IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Appellants,

vs.

THE 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; MELANE YOUNG, IN HER OFFICIAL CAPACITY AS THE EXECUTIVE DIRECTOR AND CHIEF ADMINISTRATIVE OFFICER OF THE DEPARTMENT OF TAXATION; AND THE LEGISLATURE OF THE STATE OF NEVADA,

Respondents.

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Case No. 81281

Appeal from Eighth Jud. Dist. Court, Clark County, Nevada, Case No. A-19-800267-C

RESPONDENT NEVADA LEGISLATURE'S ANSWERING BRIEF

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ROUTING STATEMENT

For purposes of appellate assignment, this case should be heard and decided by the Supreme Court under NRAP 17(a) and should not be assigned to the Court of Appeals under NRAP 17(b). The principal issues raised by this case present questions of state constitutional law that are of first impression in Nevada under NRAP 17(a)(10) and are of statewide public importance under NRAP 17(a)(11) regarding the Legislature's reasonable interpretation of the two-thirds majority requirement in Article 4, Section 18(2) of the Nevada Constitution, which provides that an affirmative vote of not fewer than two-thirds of the members elected to each House of the Legislature is necessary to pass a bill which creates, generates or increases any public revenue in any form.

STATEMENT OF THE ISSUES

This case involves a state constitutional challenge to Assembly Bill No. 458 (AB 458) of the 2019 legislative session. 2019 Nev. Stat., ch. 366, at 2295-99.[1] AB 458 made statutory amendments to the amount of potential tax credits that the Department of Taxation would have been authorized to approve under the Nevada Educational Choice Scholarship Program in future fiscal years pursuant to NRS 363A.139(4) and 363B.119(4). 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. By eliminating those potential future tax credits before they became legally operative and binding, the Legislature did not change—but maintained—the existing legally operative amount of tax 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.

Nevertheless, the Plaintiffs alleged in their complaint that AB 458 was a bill which created, generated or increased public revenue and that the Legislature passed AB 458 in violation of the two-thirds majority requirement in Article 4,

[1] AB 458 is reproduced in the addendum to this answering brief.

Section 18(2) of the Nevada Constitution (two-thirds requirement), which provides that an affirmative vote of not fewer than two-thirds of the members elected to each House of the Legislature is necessary to pass a bill which creates, generates or increases any public revenue in any form.

The principal issue of state constitutional law in this case is whether, based on the Legislative Counsel's legal opinion interpreting the two-thirds requirement, contemporaneous extrinsic evidence of the purpose and intent of the two-thirds requirement, and cases from other states interpreting similar supermajority requirements, 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 tax credits available under NRS 363A.139(4) and 363B.119(4) 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.

INTRODUCTION

Respondent 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 its answering brief. The Legislature asks this Court to affirm the district court's order granting summary judgment in favor of the State on all causes of action and claims for relief alleged in the Plaintiffs' complaint. (*JA4:00542-58.*)[2]

The district court correctly determined that the two-thirds requirement did not apply to AB 458 because "AB 458 froze the subsection 4 scholarship credit amount at $6.655 million and thus, it did not modify the overall revenue." (*JA4:00550-51.*) The district court also correctly determined that, based on contemporaneous extrinsic evidence of the purpose and intent of the two-thirds requirement and case law interpreting the supermajority provisions of other states, the two-thirds requirement "does not apply to any bill that repeals, reduces or freezes existing tax credits, as is the case in AB 458." (*JA4:00556-57.*) Finally, the district court correctly determined that "the Nevada Legislature's interpretation [of the two-thirds requirement] is reasonable, even if the Court does not agree with the wisdom of the Nevada Legislature. Thus, the Nevada Legislature is entitled to

[2] Citations to "*JA*" are to volume and page numbers of the joint appendix.

deference in its reasonable construction of the [two-thirds requirement] over the Plaintiffs' reasonable interpretation." (*JA4:00549.*) Accordingly, because the district court correctly determined that the two-thirds requirement did not apply to AB 458, this Court should affirm the district court's order granting summary judgment in favor of the State on all causes of action and claims for relief alleged in the Plaintiffs' complaint.

