is presumed to be abandoned if the holder of the property reported holding more than $10 million in property presumed to be abandoned for the most recent report filed with the Treasurer's Office. Based on the Treasurer's Office analysis of the entities subject to this change, it was estimated that there would be net gain in unclaimed property receipts in FY 2012 of $30,594,750, but a net loss in FY 2013 of $33,669,923.

FY 2014: Represents legislative actions approved during the 2013 Legislative Session.

[1-14] S.B. 475 extends the June 30, 2013, sunset (approved in A.B. 561 (2011)) to June 30, 2015, on the Net Proceeds of Minerals (NPM) tax, which continues the payment of taxes in the current fiscal year based on the estimated net proceeds for the current calendar year with a true-up against actual net proceeds for the calendar year in the next fiscal year. The two-year extension of the sunset is estimated to yield $88,295,000 in FY 2014 as tax payments are required in FY 2015 with or without the extension of the sunset. The extension of the sunset is also estimated to generate an additional $2,936,000 in FY 2015 as the difference between Economic Forum forecast for FY 2015, based on elimination of the sunset, and the estimate based on the extension of the sunset approved in S.B. 475.

[2-14] S.B. 475 extends the June 30, 2013, sunset (approved in S.B. 493 (2011)) to June 30, 2015, that eliminates health and industrial insurance deductions allowed against gross proceeds to determine net proceeds for the purpose of calculating the Net Proceeds of Minerals (NPM) tax liability. These deduction changes are effective for the NPM tax payments due in FY 2014 and FY 2015. The health and industrial insurance deduction changes are estimated to generate $7,393,000 in addtional revenue in FY 2014 and $9,741,000 in FY 2015.

[3-14] Extension of the sunset on the 0.35% increase in the Local School Support Tax (LSST) in S.B. 475 from June 30, 2013, to June 30, 2015, generates additional revenue from the 0.75% General Fund Commission assessed against LSST proceeds before distribution to school districts in each county. Estimated to generate $1,226,600 in FY 2014 and $1,294,100 in FY 2015.

[4-14] S.B. 475 changes the structure and tax rate for the Modified Business Tax on General Business (nonfinancial institutions) for FY 2014 and FY 2015 by exempting taxable wages (gross wages less allowable health care expenses) paid by an employer to employees up to and including $85,000 per quarter and taxable wages exceeding $85,000 per quarter are taxed at 1.17%, effective July 1, 2013. The taxable wages exemption threshold was $62,500 per quarter for FY 2012 and FY 2013, based on A.B. 561 (2011). These provisions in S.B. 475 for the MBT-General Business sunset effective June 30, 2015, at which time the tax rate will be 0.63% on all taxable wages per quarter. Estimated to generate an additional $113,501,000 in FY 2014 and $120,572,000 in FY 2015.

GENERAL FUND REVENUES - ECONOMIC FORUM MAY 1, 2017, FORECAST
ACTUAL: FY 2014 THROUGH FY 2016 AND FORECAST: FY 2017 THROUGH FY 2019
ECONOMIC FORUM'S FORECAST FOR FY 2017, FY 2018, AND FY 2019 APPROVED AT THE MAY 1, 2017, MEETING

DESCRIPTION	FY 2014 ACTUAL	% Change	FY 2015 ACTUAL	% Change	FY 2016 ACTUAL	% Change	ECONOMIC FORUM MAY 1, 2017, FORECAST: FY 2017 FORECAST	% Change	FY 2018 FORECAST	% Change	FY 2019 FORECAST	% Change
[5-14] A.B. 491 requires the portion of the Governmental Services Tax (GST) generated from the 10% depreciation schedule change, approved in S.B. 429 (2009), to continue to be allocated to the State General Fund for FY 2014 and FY 2015, instead of the State Highway Fund as approved in S.B. 429 (2009). Under A.B. 491, the additional revenue generated from the GST depreciation schedule change is required to be deposited in the State Highway Fund beginning in FY 2016. The GST depreciation schedule change is estimated to generate $64,224,000 in FY 2014 and $65,134,000 in FY 2015.												
[6-14] S.B. 475 extends the sunset from June 30, 2013, (approved in A.B. 561 (2011)) to June 30, 2015, on the $100 increase in the Business License Fee (BLF) from $100 to $200 for the initial and annual renewal. Estimated to generate an additional $31,273,000 in FY 2014 and $31,587,000 in FY 2015.												
[7-14] S.B. 470 increases certain existing fees and imposes a new fee collected by the Commission on Postsecondary Education from certain private postsecondary educational institutions. The fee changes are estimated to generate an additional $86,675 in FY 2014 and $80,700 in FY 2015.												
[8-14] A.B. 449 requires revenue from fees for vital statistics collected by the Health Division of the Department of Health and Human Services to be retained by the division and not deposited in the State General Fund, beginning in FY 2014. Estimated to result in a reduction of General Fund revenue of $1,027,500 in FY 2014 and $1,007,300 in FY 2015.												
[9-14] S.B. 468 increases various fees and requires the revenue from the fees collected by the State Water Engineer of the Department of Conservation and Natural Resources (DCNR) to be deposited in the Water Distribution Revolving Account for use by the Division of Water Resources of DCNR and not deposited in the State General Fund, beginning in FY 2014. Estimated to result in a reduction of General Fund revenue of $2,600,000 in FY 2014 and FY 2015.												
[10-14] Section 23 of S.B. 521 allows the Fleet Services Division of the Department of Administration to use revenues from intergovernmental transfers to the State General Fund for the repayment of $2.5 million that was appropriated to the Division for the purchase of a building in Las Vegas. The legislatively approved repayment from the Division to the State General Fund is $83,332 in FY 2014 and $125,000 in FY 2015, with an annual repayment of $125,000 each year through FY 2035.												
[11-14] A.B. 491 requires the proceeds from the commission retained by the Department of Motor Vehicles from the amount of Governmental Services Tax (GST) collected and any penalties for delinquent payment of the GST to be transferred to the State General Fund in FY 2015 only. A.B. 491 specifies that the amount transferred shall not exceed $20,813,716 from commissions and $4,097,964 from penalties in FY 2015.												
[12-14] Estimated portion of the revenue generated from Court Administrative Assessment Fees to be deposited in the State General Fund (pursuant to subsection 9 of NRS 176.059), based on the legislatively approved budget for the Court Administrative Assessment Fee revenues (pursuant to subsection 8 of NRS 176.059).												
[13-14] Adjustment to the Statewide Cost Allocation amount included in the Legislature Approves budget after the May 1, 2013, approval of the General Fund revenue forecast by the Economic Forum.												
FY 2016: Note 1 represents legislative actions approved during the 28th Special Session in September 2014.												
[1-16] Assembly Bill 3 (28th S.S.) limits the amount of the home office credit that may be taken against the Insurance Premium Tax to an annual limit of $5 million, effective January 1, 2016. The home office credit is eliminated pursuant to this bill, effective January 1, 2021.												
FY 2016: Notes 2 through 21 represent legislative actions approved during the 2015 Legislative Session.												
[2-16] S.B. 483 extends the June 30, 2015, sunset (approved in S.B. 475 (2013)) by one year to June 30, 2016, on the Net Proceeds of Minerals (NPM) tax, which continues the payment of taxes in the current fiscal year based on the estimated net proceeds for the current calendar year with a true-up against actual net proceeds for the calendar year in the next fiscal year. The one-year extension of the sunset is estimated to yield $34,642,000 in FY 2016. There is no estimated tax payment in FY 2017 with the one-year extension of the prepayment of NPM taxes.												
[3-16] S.B. 483 extends the June 30, 2015, sunset (approved in S.B. 475 (2013)) by one-year to June 30, 2016, that eliminates health and industrial insurance deductions allowed against gross proceeds to determine net proceeds for the purpose of calculating the Net Proceeds of Minerals (NPM) tax liability. These deduction changes are effective for the NPM tax payments due in FY 2016. The health and industrial insurance deduction changes are estimated to generate $4,221,000 in addtional revenue in FY 2016.												
[4-16] S.B. 483 makes the 0.35% increase in the Local School Support Tax (LSST) permanent. The 0.35% increase generates additional revenue from the 0.75% General Fund Commission assessed against LSST proceeds before distribution to school districts in each county, which is estimated to generate $1,387,300 in FY 2016 and $1,463,400 in FY 2017.												
[5-16] S.B. 266 makes changes to the structure of the tax base and tax rate for the Live Entertainment Tax (LET) in NRS Chapter 368A that is administered by the Gaming Control Board for live entertainment at licensed gaming establishments and the Department of Taxation for live entertainment provided at non-gaming establishments. Under existing law, the tax rate is 10% of the admission charge and amounts paid for food, refreshments, and merchandise, if the live entertainment is provided at a facility with a maximum occupancy of less than 7,500 persons, and 5% of the admission charge only, if the live entertainment is provided at a facility with a maximum occupancy equal to or greater than 7,500 persons. S.B. 266 removes the occupancy threshold and establishes a single 9% tax rate on the admission charge to the facility only. The tax rate does not apply to amounts paid for food, refreshments, and merchandise unless that is the consideration required to enter the facility for the live entertainment. S.B. 266 adds the total amount of consideration paid for escorts and escort services to the LET tax base and makes these activities subject to the 9% tax rate. The bill provides that the exemption from the LET for certain nonprofit organizations applies depending on the number of tickets sold and the type of live entertainment being provided. S.B. 266 establishes an exemption for the following: 1.) the value of certain admissions provided on a complimentary basis; 2.) a charge for access to a table, seat, or lounge or for food, beverages, and merchandise that are in addition to the admission charge to the facility; and 3.) certain license and rental fees of luxury suites, boxes, or similar products at a facility with a maximum occupancy of more than 7,500 persons. The provisions of S.B. 266 also make other changes to the types of activities that are included or excluded from the tax base as live entertainment events subject to the 9% tax rate. The provisions of S.B. 266 are effective October 1, 2015. The amounts shown reflect the estimated net change from the provisions of S.B. 266 on the amount of the LET collected from the portion administered by the Gaming Control Board and the Department of Taxation separately and the combined impact. The changes to the LET are estimated to reduce LET-Gaming collections by $19,165,000 in FY 2016 and by $26,551,000 in FY 2017, but increase LET-Nongaming collections by $15,483,000 in FY 2016 and $25,313,000 in FY 2017. The combined net effect on total LET collections is estimated to be reduction of $3,682,000 in FY 2016 and $1,238,000 in FY 2017.												
[6-16] S.B. 483 establishes the Commerce Tax as an annual tax on each business entity engaged in business in the state whose Nevada gross revenue in a fiscal year exceeds $4,000,000 at a tax rate based on the industry in which the business is primarily engaged. The Commerce Tax is due on or before the 45th day immediately following the fiscal year taxable period (June 30th). Although the Commerce Tax collections are received after the June 30th end of the fiscal year tax period, the proceeds from the Commerce Tax will be accrued back and accounted for in that fiscal year, since that fiscal year is not officially closed until the third Friday in September. The Commerce Tax provisions are effective July 1, 2015, for the purpose of taxing the Nevada gross revenue of a business, but the first tax payment will not be made until August 14, 2016, for the FY 2016 annual taxable business activity period.												
[7-16] A.B. 175 requires the collection of an excise tax by the Nevada Transportation Authority or the Taxicab Authority, as applicable, on the connection of a passenger to a driver affiliated with a transportation network company, a common motor carrier of passengers, or a taxicab equal to 3% of the fare charged to the passenger. The excise tax becomes effective on passage and approval (May 29, 2015) for transportation network companies and August 28, 2015, for common motor carrier and taxicab companies. The first $5,000,000 in tax proceeds from each biennium are required to be deposited in the State Highway Fund and the estimate for FY 2016 reflects this requirement.												
[8-16] S.B. 483 increases the cigarette tax per pack of 20 by $1.00 from 80 cents per pack (10 cents to Local Government Distribution Fund, 70 cents to State General Fund) to $1.80 per pack (10 cents to Local Government Distribution Fund, $1.70 to State General Fund), effective July 1, 2015. The $1.00 per pack increase is estimated to generate $96,872,000 in FY 2016 and $95,391,000 in FY 2017.												