STATEMENT OF THE CASE AND FACTS

I. AB 458 and its statutory amendments to the Modified Business Tax (MBT) and certain potential future tax credits.

Under NRS Chapters 363A and 363B, the Department of Taxation collects payroll taxes that are imposed on certain financial institutions, mining companies and other business entities that engage in business activities in Nevada. These payroll taxes are more commonly known as the Modified Business Tax or MBT. See Educ. Initiative PAC v. Comm. to Protect Nev. Jobs, 129 Nev. 35, 51 (2013).

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 potential 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 AB 458's passage, 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% 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.

II. In passing AB 458, the Legislature acted on the Legislative Counsel's legal opinion interpreting the two-thirds requirement.

During the 2019 legislative session, members of the Majority and Minority Leadership in both Houses made requests under NRS 218F.710(2) for the Legislative Counsel to give a legal opinion concerning the applicability of the two-thirds requirement to potential legislation.[3] On May 8, 2019, the Legislative Counsel provided the requested legal opinion. (*JA3:00255-78.*)

[3] At the time, NRS 218F.710(2) provided: "Upon the request of any member or committee of the Legislature or the Legislative Commission, the Legislative Counsel shall give an opinion in writing upon any question of law, including existing law and suggested, proposed and pending legislation[.]" During the 32nd Special Session, the Legislature amended NRS 218F.710(2), but those amendments did not change the authority of the Legislative Counsel to give an opinion in writing upon any question of law. Assembly Bill No. 2, 2020 Nev. Stat., 32nd Spec. Sess., ch. 2, § 22, at 16 (effective Aug. 2, 2020).

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. (*JA3:00255*.) 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. (*JA3:00261*.) After discussing and analyzing these authorities, the Legislative Counsel provided the Legislature with the following interpretation of the two-thirds requirement:

> [B]ased 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.

(*JA3:00274.*)

Thus, in passing 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 Ass'n v. Erdoes, 117 Nev. 531, 540 (2001).

III. The Plaintiffs' state constitutional claims and the proceedings in the district court.

On August 15, 2019, the Plaintiffs filed a complaint challenging the constitutionality of AB 458. (*JA1:00001.*) The Plaintiffs consist of: (1) parents of students who have received scholarships under the scholarship program; (2) a scholarship-funding organization registered with the Department of Education under the scholarship program; and (3) businesses that have donated to registered scholarship-funding organizations and received tax credits under the scholarship program. (*JA1:00008-15.*)

In their complaint, the Plaintiffs alleged that AB 458 was a bill which created, generated or increased public revenue and that the Legislature passed AB 458 in violation of the two-thirds majority requirement 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. (*JA1:00001, 7-8, 15.*) The

Plaintiffs asked for a declaration that AB 458 was unconstitutional in violation of Article 4, Section 18(2), and the Plaintiffs also asked for an injunction against its future enforcement. (*JA1:00015-16.*)

The Plaintiffs filed their complaint against the State of Nevada and several state agencies and officers of the executive branch charged with administering the tax credits and the scholarship program (Executive Defendants). The Executive Defendants consist of 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. (*JA1:00005-6.*) On October 9, 2019, the district court granted the Legislature's motion to intervene as an Intervenor-Defendant to defend the constitutionality of AB 458. (*JA1:00030-31.*)

On December 27, 2019, the district court denied the Executive Defendants' motion to dismiss the complaint. (*JA1:00049-54.*) The district court determined that the Plaintiffs had standing to bring their state constitutional claims and that the claims were ripe for adjudication. (*JA1:00052-54.*) However, the district court reserved ruling on the merits of the claims and directed the parties to brief the merits on motions for summary judgment. (*JA1:00053-54.*)

On February 14, 2020, the Plaintiffs, the Executive Defendants and the Legislature each filed motions for summary judgment. (*JA2:00062-81;*

JA2:00106-18; JA3:00214-43.) On April 23, 2020, the district court held a hearing and received oral arguments from the parties on the motions for summary judgment. (*JA4:00513-41.*) On May 20, 2020, the district court entered its order granting summary judgment in favor of the State on all causes of action and claims for relief alleged in the Plaintiffs' complaint. (*JA4:00542-58.*)