GENERAL FUND REVENUES - ECONOMIC FORUM MAY 1, 2017, FORECAST
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DESCRIPTION	FY 2014 ACTUAL	% Change	FY 2015 ACTUAL	% Change	FY 2016 ACTUAL	% Change	ECONOMIC FORUM MAY 1, 2017, FORECAST: FY 2017 FORECAST	% Change	FY 2018 FORECAST	% Change	FY 2019 FORECAST	% Change
[9-16] S.B. 483 permanently changes the structure and tax rate for the Modified Business Tax on General Business (nonfinancial institutions) by exempting quarterly taxable wages (gross wages less allowable health care expenses) paid by an employer to employees up to and including $50,000 per quarter and taxable wages exceeding $50,000 per quarter are taxed at 1.475%. The taxable wages exemption threshold was $85,000 per quarter for FY 2014 and FY 2015 with a 1.17% tax rate on quarterly taxable wages exceeding $85,000, based on S.B. 475 (2013). These provisions in S.B. 475 were scheduled to sunset effective June 30, 2015, at which time the tax rate would have been 0.63% on all taxable wages per quarter. The provisions in S.B. 483 are effective July 1, 2015. The estimated net increase in MBT-NFI tax collections from the 1.475% tax rate on quarterly taxable wages exceeding $50,000 compared to the Economic Forum May 1, 2015, forecast, based on the 0.63% tax rate on all quarterly taxable wages before accounting for the estimated impact of any other legislatively approved changes to the MBT-NFI is $268,041,000 for FY 2016 and $281,443,000 for FY 2017.											
[10-16] A.B. 389 deems the client company of an employee leasing company to be the employer of the employees it leases for the purposes of NRS Chapter 612 (unemployment compensation). Under these provisions, the wages of employees leased from employee leasing companies by client companies will no longer be reported on an aggregated basis under the employee leasing company. The wages of the employees will now be reported on a disaggregated basis under each client company. Instead of the $50,000 quarterly exemption applying to the employee leasing company, it will now apply to each client company. These provisions are effective October 1, 2015. The wages paid to employees being reported on a disaggregated basis for each client company versus an aggregated basis for the employee leasing company is estimated to reduce MBT-NFI collections by $2,758,000 in FY 2016 and $3,861,000 in FY 2017.											
[11-16] S.B. 483 requires businesses subject to the Net Proceeds of Minerals (NPM) tax in NRS Chapter 362 to pay a 2.0% tax on all quarterly taxable wages paid by the employer to the employees, which is identical to the Modified Business Tax (MBT) paid by financial institutions under NRS Chapter 363A. These provisions are effective July 1, 2015. This change is estimated to reduce MBT-NFI tax collections by $10,884,000 in both FY 2016 and FY 2017. The mining companies paying the 2% tax rate on all taxable wages are estimated to generate $17,353,000 in both FY 2016 and FY 2017 for the MBT-Mining. This change is estimated to yield a net increase in General Fund revenue of $6,469,000 in both FY 2016 and FY 2017.											
[12-16] S.B. 103 exempts from the definition of "financial institution" in NRS Chapter 363A any person who is primarily engaged in the sale, solicitation, or negotiation of insurance, which makes such a person subject to the Modified Business Tax on General Business (nonfinancial institutions) in NRS Chapter 363B at 1.475% on quarterly taxable wages exceeding $50,000 and not the 2.0% tax on all quarterly taxable wages. These provisions are effective July 1, 2015. MBT-FI is estimated to be reduced by $891,000 in FY 2016 and $936,000 and the MBT-NFI is estimated to be increased by $278,000 in FY 2016 and $291,000 in FY 2017. The net decrease in General Fund revenue is estimated to be $613,000 in FY 2016 and $645,000 in FY 2017.											
[13-16] S.B. 483 provides for a credit against a business's Modified Business Tax (MBT) due during the current fiscal year not to exceed 50% of the Commerce Tax paid by the business for the preceding fiscal year. The credit can be taken against any or all of the four quarterly MBT payments for the current fiscal year, but any amount of credit not used cannot be carried forward and used in succeeding fiscal years. The total estimated Commerce Tax credits against the MBT are estimated to be $59,913,000 in FY 2017, but this estimated credit amount was not allocated separately to the MBT-NFI, MBT-FI, and MBT-Mining.											
[14-16] S.B. 483 requires 100% of the proceeds from the portion of the Governmental Services Tax (GST) generated from the 10% depreciation schedule change, approved in S.B. 429 (2009), to be allocated to the State General Fund in FY 2016. In FY 2017, 50% of the proceeds will be allocated to the State General Fund and 50% to the State Highway Fund. Under S.B. 483, 100% of the additional revenue generated from the GST 10% depreciation schedule change is required to be deposited in the State Highway Fund beginning in FY 2018 and going forward permanently.											
[15-16] S.B. 483 makes the $100 increase in the Business License Fee (BLF) from $100 to $200 permanent for the initial and annual renewal, that was scheduled to sunset on June 30, 2015, (as approved in A.B. 475 (2013)) for all types of businesses, except for corporations. The initial and annual renewal fee for corporations, as specified in S.B. 483, is increased from $200 to $500 permanently. These provisions are effective July 1, 2015. The changes to the BLF are estimated to generate additional General Fund revenue of $63,093,000 in FY 2016 and $64,338,000 in FY 2017 in relation ot the Economic Forum May 1, 2015, forecast with all business types paying a $100 annual fee.											
[16-16] S.B. 483 permanently increases the fee for filing the initial and annual list of directors and officers by $25 that is required to be paid by each business entity organizing under the various chapters in Title 7 of the NRS, effective July 1, 2015. The $25 increase in the initial and annual list filing fee is estimated to increase Commercial Recordings Fee revenue by $2,751,000 in FY 2016 and $2,807,000 in FY 2017.											
[17-16] A.B. 475 changes the initial period from 24 to 12 months and the renewal period from 48 to 24 months for a license as a real estate broker, broker-salesperson, or salesperson and also changes the period for other licenses from 48 to 24 months, effective July 1, 2015. Existing licenses issued before July 1, 2015, do not need to be renewed until the expiration date required under statute prior to July 1, 2015. This change in the licensing period is estimated to reduce Real Estate License Fee revenue by $1,693,400 in FY 2016 and $1,404,200 in FY 2017.											
[18-16] A.B. 476 increases the current 6% license fee on the gross receipts from admission charges to unarmed combat events, that is dedicated to the State General Fund, by 2% to 8% with 75% of the proceeds from the 8% fee deposited in the State General Fund and 25% retained by the Athletic Commission to fund the agency's operations. A.B. 476 repeals the two-tiered fee based on the revenues from the sale or lease of broadcast, television and motion picture rights that is dedicated to the State General Fund. A.B. 476 allows the promoter of an unarmed combat event a credit against the 8% license fee equal to the amount paid to the Athletic Commission or organization sanctioned by the Commission to administer a drug testing program for unarmed combatants. These provisions are effective June 9, 2015, based on the passage and approval effective date provisions of A.B. 476. These changes are estimated to reduce Athletic Commission Fee revenue by $600,000 in both FY 2016 and FY 2017.											
[19-16] A.B. 478 increases certain fees relating to application or renewals paid by developers for exemptions to any provisions administered by the Real Estate Division of the Department of Business and Industry, and requires that all fees collected for this purpose be kept by the Division, effective July 1, 2015. This requirement for the Division to keep these fees is estimated to reduce Real Estate Land Company filing fees by approximately $152,600 in FY 2016 and $153,300 in FY 2017.											
[20-16] A.B. 491 (2013) required the proceeds from the commission retained by the Department of Motor Vehicles from the amount of Governmental Services Tax (GST) collected and any penalties for delinquent payment of the GST to be transferred to the State General Fund in FY 2015 only. A.B. 491 specified that the amount transferred shall not exceed $20,813,716 from commissions and $4,097,964 from penalties in FY 2015. A.B. 490 amended the commissions amount to $23,724,000 and the penalties amount to $5,037,000. This results in an estimated net increase in General Fund revenue of $3,849,320 in FY 2015 from GST Commissions and Penalties.											
[21-16] Estimated portion of the revenue generated from Court Administrative Assessment Fees to be deposited in the State General Fund (pursuant to subsection 9 of NRS 176.059), based on the legislatively approved projections and the authorized allocation for the Court Administrative Assessment Fee revenues (pursuant to subsection 8 of NRS 176.059) for FY 2016 and FY 2017.											
FY 2018: Note 1 represents legislative actions approved during the 2015 Legislative Session.											
[1-18] Section 51 of S.B. 514 allows the Division of Enterprise Information Technology Services of the Department of Administration to use revenues from intergovernmental transfers to the State General Fund for the repayment of special appropriations that were made to the Division for the replacement of the state's microwave communications system. The legislatively approved repayment from the Division to the State General Fund is $57,900 per year between FY 2018 and FY 2021, with increased repayments between FY 2022 and FY 2028.											

GENERAL FUND REVENUES - ECONOMIC FORUM MAY 1, 2017, FORECAST
ACTUAL: FY 2014 THROUGH FY 2016 AND FORECAST: FY 2017 THROUGH FY 2019
ECONOMIC FORUM'S FORECAST FOR FY 2017, FY 2018, AND FY 2019 APPROVED AT THE MAY 1, 2017, MEETING

DESCRIPTION	FY 2014 ACTUAL	% Change	FY 2015 ACTUAL	% Change	FY 2016 ACTUAL	% Change	ECONOMIC FORUM MAY 1, 2017, FORECAST: FY 2017 FORECAST	% Change	FY 2018 FORECAST	% Change	FY 2019 FORECAST	% Change
TAX CREDIT PROGRAMS APPROVED BY THE LEGISLATURE IN THE 2013 AND 2015 REGULAR SESSIONS AND THE 24TH SPECIAL SESSION IN SEPTEMBER 2014												

[TC-1] Pursuant to S.B. 165 (2013), the Governor's Office of Economic Development (GOED) could issue up to $20 million per fiscal year for a total of $80 million for the four-year pilot program in transferrable tax credits that may be used against the Modified Business Tax, Insurance Premium Tax, and Gaming Percentage Fee Tax. The provisions of the film tax credit program were amended in S.B. 1 (28th Special Session (2014)) to reduce the total amount of the tax credits that may be approved by GOED to a total of $10 million. The amounts shown reflect estimates based on information provided by GOED during the 2015 Session on the amount of tax credits that have been or will be approved for use in FY 2015 and FY 2016.

[TC-2] Pursuant to S.B. 1 (28th Special Session (2014)), for certain qualifying projects, the Governor's Office of Economic Development (GOED) is required to issue transferrable tax credits that may be used against the Modified Business Tax, Insurance Premium Tax, and the Gaming Percentage Fee Tax. The amount of transferrable tax credits are equal to $12,500 for each qualified employee employed by the participants in the project, to a maximum of 6,000 employees, plus 5 percent of the first $1 billion of new capital investment in the State made collectively by the participants in the qualifying project, plus an additional 2.8 percent of the next $2.5 billion in new capital investment in the State made collectively by the participants in the project. The amount of credits approved by GOED may not exceed $45 million per fiscal year (though any unissued credits may be issued in subsequent fiscal years), and GOED may not issue total credits in excess of $195 million. The forecast for FY 2017, 2018, and 2019 if $45 million per year, which reflects the maximum amount of credits that may be approved in each fiscal year for the Tesla project.

Pursuant to S.B. 1 (29th Special Session (2015)), for certain qualifying projects, the Governor's Office of Economic Development (GOED) is required to issue transferrable tax credits that may be used against the Modified Business Tax, Insurance Premium Tax, and the Gaming Percentage Fee Tax. The amount of transferrable tax credits are equal to $9,500 for each qualified employee employed by the participants in the project, to a maximum of 4,000 employees. The amount of credits approved by GOED may not exceed $7.6 million per fiscal year (though any unissued credits may be issued in subsequent fiscal years), and GOED may not issue total credits in excess of $38 million. The forecast for FY 2018 and FY 2019 is $7.6 million per year, which reflects the maximum amount of credits that may be approved in each fiscal year for the Faraday project.

[TC-3] Pursuant to S.B. 357 (2013), the Nevada New Markets Jobs Act allows insurance companies to receive a credit against the tax imposed on insurance premiums in exchange for making qualified equity investments in community development entities, particularly those that are local and minority-owned. A total of $200 million in qualified equity investments may be certified by the Department of Business and Industry. In exchange for making the qualified equity investment, insurance companies are entitled to receive a credit against the Insurance Premium Tax in an amount equal to 58 percent of the total qualified equity investment that is certified by the Department. The credits may be taken in increments beginning on the second anniversary date of the original investment, as follows:
2 years after the investment is made: 12 percent of the qualified investment
3 years after the investment is made: 12 percent of the qualified investment
4 years after the investment is made: 12 percent of the qualified investment
5 years after the investment is made: 11 percent of the qualified investment
6 years after the investment is made: 11 percent of the qualified investment

Under the provisions of S.B. 357, the insurance companies were allowed to begin taking tax credits in the third quarter of FY 2015. The amounts shown reflect estimates of the amount of tax credits that will be taken in each fiscal year based on information provided by the Department of Business and Industry and the Department of Taxation during the 2015 Session.

[TC-4] S.B. 507 (2015) authorizes the Governor's Office of Economic Development (GOED) to approve transferrable tax credits that may be used against the Modified Business Tax, Insurance Premium Tax, and Gaming Percentage Fee Tax to new or expanding businesses to promote the economic development of Nevada. As approved in S.B. 507, the total amount of transferrable tax credits that may be issued is $500,000 in FY 2016, $2,000,000 in FY 2017, and $5,000,000 for FY 2018 and each fiscal year thereafter. The amounts shown are the estimate based on the maximum amount that can be issued in each fiscal year.

A.B. 1 of the 29th Special Session (2015) reduced the total amount of transferrable tax credits that may be issued by GOED to zero in FY 2016, $1 million in FY 2017, $2 million per year in FY 2018 and FY 2019, and $3 million in FY 2020. For FY 2021 and future fiscal years, the amount of credits that may be issued by GOED remains at $5 million per year.

[TC-5] A.B. 165 (2015) allows taxpayers who make donations of money to certain scholarship organizations to receive a dollar-for-dollar credit against the taxpayer's liability for the Modified Business Tax (MBT). The total amount of credits that may be approved by the Department is $5 million in FY 2016, $5.5 million in FY 2017, and 110 percent of the total amount of credits authorized in the previous year, for all subsequent fiscal years. The amounts shown reflect the estimate based on the assumption that the total amount authorized for each fiscal year will be donated to a qualified scholarship organization and taken as credits against the MBT.

[TC-6] S.B. 412 (2015) provides a tax credit against the Modified Business Tax (MBT) to certain employers who match the contribution of an employee to one of the college savings plans offered through the Nevada Higher Education Prepaid Tuition Program and the Nevada College Savings Program authorized under existing law. The amount of the tax credit is equal to 25 percent of the matching contribution, not to exceed $500 per contributing employee per year, and any unused credits may be carried forward for 5 years. The provisions relating to the Nevada College Savings Program are effective January 1, 2016, and the Higher Education Prepaid Tuition Program are effective July 1, 2016. The amounts shown are estimates based on information provided by the Treasurer's Office on enrollment and contributions for the college savings plans.

TAB 15

RIS
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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. DEPARTMENT OF EDUCATION; et al.,

Defendants,

and

THE LEGISLATURE OF THE STATE OF NEVADA,

Intervenor-Defendant.

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

Date of Hearing: April 14, 2020
Time of Hearing: 1:30 p.m.

INTERVENOR-DEFENDANT NEVADA LEGISLATURE'S REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

REPLY

Intervenor-Defendant Legislature of the State of Nevada (Legislature), by and through its counsel the Legal Division of the Legislative Counsel Bureau under NRS 218F.720, hereby files this Reply in Support of Motion for Summary Judgment pursuant NRCP 56 and EDCR 2.20. The Legislature's Reply is based upon the attached Memorandum of Points and Authorities, all pleadings, documents and exhibits on file in this case and any oral arguments the Court may allow.

The Legislature requests that the Court deny Plaintiffs' Motion for Summary Judgment, grant the Legislature's Motion for Summary Judgment and enter a final judgment in favor of the Legislature and all other Defendants on all causes of action and claims for relief alleged in Plaintiffs' Complaint filed on August 15, 2019, because: (1) Plaintiffs' state constitutional claims present only pure issues of law that require no factual development, so there are no genuine issues or disputes as to any material fact; and (2) AB 458 is constitutional as a matter of law, so the Legislature and all other Defendants are entitled to summary judgment on Plaintiffs' state constitutional claims as a matter of law.[1]

MEMORANDUM OF POINTS AND AUTHORITIES

I. Correct standards for reviewing the constitutionality of statutes.

In their opposition, Plaintiffs apply the wrong standards for reviewing the constitutionality of statutes. (*Pls.' Opp'n at 2*.) Plaintiffs argue that their facial challenge to the constitutionality of AB 458 is governed by the standards of statutory construction that are used for interpreting ambiguous tax statutes when those statutes are being applied to specific taxpayers to determine whether they owe taxes under individualized circumstances. Id. Under those standards of statutory construction, the Nevada Supreme Court has stated that:

[1] It is well settled that if a plaintiff's claims fail as a matter of law on a motion for summary judgment, all defendants are entitled to a final judgment in their favor on those claims, regardless of whether they joined in the motion. See Lewis v. Lynn, 236 F.3d 766, 768 (5th Cir. 2001); True the Vote v. Hosemann, 43 F.Supp.3d 693, 708 n.59 (S.D. Miss. 2014).

> Taxing statutes when of doubtful validity or effect must be construed in favor of the taxpayers. A tax statute particularly must say what it means. We will not extend a tax statute by implication.

State Dep't of Tax'n v. Visual Commc'ns, 108 Nev. 721, 725 (1992) (quoting Cashman Photo v. Nev. Gaming Comm'n, 91 Nev. 424, 428 (1975)); Harrah's Operating Co. v. State Dep't of Tax'n, 130 Nev. 129, 132 (2014) ("[T]ax statutes are to be construed in favor of the taxpayer.").

However, because the standards of statutory construction proffered by Plaintiffs do not govern their facial challenge to the constitutionality of AB 458, Plaintiffs apply the wrong standards of constitutional review in their opposition. By arguing that AB 458 was not validly enacted under the two-thirds requirement and was therefore unconstitutional and void from its inception, Plaintiffs are making a facial challenge to the validity of AB 458 because they are claiming that the bill cannot be applied constitutionally under any circumstances. As a result, for purposes of summary judgment, the correct standards of constitutional review are the well-established standards for reviewing the facial validity of a statute.

Thus, under the correct standards of constitutional review that govern this case, the Nevada Supreme Court has stated that "[w]hen making a facial challenge to a statute, the challenger generally bears the burden of demonstrating that there is no set of circumstances under which the statute would be valid." Deja Vu Showgirls v. Nev. Dep't of Tax'n, 130 Nev. 719, 725-26 (2014); Schwartz v. Lopez, 132 Nev. 732, 744-45 (2016). The Nevada Supreme Court has also "reiterate[d] the heavy burden [the challenger] must bear to overcome the presumption of constitutional validity which every legislative enactment enjoys." Allen v. State, 100 Nev. 130, 133 (1984). That heavy burden requires the challenger to make "a clear showing that the statute is unconstitutional." List v. Whisler, 99 Nev. 133, 138 (1983). And "[i]n case of doubt, every possible presumption will be made in favor of the constitutionality of a statute, and courts will interfere only when the Constitution is clearly violated." Id. at 137. Consequently, under the correct standards of constitutional review that govern this case, the

Court must not invalidate AB 458 on constitutional grounds unless its invalidity appears "beyond a reasonable doubt." Cauble v. Beemer, 64 Nev. 77, 101 (1947); State ex rel. Lewis v. Doron, 5 Nev. 399, 408 (1870) ("[E]very statute is to be upheld, unless plainly and without reasonable doubt in conflict with the Constitution.").

Finally, under the correct standards of constitutional review that govern this case, "the judiciary will not declare an act void because it disagrees with the wisdom of the Legislature." Anthony v. State, 94 Nev. 337, 341 (1978). Thus, the Court may not find AB 458 unconstitutional "simply because [it] might question the wisdom or necessity of the provision under scrutiny." Techtow v. City Council of N. Las Vegas, 105 Nev. 330, 333 (1989). The reason for this rule is that "[q]uestions relating to the policy, wisdom, and expediency of the law are for the people's representatives in the legislature assembled, and not for the courts to determine." Worthington v. Dist. Ct., 37 Nev. 212, 244 (1914).

Accordingly, as explained by the Legislature in its arguments in this case, when the correct standards of constitutional review are applied to Plaintiffs' state constitutional claims, it is evident that Plaintiffs' state constitutional claims have no merit and that AB 458 is constitutional as a matter of law. Therefore, the Legislature and all other Defendants are entitled to summary judgment on Plaintiffs' state constitutional claims as a matter of law.

II. Argument.

A. Under the plain text of the two-thirds requirement, the Legislature could reasonably conclude that AB 458 did not have the effect of raising state revenue "in any form" and that the bill, in fact, did not alter state revenue at all because the bill did not change—but maintained—the existing legally operative amount of subsection 4 credits at $6,655,000, which is the amount that was legally in effect before the passage of AB 458 and which is the amount that is now legally in effect after the passage of AB 458.

In their opposition, Plaintiffs argue that by eliminating potential future increases in subsection 4 credits in future biennia, AB 458 has the effect of raising state revenue. (*Pls.' Opp'n at 3-11 & 13-18.*) In support of their arguments, Plaintiffs rely upon commentary in a law journal to contend that Nevada's

two-thirds requirement "applies whenever a bill has the effect of raising revenue 'in any form.'" (*Pls.' Opp'n at 8*.) In the law journal, the commentator surveys state supermajority requirements and suggests that "[s]ome states, including Delaware and Nevada, look only at the effect of tax changes: supermajority requirements apply to all legislation raising revenue." Max Minzner, Entrenching Interests: State Supermajority Requirements to Raise Taxes, 14 Akron Tax J. 43, 67 (1999). However, even assuming for the sake of argument that the commentator's interpretation of Nevada's two-thirds requirement is correct, the commentator nevertheless acknowledges that Nevada's two-thirds requirement does not apply to a bill when "**at the time of [the] bill's passage, it does not alter state revenue at all**." Id. at 73 (emphasis added).

In this case, at the time of AB 458's passage, it did not alter state revenue at all because the bill did not change—but maintained—the existing legally operative amount of subsection 4 credits at **$6,655,000**, which is the amount that was legally in effect before the passage of AB 458 and which is the amount that is now legally in effect after the passage of AB 458. Despite the fact that at the time of AB 458's passage, it did not alter state revenue at all, Plaintiffs attempt to ignore the actual effect of the bill by arguing that AB 458 raised revenue because it eliminated potential future increases in subsection 4 credits in future biennia. (*Pls.' Opp'n at 3-11 & 13-18*.) However, Plaintiffs' arguments are wrong as a matter of law because they ignore the reality that by eliminating the potential future increases in subsection 4 credits before they became legally operative and binding at the beginning of the fiscal year on July 1, 2019, the Legislature did not change—but maintained—the existing legally operative amount of subsection 4 credits at **$6,655,000**. Thus, based on the actual effect of the bill, AB 458 did not raise state revenue "in any form" and, in fact, did not alter state revenue at all, which was the Legislature's clear intent when it passed AB 458.

During the legislative hearings on AB 458, the sponsor of the bill, Assemblyman Jason Frierson, explained that the actual effect of AB 458 was to maintain the amount of subsection 4 credits at

$6,655,000, stating that:

> First, I want to clarify what A.B. 458 does not do. Assembly Bill 458 does not get rid of the Opportunity Scholarship Program. This bill is designed to deal with the 110 percent increase in the credits authorized. The measure provides that the amount [of subsection 4 credits] is **$6.655 million, which it is currently,** and any remaining amount of [subsection 5] tax credits carried forward from the additional [subsection 5] credit authorization made in 2017-2019.

Legislative History of AB 458, 80th Leg. (Nev. LCB Research Library 2019) (Hearing on AB 458 before Assembly Comm. on Taxation, 80th Leg., at 3 (Nev. Apr. 4, 2019) (emphasis added) (https://www.leg.state.nv.us/Division/Research/Library/LegHistory/LHs/2019/AB458,2019.pdf).[2]

The actual effect of AB 458 was also explained in the Legislative Counsel's Digest included in the bill. See NRS 218D.290 (providing for the Legislative Counsel's Digest to be included in each bill).[3] The digest explained that under existing law, "for Fiscal Year 2018-2019, the amount of [subsection 4] credits authorized is **$6,655,000**, plus any remaining amount of [subsection 5] tax credits carried forward from the additional [subsection 5] credit authorization made for Fiscal Year 2017-2018." Legislative Counsel's Digest, AB 458, 2019 Nev. Stat., ch. 366, at 2296 (emphasis added). The digest then explained that:

> This bill eliminates the annual 110 percent increase in the amount of [subsection 4] credits authorized and, instead, provides that the amount of [subsection 4] credits authorized for each fiscal year is a total of **$6,655,000**, plus any remaining amount of [subsection 5] tax credits carried forward from the additional [subsection 5] credit authorization made for Fiscal Year 2017-2018.

Id. at 2296 (emphasis added).

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[2] The Court may take judicial notice of the legislative history as a public record. Jory v. Bennight, 91 Nev. 763, 766 (1975); Fierle v. Perez, 125 Nev. 728, 737-38 n.6 (2009).

[3] Both the Nevada Supreme Court and the Ninth Circuit have determined that the Legislative Counsel's Digest may be considered when determining the Legislature's intent for a bill. See Nevadans for Prot. of Prop. Rights v. Heller, 122 Nev. 894, 911 (2006); ACLU v. Masto, 670 F.3d 1046, 1053-54 (9th Cir. 2012).

In an attempt to sidestep the actual effect of AB 458, Plaintiffs argue that the potential future increases in subsection 4 credits were legally operative and "effective upon passage and approval" on April 13, 2015, when Assembly Bill No. 165 (AB 165)—which provided for the potential future increases in subsection 4 credits at the beginning of each fiscal year—was enacted into law during the 2015 legislative session. (*Pls.' Opp'n at 17*.) The Legislature does not dispute that AB 165 was enacted into law during the 2015 legislative session. AB 165, 2015 Nev. Stat., ch. 22, at 85-89. However, Plaintiffs' arguments are wrong as a matter of law because the Nevada Constitution places restrictions on the Legislature's power to commit or bind public funds for future fiscal years. Nev. Const. art. 9, §§ 1-3. As a result, when the Legislature authorizes a state officer or agency to bind the state government—or any fund or department thereof—in any amount for a particular fiscal year, the Legislature's statutory authorization is not legally operative and binding until the commencement of that fiscal year on July 1. Consequently, even though AB 165 was enacted into law during the 2015 legislative session, the Legislature's statutory authorization in AB 165 for potential future increases in subsection 4 credits in any fiscal year could not become legally operative and binding until the commencement of that particular fiscal year on July 1.

Under the Nevada Constitution, the state government operates on a fiscal year commencing on July 1 of each year. Nev. Const. art. 9, §§ 1-2. When the Legislature holds its regular biennial legislative session beginning on the first Monday of February of each odd-numbered year, the Legislature must enact legislation providing for public revenues to defray the estimated expenses of the state government for the next two fiscal years of the following biennium, which begins on July 1 after the legislative session. Nev. Const. art. 4, § 2 & art. 9, §§ 1-3. However, the Nevada Constitution places restrictions on the Legislature's power to commit or bind public funds for each fiscal year, and the Legislature cannot enact statutory provisions committing or binding future Legislatures to make successive appropriations or expenditures of public funds in future fiscal years, unless the Legislature

complies with certain constitutional requirements. Nev. Const. art. 9, §§ 2-3; Employers Ins. Co. v. State Bd. of Exam'rs, 117 Nev. 249, 254-58 (2001); Morris v. Bd. of Regents, 97 Nev. 112, 114-15 (1981).

Furthermore, when the Legislature enacts legislation concerning public funds, it cannot—through the enactment of an ordinary statute—bind or limit the legislative power of future Legislatures. See Fletcher v. Peck, 10 U.S. 87, 135 (1810) ("[O]ne legislature cannot abridge the powers of a succeeding legislature. The correctness of this principle, so far as respects general legislation, can never be controverted."); United States v. Winstar Corp., 518 U.S. 839, 872 (1996) ("[O]ne legislature may not bind the legislative authority of its successors."). As explained by the U.S. Supreme Court:

> Every succeeding legislature possesses the same jurisdiction and power with respect to [public laws] as its predecessors. The latter have the same power of repeal and modification which the former had of enactment, neither more nor less. All occupy, in this respect, a footing of perfect equality.

Newton v. Mahoning Cnty. Comm'rs, 100 U.S. 548, 559 (1879).

Finally, it is unlawful for any state officer or agency to bind or attempt to bind the state government—or any fund or department thereof—in any amount in excess of the specific amount provided by law for each fiscal year. NRS 353.260(2). Therefore, when the Legislature authorizes a state officer or agency to bind the state government—or any fund or department thereof—in any amount for a particular fiscal year, the Legislature's statutory authorization is not legally operative and binding until the commencement of that fiscal year on July 1.

Accordingly, when the Legislature passed AB 458 during the 2019 legislative session, any potential future increases in subsection 4 credits that the Department of Taxation would have been authorized to approve in future fiscal years beginning on July 1, 2019—and on July 1 of each fiscal year thereafter—were not legally operative and binding yet because they would not lawfully go into effect and become legally operative and binding until the commencement of the fiscal year on July 1, 2019,

and the commencement of each fiscal year thereafter. By eliminating the potential future increases in subsection 4 credits before they became legally operative and binding, the Legislature did not change—but maintained—the existing legally operative amount of subsection 4 credits at **$6,655,000**, which is the amount that was legally in effect before the passage of AB 458 and which is the amount that is now legally in effect after the passage of AB 458.

Thus, based on the actual effect of the bill, AB 458 did not raise state revenue "in any form" and, in fact, did not alter state revenue at all, which was the Legislature's clear intent when it passed AB 458. As a result, the Legislature could reasonably conclude that AB 458 did not create, generate or increase any public revenue in any form because the bill did not change—but maintained—the existing legally operative amount of subsection 4 credits at **$6,655,000**. Under such circumstances, because the Legislature could reasonably conclude that AB 458 was not subject to the two-thirds requirement, "the Legislature is entitled to deference in its counseled selection of this interpretation." Nev. Mining Ass'n v. Erdoes, 117 Nev. 531, 540 (2001). Consequently, the Legislature and all other Defendants are entitled to summary judgment on Plaintiffs' state constitutional claims as a matter of law.

B. Even assuming for the sake of argument that AB 458 changed or reduced the amount of subsection 4 credits, the Legislature still could reasonably conclude that AB 458 was not subject to the two-thirds requirement.

In their opposition, Plaintiffs argue that the two-thirds requirement unambiguously applies to a bill that changes or reduces potential future tax credits. (*Pls.' Opp'n at 3-11 & 13-18.*) However, although the plain text of the two-thirds requirement speaks directly with regard to changes in "taxes, fees, assessments and rates" and also "changes in the computation bases for taxes, fees, assessments and rates," the plain text is entirely silent with regard to changes in tax credits. Undoubtedly, the legislative framers of the two-thirds requirement could have expressly included changes in **tax credits** in the two-thirds requirement along with the other tax-related changes that they expressly included in the constitutional provision. Based on well-established rules of construction, their legislative omission of

changes in tax credits in the two-thirds requirement unravels Plaintiffs' reliance on the plain text of the constitutional provision.

Under the rules of construction, the Nevada Supreme Court has "repeatedly refused to imply provisions not expressly included in the legislative scheme." Zenor v. State Dep't of Transp., 134 Nev. 109, 110 (2018) (quoting State Indus. Ins. Sys. v. Wrenn, 104 Nev. 536, 539 (1988)). The Nevada Supreme Court has also stated that "it is not the business of this court to fill in alleged legislative omissions based on conjecture as to what the legislature would or should have done." Id. at 111 (quoting McKay v. Bd. of Cnty. Comm'rs, 103 Nev. 490, 492 (1987)).

In this case, the legislative framers of the two-thirds requirement could have expressly included changes in **tax credits** in the two-thirds requirement along with the other tax-related changes that they expressly included in the constitutional provision. Their legislative omission in Nevada's two-thirds requirement is particularly noteworthy given that changes in tax credits and tax exemptions are expressly included in similar supermajority requirements in other states. Ariz. Const. art. IX, § 22 (requiring a supermajority for "[a] reduction or elimination of a tax deduction, exemption, exclusion, credit or other tax exemption feature in computing tax liability."); Fla. Const. art. VII, § 19 (requiring a supermajority to "decrease or eliminate a state tax or fee exemption or credit."); La. Const. art. VII, § 2 (requiring a supermajority for "a repeal of an existing tax exemption.").

Furthermore, under the rule of *noscitur a sociis* ("it is known by its associates"), the meaning of particular terms in a constitutional or statutory provision may be ascertained by reference to the other terms that are associated with it in the provision. See Orr Ditch Co. v. Justice Court, 64 Nev. 138, 146 (1947) ("[T]he meaning of particular terms in a statute may be ascertained by reference to words associated with them in the statute."); Ford v. State, 127 Nev. 608, 622 n.8 (2011) ("[W]ords are known by—acquire meaning from—the company they keep."); United States v. Williams, 553 U.S. 285, 293 (2008) ("[A] word is given more precise content by the neighboring words with which it is associated.").

Additionally, under the rule of *ejusdem generis* ("of the same kind or class"), when a general term in a constitutional or statutory provision is part of a list of more specific terms, the general term may be interpreted as being restricted in meaning by the specific terms, so its scope includes only those things that are of the same kind, class or nature as the specific terms. See Orr Ditch Co., 64 Nev. at 147 ("[G]eneral terms in a statute may be regarded as limited by subsequent more specific terms . . . and [construed] as including only things or persons of the same kind, class, character, or nature as those specifically enumerated."); Phelps v. State Farm Mut. Auto. Ins., 112 Nev. 675, 682 (1996) ("This court has previously applied the rule of *ejusdem generis*, which translated means 'of the same kind, class or nature.'").

Finally, under the rule of *expressio unius est exclusio alterius* ("the expression of one thing is the exclusion of another"), when a constitutional or statutory provision expressly mentions one thing, it is presumed that the legislative framers intended to exclude all other things. See V & T R.R. v. Elliott, 5 Nev. 358, 364 (1870) ("The mention of one thing or person, is in law an exclusion of all other things or persons."); Sonia F. v. Dist. Court, 125 Nev. 495, 499 (2009). Therefore, when the legislative framers expressly mention particular subject matters within constitutional or statutory provisions, "omissions of [other] subject matters from [those] provisions are presumed to have been intentional." State Dep't of Tax'n v. DaimlerChrysler, 121 Nev. 541, 548 (2005).

In this case, the legislative framers of the two-thirds requirement expressly mentioned changes in "taxes, fees, assessments and rates" and also "changes in the computation bases for taxes, fees, assessments and rates." By expressly mentioning these types of tax-related changes in the two-thirds requirement, it must be presumed that the legislative framers intended to exclude all other changes that are not of the same kind, class or nature. Because changes in tax credits do not change the existing "computation bases" or statutory formulas used to calculate a taxpayer's liability for the underlying state taxes, changes in tax credits are not of the same kind, class or nature as changes in "taxes, fees,

assessments and rates" or "changes in the computation bases for taxes, fees, assessments and rates." Therefore, it must be presumed that the legislative framers of the two-thirds requirement did not intend to include changes in tax credits in the constitutional provision.

Accordingly, even assuming for the sake of argument that AB 458 changed or reduced the amount of subsection 4 credits, the Legislature could reasonably conclude that AB 458 was not subject to the two-thirds requirement because the legislative framers of the two-thirds requirement did not intend to include changes in tax credits in the constitutional provision. Because changes in tax credits do not change the existing "computation bases" or statutory formulas used to calculate a taxpayer's liability for the underlying state taxes, changes in tax credits are not of the same kind, class or nature as changes in "taxes, fees, assessments and rates" or "changes in the computation bases for taxes, fees, assessments and rates." Therefore, by expressly mentioning those tax-related changes in the plain text of the two-thirds requirement—while clearly omitting any references to changes in tax credits from the plain text—it must be presumed that the legislative framers did not intend to include any changes in tax credits in the two-thirds requirement.

Moreover, even if the legislative framers intended to include changes in tax credits in the constitutional provision, the Legislature still could reasonably conclude that AB 458 did not change—but maintained—the existing "computation bases" or statutory formulas used to calculate the underlying state taxes to which the subsection 4 credits are applicable. Because the subsection 4 credits are not part of the existing "computation bases" or statutory formulas used by the Department of Taxation to calculate a taxpayer's liability under the Modified Business Tax or MBT, AB 458 did not change—but maintained—those existing "computation bases" or statutory formulas and therefore did not change any "taxes, fees, assessments and rates" or "the computation bases for [any] taxes, fees, assessments and rates." Again, in passing AB 458, the Legislature acted on the Legislative Counsel's opinion that this is a reasonable interpretation of the two-thirds requirement. (*Leg.'s MSJ Ex. A.*) Because the Legislature

acted on the Legislative Counsel's opinion that this is a reasonable interpretation of the two-thirds requirement, "the Legislature is entitled to deference in its counseled selection of this interpretation." Nev. Mining, 117 Nev. at 540. Therefore, because the Legislature could reasonably conclude that AB 458 was not subject to the two-thirds requirement, the Legislature and all other Defendants are entitled to summary judgment on Plaintiffs' state constitutional claims as a matter of law.

C. Contrary to Plaintiffs' arguments, the Legislature's reasonable interpretation of the two-thirds requirement is entitled to deference, especially given the Legislature's reliance on the advice of the Legislative Counsel.

In their opposition, Plaintiffs argue that the Legislature is not entitled to deference in its reasonable interpretation of the two-thirds requirement, regardless of whether the Legislature relied on the advice of the Legislative Counsel. (*Pls.' Opp'n at 6-7*.) In particular, Plaintiffs argue that the deference which the Nevada Supreme Court extended to the Legislature's reasonable interpretation of the state constitutional limit on the length of legislative sessions in Nev. Mining has no application in this case. Plaintiffs' arguments are wrong as a matter of law.

Plaintiffs first argue that unlike the ambiguity in the constitutional provision at issue in Nev. Mining, there is no ambiguity in the two-thirds requirement. However, as discussed previously, although the plain text of the two-thirds requirement speaks directly with regard to changes in "taxes, fees, assessments and rates" and also "changes in the computation bases for taxes, fees, assessments and rates," the plain text is entirely silent with regard to changes in tax credits. When a constitutional or statutory provision is silent or otherwise does not speak directly to the issue at hand, the Nevada Supreme Court applies the rules of construction to determine the meaning of the provision. See SFR Invs. Pool 1, LLC v. Bank of N.Y. Mellon, 134 Nev. 483, 486 (2018); Allstate Ins. Co. v. Fackett, 125 Nev. 132, 138 (2009); State Dep't of Human Res. v. Estate of Ullmer, 120 Nev. 108, 118 (2004).

Under the rules of construction, the Nevada Supreme Court has recognized that a reasonable construction of a constitutional provision by the Legislature should be given great weight. State ex rel.

Coffin v. Howell, 26 Nev. 93, 104-05 (1901); State ex rel. Cardwell v. Glenn, 18 Nev. 34, 43-46 (1883). This is particularly true when a constitutional provision concerns the passage of legislation. Id. Thus, when construing a constitutional provision, "although the action of the legislature is not final, its decision upon this point is to be treated by the courts with the consideration which is due to a co-ordinate department of the state government, and in case of a reasonable doubt as to the meaning of the words, the construction given to them by the legislature ought to prevail." Dayton Gold & Silver Mining Co. v. Seawell, 11 Nev. 394, 399-400 (1876).

Consequently, in determining whether the two-thirds requirement applies to a particular bill, the Legislature has the power to interpret the two-thirds requirement—in the first instance—as a reasonable and necessary corollary power to the exercise of its expressly granted and exclusive constitutional power to enact laws by the passage of bills. See Nev. Const. art. 4, § 23 (providing that "no law shall be enacted except by bill."); State ex rel. Torreyson v. Grey, 21 Nev. 378, 380-84 (1893) (discussing the power of the Legislature to interpret constitutional provisions governing legislative procedure). Moreover, because the two-thirds requirement involves the exercise of the Legislature's lawmaking power, any uncertainty, ambiguity or doubt regarding the application of the two-thirds requirement must be resolved in favor of the Legislature's lawmaking power and against restrictions on that power. See In re Platz, 60 Nev. 296, 308 (1940) (stating that the language of the Nevada Constitution "must be strictly construed in favor of the power of the legislature to enact the legislation under it.").

Finally, when the Legislature exercises its power to interpret the two-thirds requirement in the first instance, the Legislature may resolve any uncertainty, ambiguity or doubt regarding the application of the two-thirds requirement by following an opinion of the Legislative Counsel which interprets the constitutional provision, and the judiciary will typically afford the Legislature deference in its counseled selection of that interpretation. Nev. Mining, 117 Nev. at 40.

In this case, because the plain text of the two-thirds requirement is entirely silent with regard to changes in tax credits, the Legislature's reasonable interpretation of the two-thirds requirement is entitled to deference, especially given the Legislature's reliance on the advice of the Legislative Counsel. Nev. Mining, 117 Nev. at 40. Therefore, the Legislature's reasonable interpretation of the two-thirds requirement "is to be treated by the courts with the consideration which is due to a co-ordinate department of the state government, and in case of a reasonable doubt as to the meaning of the words, the construction given to them by the [L]egislature ought to prevail." Dayton Gold & Silver Mining Co., 11 Nev. at 399-400.

Plaintiffs also argue that Nev. Mining has no application in this case because the state constitutional limit on the length of legislative sessions at issue in Nev. Mining was "an arbitrary question of timekeeping (whether the session ended at midnight or one in the morning), not a substantive limitation on the power of the Legislature" to enact legislation like the two-thirds requirement. (*Pls.' Opp'n at 6.*) This argument is simply absurd. The state constitutional limit on the length of legislative sessions is clearly a substantive limitation on the power of the Legislature to enact legislation because all bills passed after the constitutional time limit are "void." Nev. Const. art. 4, § 2. Thus, in comparison to the two-thirds requirement whose application is limited to particular types of legislation, the constitutional time limit applies to all types of legislation and is therefore a much broader substantive limitation on the power of the Legislature" to enact legislation. Accordingly, the deference which the Nevada Supreme Court extended to the Legislature's reasonable interpretation of the state constitutional limit on the length of legislative sessions in Nev. Mining is clearly applicable in this case.

As a result, in this case, the Legislature acted on the Legislative Counsel's opinion that "Nevada's two-thirds majority requirement does not apply to a bill which reduces or eliminates available tax exemptions or tax credits applicable to existing state taxes." (*Leg.'s MSJ Ex. A.*) Thus, in enacting AB 458, "the Legislature acted on Legislative Counsel's opinion that this is a reasonable construction of

the provision . . . and the Legislature is entitled to deference in its counseled selection of this interpretation." Nev. Mining, 117 Nev. at 540.

D. The Legislature's reasonable interpretation of the two-thirds requirement is supported by: (1) contemporaneous extrinsic evidence of the purpose and intent of Nevada's two-thirds requirement; and (2) case law from other states interpreting similar supermajority requirements that served as the model for Nevada's two-thirds requirement.

As explained in the Legislature's motion for summary judgment, the Legislature's reasonable interpretation of the two-thirds requirement is supported by contemporaneous extrinsic evidence of the purpose and intent of Nevada's two-thirds requirement. The contemporaneous extrinsic evidence indicates that the two-thirds requirement was not intended to impair any existing revenues. And there is nothing in the contemporaneous extrinsic evidence to indicate that the two-thirds requirement was intended to apply to a bill which does not change—but maintains—the existing computation bases currently in effect for existing state taxes. The absence of such contemporaneous extrinsic evidence is consistent with the fact that: (1) such a bill does not raise new state taxes and revenues because it maintains the existing state taxes and revenues currently in effect; and (2) such a bill does not increase the existing state taxes and revenues currently in effect—but maintains them in their current state under the law—because the existing computation bases currently in effect are not changed by the bill. Furthermore, there is nothing in the contemporaneous extrinsic evidence to indicate that the two-thirds requirement was intended to apply to a bill which reduces or eliminates available tax exemptions or tax credits.

Finally, as explained in the Legislature's motion for summary judgment, the Legislature's reasonable interpretation of the two-thirds requirement is supported by case law from other states interpreting similar supermajority requirements that served as the model for Nevada's two-thirds requirement. Based on the case law from the other states, the Legislature could reasonably interpret Nevada's two-thirds requirement in a manner that adopts and follows the judicial interpretations placed

on the similar supermajority requirements from those other states. Under those judicial interpretations, the Legislature could reasonably conclude that Nevada's two-thirds requirement **does not** apply to a bill which reduces or eliminates available tax exemptions or tax credits, and "the Legislature is entitled to deference in its counseled selection of this interpretation." Nev. Mining, 117 Nev. at 540. Therefore, because the Legislature could reasonably conclude that AB 458 was not subject to the two-thirds requirement, the Legislature and all other Defendants are entitled to summary judgment on Plaintiffs' state constitutional claims as a matter of law.

CONCLUSION AND AFFIRMATION

Based on the foregoing, the Legislature requests that the Court enter an order: (1) denying Plaintiffs' Motion for Summary Judgment; (2) granting the Legislature's Motion for Summary Judgment; and (3) granting a final judgment in favor of the Legislature and all other Defendants on all causes of action and claims for relief alleged in Plaintiffs' Complaint filed on August 15, 2019.

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

DATED: This **27th** day of March, 2020.

Respectfully submitted,

By: /s/ Kevin C. Powers

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ADDENDUM

Assembly Bill No. 458–Committee on Education

CHAPTER 366

[Approved: June 3, 2019]

AN ACT relating to taxation; revising provisions governing the amount of credits the Department of Taxation is authorized to approve against the modified business tax for taxpayers who donate money to a scholarship organization; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Under existing law, financial institutions, mining businesses and other employers are required to pay an excise tax (the modified business tax) on wages paid by them. (NRS 363A.130, 363B.110) Existing law establishes a credit against the modified business tax equal to an amount which is approved by the Department of Taxation and which must not exceed the amount of any donation of money made by a taxpayer to a scholarship organization that provides grants on behalf of pupils who are members of a household with a household income of not more than 300 percent of the federally designated level signifying poverty to allow those pupils to attend schools in this State, including private schools, chosen by the parents or legal guardians of those pupils. (NRS 363A.139, 363B.119, 388D.270) Under existing law, the Department: (1) is required to approve or deny applications for the tax credit in the order in which the applications are received by the Department; and (2) is authorized to approve applications for each fiscal year until the amount of the tax credits approved for the fiscal year is the amount authorized by statute for that fiscal year. The amount of credits authorized for each fiscal year is equal to 110 percent of the amount authorized for the immediately preceding fiscal year, not including certain additional tax credits authorized for Fiscal Year 2017-2018. For Fiscal Year 2017-2018, the amount of credits authorized which are relevant for calculating the credits authorized in subsequent fiscal years is $6,050,000. Thus, for Fiscal Year 2018-2019, the amount of credits authorized is $6,655,000, plus any remaining amount of tax credits carried forward from the additional credit authorization made for Fiscal Year 2017-2018. (NRS 363A.139, 363B.119)

This bill eliminates the annual 110 percent increase in the amount of credits authorized and, instead, provides that the amount of credits authorized for each fiscal year is a total of $6,655,000, plus any remaining amount of tax credits carried forward from the additional credit authorization made for Fiscal Year 2017-2018.

EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~[omitted material]~~ is material to be omitted.

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

Section 1. **NRS 363A.139** is hereby amended to read as follows:

363A.139 1. Any taxpayer who is required to pay a tax pursuant to NRS 363A.130 may receive a credit against the tax otherwise due for any donation of money made by the taxpayer to a scholarship organization in the manner provided by this section.

2. To receive the credit authorized by subsection 1, a taxpayer who intends to make a donation of money to a scholarship organization must, before making such a donation, notify the scholarship organization of the taxpayer's intent to make the donation and to seek the credit authorized by subsection 1. A scholarship organization shall, before accepting any such donation, apply to the Department of Taxation for approval of the credit authorized by subsection 1 for the

donation. The Department of Taxation shall, within 20 days after receiving the application, approve or deny the application and provide to the scholarship organization notice of the decision and, if the application is approved, the amount of the credit authorized. Upon receipt of notice that the application has been approved, the scholarship organization shall provide notice of the approval to the taxpayer who must, not later than 30 days after receiving the notice, make the donation of money to the scholarship organization. If the taxpayer does not make the donation of money to the scholarship organization within 30 days after receiving the notice, the scholarship organization shall provide notice of the failure to the Department of Taxation and the taxpayer forfeits any claim to the credit authorized by subsection 1.

3. The Department of Taxation shall approve or deny applications for the credit authorized by subsection 1 in the order in which the applications are received.

4. Except as otherwise provided in subsection 5, the Department of Taxation may, for each fiscal year, approve applications for the credit authorized by subsection 1 until the total amount of the credits authorized by subsection 1 and approved by the Department of Taxation pursuant to this subsection ***and subsection 4 of NRS 363B.119*** is ~~[~~:

~~(a) For Fiscal Year 2015-2016, $5,000,000;~~

~~(b) For Fiscal Year 2016-2017, $5,500,000; and~~

~~(c) For each succeeding fiscal year, an amount equal to 110 percent of the amount authorized for the immediately preceding fiscal year.~~

~~➥]~~ ***$6,655,000.*** The amount of any credit which is forfeited pursuant to subsection 2 must not be considered in calculating the amount of credits authorized for any fiscal year.

5. In addition to the amount of credits authorized by subsection 4 for Fiscal Year 2017-2018, the Department of Taxation may approve applications for the credit authorized by subsection 1 for that fiscal year until the total amount of the credits authorized by subsection 1 and approved by the Department of Taxation pursuant to this subsection and subsection 5 of NRS 363B.119 is $20,000,000. The provisions of ~~[paragraph (c) of]~~ subsection 4 do not apply to the amount of credits authorized by this subsection and the amount of credits authorized by this subsection must not be considered when determining the amount of credits authorized for a fiscal year pursuant to ~~[that paragraph.]~~ ***subsection 4.*** If, in Fiscal Year 2017-2018, the amount of credits authorized by subsection 1 and approved pursuant to this subsection is less than $20,000,000, the remaining amount of credits pursuant to this subsection must be carried forward and made available for approval during subsequent fiscal years until the total amount of credits authorized by subsection 1 and approved pursuant to this subsection is equal to $20,000,000. The amount of any credit which is forfeited pursuant to subsection 2 must not be considered in calculating the amount of credits authorized pursuant to this subsection.

6. If a taxpayer applies to and is approved by the Department of Taxation for the credit authorized by subsection 1, the amount of the credit provided by this section is equal to the amount approved by the Department of Taxation pursuant to subsection 2, which must not exceed the amount of the donation made by the taxpayer to a scholarship organization. The total amount of the credit applied against the taxes described in subsection 1 and otherwise due from a taxpayer must not exceed the amount of the donation.

7. If the amount of the tax described in subsection 1 and otherwise due from a taxpayer is less than the credit to which the taxpayer is entitled pursuant to this section, the taxpayer may, after applying the credit to the extent of the tax otherwise due, carry the balance of the credit forward for not more than 5 years after the end of the calendar year in which the donation is made or until the balance of the credit is applied, whichever is earlier.

8. As used in this section, "scholarship organization" has the meaning ascribed to it in NRS 388D.260.

Sec. 2. NRS 363B.119 is hereby amended to read as follows:

363B.119 1. Any taxpayer who is required to pay a tax pursuant to NRS 363B.110 may receive a credit against the tax otherwise due for any donation of money made by the taxpayer to a scholarship organization in the manner provided by this section.

2. To receive the credit authorized by subsection 1, a taxpayer who intends to make a donation of money to a scholarship organization must, before making such a donation, notify the scholarship organization of the taxpayer's intent to make the donation and to seek the credit authorized by subsection 1. A scholarship organization shall, before accepting any such donation, apply to the Department of Taxation for approval of the credit authorized by subsection 1 for the donation. The Department of Taxation shall, within 20 days after receiving the application, approve or deny the application and provide to the scholarship organization notice of the decision and, if the application is approved, the amount of the credit authorized. Upon receipt of notice that the application has been approved, the scholarship organization shall provide notice of the approval to the taxpayer who must, not later than 30 days after receiving the notice, make the donation of money to the scholarship organization. If the taxpayer does not make the donation of money to the scholarship organization within 30 days after receiving the notice, the scholarship organization shall provide notice of the failure to the Department of Taxation and the taxpayer forfeits any claim to the credit authorized by subsection 1.

3. The Department of Taxation shall approve or deny applications for the credit authorized by subsection 1 in the order in which the applications are received.

4. Except as otherwise provided in subsection 5, the Department of Taxation may, for each fiscal year, approve applications for the credit authorized by subsection 1 until the total amount of the credits authorized by subsection 1 and approved by the Department of Taxation pursuant to this subsection ***and subsection 4 of NRS 363A.139*** is ~~[~~:

~~(a) For Fiscal Year 2015-2016, $5,000,000;~~

~~(b) For Fiscal Year 2016-2017, $5,500,000; and~~

~~(c) For each succeeding fiscal year, an amount equal to 110 percent of the amount authorized for the immediately preceding fiscal year.~~

~~➥]~~ ***$6,655,000.*** The amount of any credit which is forfeited pursuant to subsection 2 must not be considered in calculating the amount of credits authorized for any fiscal year.

5. In addition to the amount of credits authorized by subsection 4 for Fiscal Year 2017-2018, the Department of Taxation may approve applications for the credit authorized by subsection 1 for that fiscal year until the total amount of the credits authorized by subsection 1 and approved by the Department of Taxation pursuant to this subsection and subsection 5 of NRS 363A.139 is $20,000,000. The provisions of ~~[paragraph (c) of]~~ subsection 4 do not apply to the amount of credits authorized by this subsection and the amount of credits authorized by this subsection must not be considered when determining the amount of credits authorized for a fiscal year pursuant to ~~[that paragraph.]~~ ***subsection 4.*** If, in Fiscal Year 2017-2018, the amount of credits authorized by subsection 1 and approved pursuant to this subsection is less than $20,000,000, the remaining amount of credits pursuant to this subsection must be carried forward and made available for approval during subsequent fiscal years until the total amount of credits authorized by subsection 1 and approved pursuant to this subsection is equal to $20,000,000. The amount of any credit which is forfeited pursuant to subsection 2 must not be considered in calculating the amount of credits authorized pursuant to this subsection.

6. If a taxpayer applies to and is approved by the Department of Taxation for the credit authorized by subsection 1, the amount of the credit provided by this section is equal to the amount approved by the Department of Taxation pursuant to subsection 2, which must not exceed the amount of the donation made by the taxpayer to a scholarship organization. The total amount

of the credit applied against the taxes described in subsection 1 and otherwise due from a taxpayer must not exceed the amount of the donation.

7. If the amount of the tax described in subsection 1 and otherwise due from a taxpayer is less than the credit to which the taxpayer is entitled pursuant to this section, the taxpayer may, after applying the credit to the extent of the tax otherwise due, carry the balance of the credit forward for not more than 5 years after the end of the calendar year in which the donation is made or until the balance of the credit is applied, whichever is earlier.

8. As used in this section, "scholarship organization" has the meaning ascribed to it in NRS 388D.260.

Sec. 3. This act becomes effective upon passage and approval for the purpose of adopting regulations and performing any other administrative tasks that are necessary to carry out the provisions of this act, and on July 1, 2019, for all other purposes.

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Nevada Legislative Counsel Bureau, Legal Division, and that on the **27th** day of March, 2020, pursuant to NRCP 5(b), I served a true and correct copy of Intervenor-Defendant Nevada Legislature's Reply in Support of Motion for Summary Judgment, by means of the Eighth Judicial District Court's electronic filing system, directed to the following:

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/s/ Kevin C. Powers
An Employee of the Legislative Counsel Bureau

TAB 16

Electronically Filed
5/21/2020 4:17 PM
Steven D. Grierson
CLERK OF THE COURT

RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

FLOR MORENCY, Plaintiff, vs. STATE OF NEVADA - DEPARTMENT OF EDUCATION, Defendant.	CASE NO: A-19-800267-C DEPT. XXXII

BEFORE THE HONORABLE ROB BARE, DISTRICT COURT JUDGE
THURSDAY, APRIL 23, 2020

RECORDER'S TRANSCRIPT OF HEARING RE:
ALL PENDING MOTIONS

APPEARANCES:

For the Plaintiff(s):	JOSHUA A. HOUSE, ESQ., TIM KELLER, ESQ.
For the Defendant(s):	CRAIG A. NEWBY, ESQ.
For the Intervenor Defendant Nevada Legislature:	KEVIN C. POWERS, ESQ.

RECORDED BY: KAIHLA BERNDT, COURT RECORDER

Las Vegas, Nevada; Thursday, April 23, 2020

[Proceeding commenced at 1:32 p.m.]

THE LAW CLERK: All right, we're calling case number A800267 Flor Morency versus State of Nevada - Department of Education.

THE COURT: All right, well, good afternoon everyone. If you could make your appearances, please start with the Plaintiff's side.

MR. HOUSE: Hi, Your Honor, Joshua House for the Plaintiffs, joined by my colleague Timothy Keller, and we're also joined today by Flor Morency and Keysha Newell, two of the Plaintiffs in this case, whom I'm going to ask actually to turn their video off just so they -- they're not a distraction during the argument.

THE COURT: Okay. Anybody else for the --

MR. NEWBY: Craig Newby for Executive Defendants.

THE COURT: Oh, I missed that. Who's that, please?

MR. NEWBY: Craig Newby for the Executive Defendants.

THE COURT: All right.

MR. POWERS: Good afternoon, Your Honor, Kevin Powers, LCB Legal Division on behalf of the Intervenor Defendant Legislature.

THE COURT: Okay. Go ahead. Another -- I think there's another lawyer, or is that it?

MR. KELLER: Your Honor, Tim Keller on behalf of the Plaintiffs.

THE COURT: All right, we have Mr. House, Mr. Newby, Mr.

Powers, who else is there? Is that it?

MR. KELLER: Your Honor, Tim Keller is here, as well, for the Plaintiffs.

THE COURT: Okay. Okay. We've been conducting court by using the -- we call it BlueJeans for some reason, you know, of course the video system that we have. And so, we have just now some experience in dealing with this. I have to say that this mode of having court changes my way a little bit in that normally, when we have live court with lawyers in the courtroom, it seems to be, I think, easy or easier to be interactive with the attorneys, the questioning, the back-and-forth, that sort of thing. I think what we're getting to more and more in our department, given the world that we're living in and way we're having to conduct court, is we're putting probably more emphasis on the written documents, of course, still viewing some hearings as essential or necessary, such as this one.

But I guess what I'm really getting to is my normal way, if any of you have been around our court, I've been here a little bit more than nine years now, I typically start off by saying a number of things to put the case in context, and oftentimes, I will share preliminary thoughts that the Court has. I want to do some of that today, but I'm trying to tone a little bit of that down some given the way that we're doing these hearings now by video. So, I'm going to say a little bit, probably not as much as I would have said in the past.

I do want to let all the counsel know that, as a department, our department has quite a bunch of time and effort put into this hearing.

You know, I don't know how much it is, but you know, it wouldn't surprise me if it's more than ten hours just to get to this point. In addition, I do want you to know that between my Law Clerk and I, I have 19 pages of -- type-written pages of notes having to do with everything that was brought up in the pleadings. So, that's close to an all-time record for me, you know, a 19-page brief having to do with a motion hearing.

So, I want to just highlight some things that we have that we've gleaned from the paperwork and just sort of put things in context. There's a couple preliminary thoughts that I want to share, like I said. These preliminary thoughts are just that, they're preliminary. That doesn't mean that your activity in court doesn't mean anything, because of course it does. But I -- I've always, since I've been here, stylistically, if I draw certain conclusions based upon the facts and the law, I like to share that with people because you wouldn't know that unless I tell you.

So, with all that, let me go ahead and just sort of launch into some of this. Obviously, the lawsuit that we have here challenges the constitutionality of Assembly Bill 458 out of the 2019 legislative session. I think that became effective law in July of 2019. And by the way, if I say something that you think is incorrect, interrupt me, no problem being interrupted if you think I say something that's wrong or incorrect on the factual front.

Of course, this is a legislative scenario, again, resulting in this AB 458 and the law that the Governor signed regarding tax credits for the Nevada Educational Choice Scholarship Program. The Plaintiffs sort of come to this case in different, you know, individual camps but are all

together of course as Plaintiffs. They're parents -- the parents of scholarship recipient students, the Scholarship Funding Organization, and business donors that at the end of the day, this whole statutory scheme's designed to, I think, encourage participation from. So, that's the set of Plaintiffs.

And they do allege that Nevada incentivizes private donations to fund these, you know, K-12 scholarships to low-income families via tax credit program called, again, the Nevada Educational Choice Scholarship Program. And there's a little bit of a history, of course, that's now gone on over time having to do with the philosophy and the practical way this has worked over time, and this program or -- it's been revisited and the challenge comes, of course, because of what did happen in the 2019 legislative session.

2019 AB 458 essentially modifies NRS 363B.119(4). There was really no change in the process, so to speak, rather they -- the Legislature froze, I guess is one way you can say it, the amount at 6.655 million. In other words, they did away with, as I'm sure you all know, the prior Legislature in the prior program was a $5 million amount, I think, and then it was a -- but 10 percent increase annually, per year, but that provision was deleted in the AB 458 efforts.

And so, the Plaintiffs -- again, I've identified sort of the individual camps all coming together of the Plaintiff group, they want this Court, we're here in Department XXXII of the District Court, so me, to find that the law that resulted from the efforts of AB 458 is unconstitutional. And so, the mainline basis for that is -- does come, of

course, from the Nevada Constitution.

And so, the Nevada Constitution in Article 4 Section 18(2) talks about an affirmative vote of not fewer than two-thirds of the members elected to each House necessary to pass a bill which creates, generates, or increases any public revenue in any form, including but not limited to taxes, fees, assessments, rates, or changes in the computation bases for taxes, fees, assessments, and rates. We might refer to that affectionately as the supermajority requirement two-thirds, that talks about each House, of course, that's the Assembly and the Senate here in Nevada.

And the constitutional challenge focuses on the idea that -- and so, correct me if I'm wrong, as I understand it, the House -- the two-thirds was reached in the House but the Senate was one vote short of the -- what we might refer as the supermajority two-thirds. And so, it seems to be undisputed, by the way, that -- I mean, there's not a two-third passage, and so, the Plaintiffs, again, their position is that this type of effort by the Legislature, AB 458, would require the two-third majority, or as I call it, supermajority vote; it did not. And so, it's unconstitutional.

All right, so what can I share with you by way of any preliminary thoughts? I do have a few to share. I -- let's see what I want to share.

There was a lot in here about how statutes should be interpreted, both tax statutes and then just constitutionality in general as to statutory schemes. We've got a lot of notes on what the lawyers say about all that. Of course, the multitude of cases from other jurisdictions,

I have them all actually here and summarized. So, if any of the out-of-jurisdiction cases come up, I've got about five pages actually just on that alone, summarizing the cases from all the other jurisdictions. And that's probably a preview of what I'm going to say by way of a preliminary conclusion.

As far as reviewing constitutional issues, it seems to me the law is pretty clear as to a process a Court should use. And so, of course, that'd be the process I'd be using to decide this issue. The Court should look at the plain language of the provision. If the plain language is clear, then that's the end of the inquiry. If the provision is susceptible to two or more reasonable, not inconsistent interpretations, then we get into, of course, legislative history, public policy, and what have you to ascertain the intent of the Legislature or the intent of the law or the provision itself.

And so, I do want to share, perhaps, the first, more material preliminary conclusion is in looking at this I do think that the overall issue here, the word any, for example, the -- well, the statutory -- the constitutional provision itself, I think, is such that we should look at -- we do have to go beyond the plain language of the statute. In other words, I'm not sure that it's crystal clear. I think the good lawyering and the arguments here are enough to show that there's a reasonable dispute or disagreement as to what the intent and what the real effect of the constitutional provision is in this context.

So, I do think that we have to look at the history, the policy, the reason, and all the things behind the meaning that you might take

from the plain language of the statute. So, that's one of the things I think I have to at least tell you, and that gets into, you know, a number of areas, of course.

And then, the last thing is, there seemed to be -- well, there is, a dispute as to who has the burden here. And I think that that dispute between the parties as to who has the burden in the hearing and in the legal issue in general, I think that comes from, perhaps, the idea of a debate as to whether this is a tax provision or whether it's a constitutional provision and how those sort of intermix with each other by way of a area, philosophically, in law. You know, tax law or a constitutional -- a more overriding constitutional issue. The Plaintiffs seem to say that it's more of a tax issue, I think, and give us, you know, the visual communications, *Harrah's Operating Company* cases, and what have you.

I do want to share though, just as a preliminary thought, I disagree with that going into this. To me, the Plaintiffs are challenging the constitutionality of the statute, and I side -- just the preliminary thought going into the hearing, that I side more with the defense view as to the construct here that the idea is if you're challenging the constitutionality of a statute, there's a lot of law. *Cornellia, Castaneda, Déjà Vu Showgirls, Schwartz, List*, a number of cases that essentially lay out the idea that these statutes are presumed to be valid, and it's the challenging party's burden to show that statute's unconstitutional.

So, we can have argument on it, and I could take a different position, really. I just wanted to share though, and that's what I do, that I

think the Plaintiffs actually have the burden here to challenge the constitutionality -- in their challenge. So, with that, let me turn it over to the lawyers.

Please know, again, we've got a 19-page brief here, and I don't think there's any way I'll make a decision on this in court live at the end of the hearing. Normally, I do, probably statistically over time in our department, probably only between 3 and 5 percent of the cases go under advisement for a written order. But I can tell you, in this case, we're going to do a written, minute-style order for sure, just because there's too many moving parts to it. And I think the only way to lay out the decision of the Court has to be a comprehensive step-by-step set of findings and what have you. And so, I don't think there's any other way to do it, to be that organized. So, whatever the result is, it'll be a written order.

And again, I appreciate everything the lawyers have brought up, I have it all outlined here, well, at least 19 pages of outline, like I've said. But let me start, of course, with the Plaintiffs. We have the -- one group of Plaintiffs have this -- brought this in a summary judgment sort of mode, if you will. Then the various departments of the government have their own stylized summary judgment. And then, of course, Mr. Powers on behalf of the Nevada Legislature has an -- intervened, and then, departments or the Executives joined into the Legislature's motion.

So, the way it really sets up is you have the Plaintiffs, you know, against, if you will, the various departments and the Legislature. So, given that that's the set-up of it, let me just start with the Plaintiff's

side and that means Mr. House. Go ahead, Mr. House.

MR. HOUSE: Thank you, Your Honor. Just really quick, I want to first address some of those preliminary thoughts that you had on the burden. The Plaintiffs actually were not arguing that we didn't have the burden to establish unconstitutionality. We brought up those cases about tax statutes because there seemed to be some confusion on the Defendant's part on what AB 458 did. Did it raise revenue, did it not raise revenue, of the actual text of the tax statute?

That statute should be read with the Plaintiff's -- with all the interpretations favoring the Plaintiffs because they're taxpayers. Plaintiffs were not arguing that the constitutional provision should be read in our favor. It -- that can and only applies to tax statute. And that brings me to AB 458.

THE COURT: Right, you said --

MR. HOUSE: We do --

THE COURT: Pardon the interruption. I really will try to not do that so much. That's the other thing we're learning in doing these video hearings, I got to cut back on my interruptions.

But you said it -- I just want to let you know, you said it more eloquently than me. That's what I meant to say, so go ahead.

MR. HOUSE: Okay. And in so far as, we don't think there is any confusion about AB 458. We do think that it is crystal clear, not only that the constitutional provision covers this, but that AB 458 is a revenue-raising statute.

And in fact, it was so crystal clear that the Department of

Taxation, before this was passed, noted that this was going to be a revenue statute. And I'm sure that played some part in actually why the Legislature went and -- to the LCB to get a legal opinion in the first place, because they knew ahead of time this is the sort of bill that needs two-thirds votes. This was not a surprise to anyone.

It only -- only after not getting enough votes and forcing this through does the Department of Taxation now, in this Court, change its position and argue that, well, this is not really a revenue bill. And that change in position is simply not justified by the text of the bill. And you know, again, this was not a surprise.

The sponsor of AB 458 argued specifically, and I'm quoting here from his testimony to the Senate Revenue Committee, he said, "Every year, that 10 percent tax credit would otherwise be in the general fund." Again, he later says, "Every dollar for this program is a dollar we deplete for the general fund." And finally, he says, "I have been asked why if the program is so popular, we want to limit it. It's because we have an obligation to fund our budget responsibly." These are all straight from the sponsor in this Senate.

And so, it was no surprise to anyone at the time that this needed two-thirds votes. Again, it's only after it didn't get enough votes that it is now being argued by the Department of Taxation that this is not a revenue-raising bill. And again, going to actual revenue that is being raised by this bill, the Plaintiffs have shown that whether you look at it, at this bill, just for this year, where the Department of Taxation found that $665,000 would go missing for this fiscal year, or are you looking to the

years in the future where many millions are going to be missing? Again, it's clear the whole point of this bill was to put more money into the Nevada General Fund.

I understand this Court's position that -- or preliminary thought, I should say, that maybe it's not crystal clear that this type of revenue bill fits within the -- Nevada's provision. I would only point out that, you know, reading the Nevada provision, it's extremely broad. But even if you looked at what the proponent or the sponsor of the text of this constitutional provision, former Governor Gibbons, if you look at his thoughts on it when he was proposing it, it did include changes to existing taxes. It was not limited to the narrow, new tax formulation that we see in Defendant's briefs.

And just one more thought on that, the -- reading that provision broadly would put it kind of in the same box as many other states, which include tax credits or tax exemption repeals, Arizona, Louisiana, Florida, among them. So, it would not be unreasonable to read Nevada's provision that way, especially given how broad Nevada's provision is.

Those are my initial responses to the Court's preliminary thoughts, and I'm -- if the Court has any questions, I'd be happy to address them.

THE COURT: Well, it's a -- I think what they call this, like a 10,000-feet-style question. But AB 458 from, of course, the 2019 Legislature, Mr. House, does it create, generate, or increase public revenue consistent with the constitutional provision? I mean, that's

really the ultimate question. I just want to hear more about what you'd have to say about that.

MR. HOUSE: And absolutely, Your Honor. Again, I'll take the language straight from the fiscal note put out by the Department of Taxation on this, and this was cited in Plaintiff's motion on page 19. The Department of Taxation said, quote: the Department has reviewed the bill and determined that it would increase general fund revenue by $665,500 in fiscal year 2019-2020. That is -- end quote -- and that is for just this year.

And again, we provided a chart showing how much more money is going to be raised by this in the future. I believe it's on page -- it's -- I'm sorry, I thought I heard something, Your Honor. In any event, in Plaintiff's opposition, we provided a chart showing how many millions of dollars would be raised by AB 458 in the long run.

So, there was no question from before this time that before the bill was passed that this was going to be a revenue bill. This was exactly what everyone expected. It was exactly what the sponsor proposed the bill to do. AB 458 did not get enough votes, and then, it's only now that the Department of Taxation is arguing that it is not a revenue-raising bill.

Now, the Defendants bring up some arguments, for example, arguing that AB 458, you know, doesn't raise revenue because it makes certain -- there are certain parts of the Nevada fiscal policy that actually will be more efficient or that will spend less money as a result -- or spend more money, I should say, as a result of AB 458. And, the Defendants --

the problem with Defendant's reasoning is that they look at the constitutional provision and they think that it means some sort of net balance between expenditures and revenues, and if the net balance is positive, then it's revenue-raising. But that's actually not how you read the bill.

As we argued at the motion to dismiss stage, each bill should be analyzed separately. And the reason for that is that the constitutional provision says a bill that increases, or generates, or creates revenue. And looking at this bill and deciding whether this bill needs a two-thirds vote, looking at the bill means does the bill itself raise revenue. It's not some balancing act between all the other bills that were enacted in the same session, and balancing, you know, these bills spent money and these bills raised money, and what's the plus and minus, the over/under, it's just whether this bill raised money.

So, all the extra expenditures or efficiencies the Defendants quote in their briefs, those are irrelevant to the analysis here. What's relevant, it's a very simple question, and I'll turn to the -- I'll turn to just the text of the provision, it is -- you know, does the bill create, generate, or increase any public revenue, in any form? Here the puck -- here the public revenue is general fund revenue. Here the form is repealing tax credits. And again, we know from the Department of Taxation's fiscal note that this is going to boost general fund revenue. It hits all three points. And for that reason, AB 458 should have received a supermajority.

THE COURT: Okay, that's a pretty succinct statement of your

case, and it's exactly what I thought it would be from your pleadings and what have you, although again, I appreciate the way that you stated it here in court. Let me turn to the defense side. I don't really have a preference who goes first but maybe Mr. Newby.

MR. NEWBY: Thank you, Your Honor. I'm happy to go first in this instance. And first of all, I appreciate the Court's initial preliminary thoughts. I appreciate the clarification from opposing counsel regarding who bears the burden on the ultimate issue before the Court in this case, which is the constitutionality of the Legislature's actions in taxing AB 458.

Going to what has happened here, this is -- the AB 458 has not increased any Nevada taxpayer's burden in this state. Each taxpayer, who is subject to the modified business tax, is still subject to the same amount at the same rate as they were the year before and the year before that. It does not decrease the tax credits that are at issue here. It froze -- as the Court noted in preliminarily discussing this, it froze the amount from one fiscal year to another. It did not increase taxes, it did not decrease taxes. It's the same amount.

And then, in the context of what the Legislature did to close session, in a separate bill they added more than seven million dollars above the amount that Plaintiffs contend was mandated by statute passed in 2015 by a bare majority vote. They're -- it's mandated that they should receive an additional two million dollars' worth of credits this year. And there's nothing within the constitutional provision that pertains to tax credits or tax exemptions.

And every state that has a similar provision in terms of putting a supermajority limit on increasing or raising revenue has looked at this question and determined that eliminating exemptions or reducing credits, assuming for argument credits were reduced, for purposes of this argument, has determined that that does not violate the provisions for increasing revenue, such that it required a supermajority vote.

And there's no principal basis based on the text of these provisions why Nevada's provision pertaining to increasing revenue should be interpreted any differently by this Court, particularly given the deference the Legislature is entitled to if there are reasonable interpretations of this provision because the Legislature is the branch of government that's accountable to the people. And they are entitled subject to the narrow interpretation of limits on their legislative power because the people have the ability to stand up and disagree with the Legislature as the branch closest to the people relative to the Judiciary, relative to the Executive Branch, and say, we agree or we disagree.

I could keep going, but I would prefer to address any specific questions that the Court has. That --

THE COURT: All right, I -- let me ask you a question, Mr. Newby. It does seem to me there's a pretty credible argument from the Plaintiff's side that in the formulative stages of AB 58 [sic], you know, what legislators do, what lobbyists do, what people do to, you know, have ideas in the Legislature and go forward. It seems like there was some preliminary efforts put forth, you know, whether it was the Legislative Counsel Bureau opinions or, you know, other input or

opinions, it does seem to me like there was some effort put in with a view towards supermajority application, you know, the two-thirds idea. How do you reconcile that?

Does that matter at this point that there might have been some view -- earlier view that maybe we should all proceed if we're interested in AB 58 [sic], if we're a sponsor of it, if we're a proponent of it, if we're a legislator who wants to put their name behind it, you know, it just -- it seems to me there was some effort along those lines. How do you reconcile that?

MR. NEWBY: Your Honor, I mean, I'll first address what's in the record that's before this Court and I will defer generally to Mr. Powers as the attorney within --

THE COURT: Okay.

MR. NEWBY: -- the Legislative Counsel Bureau who prepared the memorandum. There's nothing in the record about whatever Counsel would say about people knew about Assembly Bill 458 or not. That isn't there.

That being aside, outside of what is in the record, and I just want to make that clear as we speak, there was -- the Governor proposed a budget that involved eliminating a potential readjustment in the modified business tax calculation as part of his budget. That was the subject of legislative discussion during times generally and is subject to a different lawsuit in the First Judicial District at this moment.

But in terms of people contemplating whether it applied specifically to this, I can't speak to it. There's nothing in the record that

says --

THE COURT: Okay.

MR. NEWBY: -- the Legislature knew it needed an opinion to address the issue directly before this Court. There's nothing there in terms of evidence either way, contemporaneous news, anything of that sort that's in the record. So, I'm just speculating based on reading the news during session last year, and I'm not sure that's an appropriate way to answer this.

THE COURT: Okay.

MR. NEWBY: But LCB generally prepares legal opinions for someone who asks for them. And the one that's at issue in this case was requested, as I understand it -- and I will defer to Mr. Powers on the specifics, was requested by the legislative leadership, both Republicans and Democrats. As to whether it pertained to this bill, I don't know. It's on -- some part of the memorandum is on point with this, but I just don't know the answer to that.

THE COURT: Okay, I appreciate that. That's probably a good segue to Mr. Powers, anyway. So, Mr. Powers, go ahead.

MR. POWERS: Thank you, Your Honor. For the record, Kevin Powers, chief litigation counsel, LCB Legal Division on behalf of the Intervening Defendant Nevada Legislature. I'll start with answering that specific question you asked Mr. Newby, and it's a two-part answer.

First, as a matter of politics, every sponsor of a bill would like to get every legislator from both Houses to vote in favor of it. Having a unanimous vote is always better for any legislative measure. However,

as this bill AB 458 went through the legislative process, there was opposition. It was clear that the bill was not going to pass unanimously in both Houses.

As a result, some of the legislators in opposition raised the issue of whether or not this bill would require a two-thirds vote. It was an issue that was not asked directly to the LCB in any other prior session on a bill like this. And so, as a result of our statutory duty to provide legal opinions to the Legislature, the LCB Legal Division responded to the request by leadership in both Houses. The majority and minority leadership in both Houses requested this LCB legal opinion, and this is when we did our initial research.

We -- obviously, as you could see from the 19-page brief that your staff provided you, there's a significant amount of case law on this subject. There is a significant amount of legal scholarship on this subject. There's a significant amount of history behind the two-thirds amendment that requires the supermajority.

So, we looked at all of that, and we analyzed it, we looked at what these types of bills do, and we concluded that this type of legislation would not require two-thirds vote in both Houses in order to pass because it was not a revenue-raising measure. In fact, this bill, AB 458, is a revenue-neutral measure. As the Court mentioned, it froze the amount of tax credits at 6.655 million, which it was on July 1st, 2018, which it is now on July 1st, 2019 when the bill became effective, they froze at that amount, and it will continue at that amount of 6.655 million in every other fiscal year unless a future Legislature were to change that.

So, this is not a revenue-raising measure, it's a revenue-neutral measure. In fact, the one law review article that the Plaintiffs cited and in support of their analysis of the broad scope of Nevada's two-thirds majority requirement, specifically says that a revenue-neutral measure would not be subject to a supermajority requirement. So, the only support they have is a law review article, and it supports our conclusion that a revenue-neutral measure doesn't require two-thirds.

If you look at the case law from the other jurisdictions, and obviously your staff and the Court has looked at that case law, there is no case directly on point that supports the Plaintiff's case. All of the case law from other jurisdictions concludes that tax exemptions and tax credits, when you reduce them, are not revenue-raising measures. They're not in the concept of the supermajority requirement that the voters approved when they approved these constitutional amendments in the '90s.

The goal was to stop increases in new taxes or raising existing tax rates or creating new taxes. Those were the goals to stop the Legislature from increasing the tax burden on the taxpayers without that supermajority support. But tax exemptions and tax credits were not part of that voter-approved initiative.

Now, the Plaintiffs mentioned that Arizona, Louisiana, and Florida in their constitutional provisions, they specifically say a supermajority is required for reductions in tax credits and tax exemptions. That's true. Those three constitutional provisions do. Some of those constitutional provisions though, two of them, Arizona

and Louisiana, were in effect before Assemblyman Gibbons drafted his supermajority requirement for Nevada.

Nevada could have easily included those requirements that tax credit reductions and tax exemption removals are subject to the two-thirds requirement, but Nevada's drafters of the supermajority requirement did not do that. The absence of that in Nevada's constitutional provision favors an interpretation that the drafters did not intend to include reductions in tax credits and tax exemptions within the constitutional requirement.

But we don't even need to get there, Your Honor, because this is a revenue-neutral measure. It doesn't change the amount of tax credits from one year to the next; it freezes them. What the Plaintiffs fail to realize is that under Nevada's Constitution, Article 9, the Legislature operates on a fiscal year basis. They create a budget for a two-year period, a biennium, where each fiscal year they set aside how much revenue will be collected and how much of that revenue will be expended.

And no one Legislature can control revenue collection and expenditures beyond the next biennium. Each Legislature only controls the two fiscal years in a biennium. Because this Legislature controls the current fiscal year biennium, that started July 1st, 2019 and will end on July 1st, 2021, before the future potential tax credit increases took effect, the Legislature changed the law and froze the tax credits at their current amount. So, it was purely revenue neutral.

The Plaintiffs want you to believe that the potential future tax

increases were an entitlement in the law. They were not because they had not become effective yet. No expenditure or revenue collection can occur and become effective until July 1st of the fiscal year where that expenditure or revenue collection will occur. So, in this case, those potential future increases in tax credits never became legally effective because the Legislature changed the law before they became legally affected and thereby froze the tax credits at 6.655 million.

So, if this were a revenue-generating measure, then they -- maybe there would be an issue about whether or not removing tax credits or decreasing tax credits requires a two-thirds. But this was a revenue-neutral measure. The tax credits stayed the same from July 1st, 2018 to July 1st, 2019 and will stay the same in the future. So, in the absence of any revenue issue, the two-thirds majority requirement simply doesn't apply.

Finally, Your Honor, as you mentioned, there's a reasonable dispute as to whether this bill fits within the language of the two-thirds supermajority requirement in Nevada. In those circumstances, the Nevada Supreme Court has made clear, most recently in the case of *Nevada Mining Association versus Erdoes*, that when the Legislature relies on the legal opinion from its legislative counsel, and that legal opinion comes to a reasonable conclusion, that the Legislature's entitled to deference in its counseled selection of a reasonable interpretation of a constitutional provision. That's exactly what happened here.

There is a reasonable dispute as to whether or not the two-thirds requirement applies to this bill. And under those circumstances,

the Legislature requested the legal opinion, LCB gave the legal opinion, and now the Legislature's entitled to deference in that counseled selection of its interpretation of the Nevada Constitution.

Thank you, Your Honor, I'm open for any questions the Court may have.

THE COURT: All right, thanks, Mr. Powers. And yeah, I do have the *Nevada Mining* case here. And it does seem pretty clear to me that if the Legislature acted on the Legislative Counsel Bureau's opinion, the Legislature's entitled to deference as you've said. And so, I have that, and I see it.

Okay, well, let me go back to the moving party and see if there's any last word from the Plaintiff's side. Mr. House?

MR. HOUSE: Thank you, Your Honor. Well, I'll start off right where Mr. Powers left off which is on that issue of deference.

And I think that staring straight in the face of the *Nevada Mining* case is the *Clean Water Coalition versus The M Resort* case. That was cited in Plaintiff's opposition on page seven, where that case involved -- and I believe Mr. Powers was probably pretty familiar with it -- it involved the same situation where the LCB actually provided an opinion to the Legislature about whether or not converting $62 million dollars of fees into a tax was contrary to a prohibition on local or special taxes. The LCB was asked for an opinion, it delivered an opinion, and the Nevada Supreme Court unanimously reversed because the plain text of the Constitution was just so clearly against the LCB's opinion.

And in fact, the actual Nevada Supreme Court opinion

cautions District Courts to quote -- from “extending unqualified deference to the Legislature’s lawmaking authority”. In other words, they are cautioning District Courts specifically against relying on LCB opinions, especially where, as in this case, the LCB opinion didn’t actually address the question presented. The LCB opinion, if you read it, it is very much concerned with whether this is a change in a computation base. This case has nothing to do with computation bases. It has to do with whether or not this raises revenue. AB 458 raises revenue.

And this brings me to my second point, which is there’s this argument that it maintains or freezes revenue at whatever it was the day before the end of last fiscal year. The problem with this argument, Your Honor, is that, in that case, there would be no such thing as a tax raise ever because most tax raises are passed to go into effect in the following year. The Legislature’s usually not passing something in May to go into effect in May. It’s passing something to go into effect the next fiscal year.

And reading the bill the same way as the Defendants want to read it, they basically would say, well, because no Legislature can actually be bound unless it does something within the same fiscal year, it will never be raising taxes. And therefore, this constitutional provision would never apply. And that would actually obviate the entire purpose of this provision which was to make it hard for the Legislature to pass new revenue bills.

And the -- then, it was brought up that this was not a revenue bill under the precedence in other states. And that’s actually -- that’s

patently false, as well. If you look at Oregon and Oklahoma, for example, they clearly say that bills that repeal tax exemptions are considered bills that raise revenue. Those Courts have two-part tests. Anything under its constitution concerning a revenue bill must both raise revenue, as well as look like a new tax.

Now, it was -- across the board, states have said repealing tax exemptions or repealing tax credits raise revenue. That is uncontroverted, that applies in every case that's been decided. It is only when you get to the second part of the test, which concerns whether it looks like a new tax that the tax credit repeals in those states were not considered revenue-raising.

But that's irrelevant here. There's nothing in Nevada's provision that requires it to look like a new tax. It just simply asks, is it a bill that raises any public revenue in any form? And in that sense, that's why Nevada's provision isn't like Arizona's or Florida's where they have a specific list of things. Nevada's is the broadest. It says, any form, any public revenue.

The Nevada -- the drafters of Nevada's provisions didn't want, apparently from the text, to limit it to a particular list. They wanted it to cover everything. And it's -- it would go against the intent of the provision to say, well because they wanted everything, they get a small, narrow subset. That's simply not how drafting works.

They wanted something broader than Arizona, broader than Florida, broader than Louisiana, and it would go against their intentions if you then say, well because you didn't list everything like those other

states, you actually get a smaller one. They were specifically going for a larger one.

And one last point is on whether this would be one Legislature binding another. And it wouldn't be one Legislature binding another. It would be the Constitution binding this Legislature. This constitutional provision says that two-thirds supermajority was needed in the Senate in order for this bill to become a valid law. That's not one Legislature binding a future Legislature, that's the Constitution binding this Legislature and enforcing rules on how the Legislature passes certain bills.

So, in sum, this was a revenue bill. It raised revenue in this exact fiscal year, 2019-2020. It raised revenue in future fiscal years. It's as a result of AB 458 that my clients have lost scholarships and that my business clients will be paying more in taxes. For all those reasons, this is a revenue bill that should have received a supermajority vote.

And I'll happily answer any of the Court's questions.

THE COURT: Well, I don't have any other questions, but does anybody else have anything to add? All right.

MR. POWERS: Thank you, Your Honor. Again, Kevin Powers for the record, chief litigation counsel, LCB Legal Division on behalf of the Nevada Legislature.

The whole premise behind the Plaintiff's arguments is that these tax credits were somehow repealed and brought down to zero or reduced from their prior level. They weren't. They were kept the same.

In the legislative history that the Plaintiffs mentioned earlier,

the primary sponsor of the bill said that the measure provides that the amount of credits is 6.655 million, which it is currently. And the sponsor also said he wants to clarify what AB 458 does not do. It does not get rid of the Opportunity Scholarship Program. Instead, it keeps it at its current existing level.

There is no revenue effect. The amount of credits that a taxpayer could seek before the measure is the same that the amount of tax credits that the taxpayer can seek after the measure. It's a complete revenue-neutral measure.

THE COURT: Okay.

MR. POWERS: The fact that there was potential future increases doesn't change that fact.

And finally, with the Plaintiff's doomsday scenario where we're arguing that our logic would mean that the two-thirds majority requirement would never apply is simply not true. If you look at the LCB's opinion, we lay out when we believe a two-thirds would require -- be required. And that's when a bill actually increases a tax rate from one fiscal year to the next or actually changes a computation base from one fiscal year to the next. This bill did neither of those things. The amount of credits before were the same as the amount of credits after. That's revenue neutral.

If the Legislature passes a bill that takes effect on July 1st after the session, and that bill actually increases a tax rate, or actually changes a computation base, then yes, the two-thirds would be required, and the Legislative Counsel Bureau has provided that opinion to the

Legislature repeatedly. That's not what happened here. This was revenue neutral. The two-thirds requirement wasn't applicable. The Legislature sought the advice of counsel, there's reasonable dispute as to meaning of this provision, and the Legislature, therefore, is entitled to deference in its counseled selection.

Thank you, Your Honor.

THE COURT: All right, any --

MR. HOUSE: Your Honor, I just have a response.

THE COURT: Sure, go ahead.

MR. HOUSE: I just have a quick response to that, okay?

THE COURT: Yeah.

MR. HOUSE: Just a very quick response, most of this was argued in the briefs, especially the things about computation bases, but I just want to say that it simply isn't the truth that funds haven't disappeared this year. Funds have disappeared, that's why we're in court, my clients have lost scholarships, my business -- the businesses I represent have fewer tax credits that they're able to get this year. This was not a theoretical future increase; this was something that impacted them in this exact year and money is now missing that wasn't on July 1st.

Thank you.

THE COURT: All right, Mr. House, thank you. And of course, everyone, like I said, we'll take the matter under advisement. You know, we have more time, at least I do, I don't know about my Law Clerk, but we have more time now because there's no jury trials for the foreseeable future. So, I would expect an order within a week or two that decides

this and I hope in a comprehensive way that's understandable for everyone.

And you know, it's been interesting doing the video hearings. I appreciate, you know, that you all participated, of course, in this way, the way you did. It's always interesting to me though to see the background, you know -- I mean, we've had lawyers with dogs, lawyers with family photos. And so, I guess it's no surprise, Mr. Powers, that you -- on behalf of the Nevada Legislature, you've got all the statute books right behind you. That was pretty good.

MR. POWERS: All available from the State Printing Office at a reasonable price.

THE COURT: All right, you all take care, and stay safe.

MR. NEWBY: Thank you, Your Honor.

THE COURT: Okay.

MR. POWERS: Thank you.

MR. HOUSE: Thank you, Your Honor.

THE COURT: Okay. Off the record.

[Proceeding concluded at 2:23 p.m.]

* * * * * * *

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.

Kaihla Berndt
Court Recorder/Transcriber

TAB 17

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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

	Voluntary Dismissal	X	Summary Judgment
	Involuntary Dismissal		Stipulated Judgment
	Stipulated Dismissal		Default Judgment
	Motion to Dismiss by Deft(s)		Judgment of Arbitration

Case Number: A-19-800267-C

Introduction.

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

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

The parties submitted this action to the Court on the following motions: (1) the Plaintiffs' Motion for Summary Judgment; (2) the Executive Defendants' Motion for Summary Judgment; (3) Intervenor-Defendant Nevada Legislature's Motion for Summary Judgment; and (4) the Executive Defendants' Joinder to Intervenor-Defendant Nevada Legislature's Motion for Summary Judgment. The Court also heard oral arguments on the motions on April 23, 2020. After a review of the pleadings, motions and exhibits and the oral arguments at the hearing, and for the reasons set forth in this order, the Court FINDS that the Nevada Supermajority Provision does not apply to AB 458 and the 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; and (3) FINAL JUDGMENT is entered in favor of all Defendants as a matter of law on all causes of action and claims for relief.

Factual and Procedural Background.

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

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 organizations 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. But the amount these employers can donate in scholarships and receive as a tax credit is capped by statute.

This scholarship program was established by the 2015 Nevada Legislature. Assembly Bill No. 165, 2015 Nev. Stat., ch. 22, at 85-89. The 2015 Nevada Legislature set a cap on the total amount of scholarship credit the employers can claim as a tax credit on a first come, first served 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" because it is codified in subsection 4 of NRS 363A.139 and 363B.119.

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

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

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. The Nevada Assembly passed AB 458 by a vote of two-thirds of all the members elected to the Assembly. *Assembly Daily Journal*, 80th Sess., at 90 (Nev. Apr. 16, 2019). However, although the Nevada Senate passed AB 458 by a vote of more than a majority of all the members elected to the Senate, the vote in the Senate was fewer than two-thirds of all the members elected to the Senate. *Senate Daily Journal*, 80th Sess., at 28 (Nev. May 23, 2019).

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 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 tax credits applicable to existing state taxes. Per its May 8, 2019 letter, the LCB opined that the Nevada Supermajority Provision does not apply to a bill in either of such events.

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

and filed an Answer on October 10, 2019. The 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 the 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 from AB 458.

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

Parties' Main Arguments.

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

The Executive Defendants disagree with this interpretation. They argue that AB 458 should be read together with SB 551, because together both bills modify the scholarship credit statute, albeit different subsections. The Executive Defendants argue that, 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 Executive Defendants argue that the combined effect of AB 458 and SB 551 resulted in an increase to the total amount of available tax credits for FY 2019-2020 and FY 2020-2021 than the amount that was previously available. The Executive Defendants focus on the "creates, generates, or increases" phrase found in the Nevada Supermajority Provision and argue that since AB 458 only affects the amount of tax credits available, the MBT and its rate structure are not affected. Thus, they argue that the Nevada Supermajority Provision is not implicated. Furthermore, the Executive Defendants call for a narrow interpretation of the Nevada Supermajority Provision based on its history and cases from other states interpreting their respective supermajority provisions contained in their respective state constitutions. Lastly, the Executive Defendants argue that the Nevada Legislature is entitled to deference in its constitutional construction, citing *Nev. Mining Ass'n v. Erdoes*, 117 Nev. 531, 540, 26 P.3d 753, 758 (2001).

The 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 the amount legally in effect before the bill was passed. Similar to the Executive Defendants' argument, the Nevada Legislature also focuses on the phrase "creates, generates, or increases" found in the Nevada Supermajority Provision, as well as the phrase "computation bases" in that constitutional provision. Because AB 458 does not bring into existence, produce or enlarge any public revenue in any form or change the MBT's existing tax formula—which consists of a number (wages paid by certain employers) that is multiplied by a tax rate or from which a percentage is calculated—the 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, the Nevada Legislature argues that the Nevada Supermajority Provision is still not applicable because the bill does not modify the existing "computation bases" used to calculate the underlying MBT; rather, AB 458 merely changed or reduced the total amount of tax credits available

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

Is 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. The parties agree that there is little dispute over the facts and that the main dispute is the question of law regarding 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.

The Plaintiffs cite to *Shetakis Distrib. Co. v. State, Dep't of Taxation*, 108 Nev. 901, 839 P.2d 1315 (1992), *State, Dep't of Taxation v. Visual Commc'ns, Inc.*, 108 Nev. 721, 836 P.2d 1245 (1992), and *Harrah's Operating Co. v. State, 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, the Plaintiffs claim that the Defendants have the burden of proof. The Court cannot agree. The central question in this case is the constitutionality of AB 458. There is a long line of cases which 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, 382 P.3d 886 (2016); *Cornella v. Justice Court*, 132 Nev. 587, 377 P.3d 97 (2016); *Deja Vu Showgirls v. Nev. Dep't of Taxation*, 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, the Court "must start with the presumption in favor of

constitutionality, and therefore [the Court] 'will interfere only when the Constitution is clearly violated.'" *Schwartz*, 132 Nev. at 745, 382 P.3d at 895 (quoting *List*, 99 Nev. at 137, 660 P.2d at 106). 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, 943 n.20, 142 P.3d 339, 347 n.20 (2006). Although the Plaintiffs object to *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." *Nev. Mining*, 117 Nev. at 540, 26 P.3d at 758. The Plaintiffs cite to *Clean Water Coal. v. The M Resort, LLC*, 127 Nev. 301, 255 P.3d 247 (2011), for the proposition that the Nevada Supreme Court limited the application of *Nev. Mining*. However, the *Clean Water Coal.* case did not expressly overturn, or even cite to *Nev. Mining*. It did caution against "unqualified deference" to the Legislature, *Clean Water Coal.*, 127 Nev. at 309, 255 P.3d at 253, but it did not overturn *Nev. Mining's* rule that the Nevada Legislature is entitled to deference in its "reasonable construction of the [constitutional] provision." *Nev. Mining*, 117 Nev. at 540, 26 P.3d at 758.

Thus, *Nev. Mining* is controlling and if the Court finds that both the Plaintiffs' and the 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 in its reasonable construction of the Nevada Supermajority Provision over the Plaintiffs' reasonable interpretation.

Does AB 458 Increase Revenue?

The Executive Defendants urge the Court to consider AB 458 in conjunction with SB 551 based on their combined effect, which indisputably would increase the amount of tax credits available under subsections 4 and 5 of NRS 363A.139 and 363B.119. Thus, the Nevada Supermajority Provision would not be applicable. The Executive Defendants argue that such an 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 AB 458 in conjunction with SB 551 to gauge the intent of the 2019 Nevada Legislature. As the 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, 686, 765 P.2d 1162, 1163-64 (1988). Thus, AB 458 must be reviewed separately and on its own.

The Court notes that the 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, the Plaintiffs argue that AB 458 increases revenue. The 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 FY 2019-2020 on July 1, 2019, and the commencement of each fiscal year thereafter.

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 provisions 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, 254-58, 21 P.3d 628, 631-33

(2001). Prior to the passage of AB 458, the Department of Taxation was authorized for FY 2018-2019 to approve subsection 4 scholarship credit up to $6.655 million, and that amount would have increased by 10% per annum for subsequent FYs. When the 2019 Nevada Legislature passed AB 458, the future 10% increases in the subsection 4 scholarship credit were not yet legally operative and binding because they would not lawfully go into effect and become legally operative and binding until July 1, 2019, the beginning of FY 2019-2020. Consequently, 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 that AB 458 does not increase revenue. Thus, the Nevada Supermajority Provision does not apply to AB 458, and the Defendants are entitled to summary judgment as a matter of law under NRCP 56. However, in the alternative, even if the Court were to find that AB 458 increases revenue, this finding would not change the ultimate outcome of the Court's decision, and the Defendants are still entitled to summary judgment as a matter of law under NRCP 56. For the reasons set forth below, the Court FINDS that the 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.

In *Guinn v. Legislature*, 119 Nev. 460, 471, 76 P.3d 22, 29 (2003), the Nevada Supreme Court ruled that, 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 must look to the provision's history, public policy, and reason to determine what the votes intended. *Miller v. Burk*, 124 Nev. 579, 590, 188 P.3d 1112, 1119-20 (2008); *Landreth v. Malik*, 127 Nev. 175,

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

In the present matter, the Court cannot find that the plain reading of the Nevada Supermajority Provision is unambiguous in this context. The Plaintiffs focus on the phrase "any public revenue in any form" to argue that a bill which has the effect of raising revenue is subject to the Nevada Supermajority Provision. However, both the Executive Defendants and the Nevada Legislature instead focus on the phrase "creates, generates, or increases," and the phrase "computation bases," to argue that a bill which does not impose new taxes or increase existing taxes by changing computation bases, such as tax rates, 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. *Miller*, 124 Nev. at 590, 188 P.3d at 1119-20.

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

In his legislative testimony on AJR 21 in 1993, 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. *Legislative History of AJR 21*, *supra* (Hearing on AJR 21 before Assembly Comm. on Taxation, 67th Leg., at 11-13 (Nev. May 4, 1993)). 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." *Id.* However, the Nevada Supermajority Provision "would not impair any existing revenues." *Id.* Thus, in *Guinn*, the Nevada Supreme Court concluded that the legislative intent of the Nevada Supermajority Provision "was intended to make it more difficult for the Legislature to pass new taxes." *Guinn*, 119 Nev. at 471, 76 P.3d at 29.

Because the Nevada Supermajority Provision was modeled after supermajority provisions in other states, under *Advanced Sports Info. v. Novotnak*, 114 Nev. 336, 340, 956 P.2d 806, 809 (1998), it would be prudent for the 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, 763, 32 P.3d 1263, 1269 (2001).

Arizona's supermajority provision is found in its Constitution, Article 9, Section 22, and it requires that a two-thirds majority in each House of the Arizona Legislature is necessary to pass "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 which eliminates or reduces a tax credit, such as the one found in AB 458. Thus, had AB 458 been an Arizona bill, then Arizona's supermajority provision would be applied.

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

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

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

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

Louisiana's supermajority provision is found in its Constitution, Article 7, Section 2, and it mandates a supermajority of two-thirds in each House of the Louisiana Legislature for "[t]he levy of a new tax, an increase in an existing tax, or a repeal of an existing tax exemption." In a challenge under Louisiana's supermajority provision, the Louisiana Court of Appeals reviewed the constitutionality of legislation which suspended an existing tax exemption for sales of steam, water, electric power or energy and natural gas for a period of 1 year, but which failed to pass with a supermajority. The Louisiana court ruled that the suspension was a temporary delay and that the legislation did not repeal the law authorizing the existing tax exemption. *La. Chem. Ass'n v. State ex rel. La. Dep't of Revenue*, 217 So.3d 455, 462-63 (La. Ct. App. 2017), *writ of review denied*, 227 So.3d 826 (La. 2017). The 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

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

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

> HB 2433 merely revokes a portion of that special exemption from sales tax such that car buyers now receive only a partial exemption from sales tax, rather than the complete 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.

Id. at 1156.

Although the opponents of the bill argued that it was a "revenue bill" under Oklahoma's supermajority provision because the people have to pay more in taxes without the exemption, the Oklahoma court rejected that argument, stating 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. at 1158.

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

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

Under this two-part test, the Oregon Supreme Court found that bills which assess a fee for a specific purpose are not bills for raising revenue even though they collect or bring money into the treasury. *Id.* The Oregon Supreme Court also found that even though a bill eliminated a tax exemption for foreign municipal corporations and brought money into the state treasury, the bill did 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. Or. Dep't of Revenue*, 357 P.3d 979, 985-88 (Or. 2015).

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

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

Although the Plaintiffs argue that the Nevada Supermajority Provision is uniquely broad and they focus on the word "any" and the meaning given to that term 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 "[a]ny revenue bill." Okla. Const. art. 5, § 33(D). 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 suggested by the Plaintiffs, it would mean that any revenue increases resulting from Nevada's population and business growth would also require invoking the Nevada Supermajority Provision.

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

Conclusion, Order and Judgment.

The Court FINDS that the Nevada Supermajority Provision does not apply to AB 458 and the 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

Submitted by:
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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.	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.

PLAINTIFFS' NOTICE OF APPEAL

Notice is hereby given that Plaintiffs Flor Morency; Keysha Newell; Bonnie Ybarra; AAA Scholarship Foundation, Inc.; Sklar Williams PLLC; and Environmental Design Group, LLC, appeal to the Supreme Court of Nevada from the Order Granting Summary Judgment in Favor of All Defendants entered in this action on May 20, 2020.

DATED this 29th day of May, 2020.

By */s/ Joshua A. House*

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Institute for Justice, and that on the 29th day of May, 2020, I caused to be served, via the Court's Tyler electronic filing service, a true and correct copy of foregoing **NOTICE OF APPEAL** to the following parties:

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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

NOTICE OF ENTRY OF ORDER

TO ALL PARTIES AND THEIR COUNSEL, please take notice that: (1) an Order Granting Summary Judgment in Favor of All Defendants was approved and signed by the Court on May 20, 2020, and electronically filed with the Clerk on that same date; and (2) a copy of the Order is attached hereto.

DATED: This **1st** day of June, 2020.

Respectfully submitted,

By: /s/ Kevin C. Powers

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Nevada Legislative Counsel Bureau, Legal Division, and that on the **1st** day of June, 2020, pursuant to NRCP 5(b), I served a true and correct copy of Notice of Entry of Order Granting Summary Judgment in Favor of All Defendants, by means of the Eighth Judicial District Court's electronic filing system, directed to the following:

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/s/ Kevin C. Powers
An Employee of the Legislative Counsel Bureau

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Institute for Justice, and that on the 10th day of July, 2020, I caused to be served, via the Court's electronic filing service, a true and correct copy of the foregoing **JOINT APPENDIX, VOLUME IV** to the following parties:

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