IV. The district court's summary-judgment order.

In its summary-judgment order, the district court found that the rule of construction in Nev. Mining was applicable, and that if the district court found that both the Plaintiffs' and the Legislature's interpretations of the two-thirds requirement were reasonable, but inconsistent or contradictory, the district court must give deference to the Legislature's reasonable interpretation. (*JA4:00549.*) The district court determined that "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." (*JA4:00549.*)

The district court also determined that AB 458 did not increase public revenue. (*JA4:00550-51.*) The district court found that before the passage of AB 458, the Department of Taxation was authorized for Fiscal Year 2018-2019 to approve subsection 4 credits up to $6.655 million, and that the amount of

subsection 4 credits would have increased by 10% per annum at the beginning of subsequent fiscal years. (*JA4:00551*.) However, the district court found that when the Legislature passed AB 458 during the 2019 legislative session, the future 10% increases in the subsection 4 credits 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 Fiscal Year 2019-2020, and the beginning of each fiscal year thereafter. (*JA4:00551*.) Consequently, the district court determined that "AB 458 froze the subsection 4 scholarship credit amount at $6.655 million and thus, it did not modify the overall revenue." (*JA4:00551*.) Therefore, the district court concluded that the two-thirds requirement did not apply to AB 458 because the bill did not increase public revenue. (*JA4:00551*.)

In the alternative, the district court also concluded that even if it were to find that AB 458 increased public revenue, the district court would still conclude that the two-thirds requirement did not apply to AB 458 because the district court determined that the two-thirds requirement "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." (*JA4:00551*.) After reviewing contemporaneous extrinsic evidence of the purpose and intent of the two-thirds requirement and case law interpreting the supermajority provisions of other states, the district court concluded 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." (*JA4:00556-57.*)

Accordingly, because the district court concluded that the two-thirds requirement did not apply to AB 458, the district court entered its order granting summary judgment in favor of the State on all causes of action and claims for relief alleged in the Plaintiffs' complaint. (*JA4:00557-58.*)

SUMMARY OF THE ARGUMENT

The Legislature could reasonably conclude that AB 458 was not subject to the two-thirds requirement because the actual effect of the bill did not raise or increase public revenue in any form and, in fact, did not alter public revenue at all, which was the Legislature's clear intent when it passed AB 458. The Plaintiffs attempt to ignore the actual effect of the bill by arguing that AB 458 raised or increased public revenue because it eliminated potential future increases in subsection 4 credits in future biennia. 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.

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. Consequently, based on the actual effect of the bill, 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, "the Legislature is entitled to deference in its counseled selection of this interpretation." Nev. Mining, 117 Nev. at 540.

Furthermore, 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 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 two-thirds requirement—while clearly omitting any references to changes in tax credits—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 MBT, the Legislature could reasonably conclude that 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."

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. In passing AB 458, the Legislature

acted on the Legislative Counsel's legal opinion interpreting the two-thirds requirement in light of that contemporaneous extrinsic evidence and case law, and "the Legislature is entitled to deference in its counseled selection of this interpretation." Nev. Mining, 117 Nev. at 540.

ARGUMENT

I. Standards for reviewing the district court's summary-judgment order and Plaintiffs' state constitutional claims.

Because the Plaintiffs' state constitutional claims raise only issues of law, the district court's decision granting summary judgment and denying declaratory and injunctive relief is reviewed de novo on appeal. Nevadans for Nev. v. Beers, 122 Nev. 930, 942 (2006). The question of whether a statute is constitutional is also reviewed de novo on appeal. Id. at 939.

In reviewing the constitutionality of a statute, this Court presumes the statute is 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. Consequently, this Court will 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 this Court "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 a statute, this Court is not concerned with the wisdom or policy of the statute 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).

II. Rules of construction for state constitutional provisions.

This Court has long held that the rules of statutory construction also govern the interpretation of state 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, this Court's primary task 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, this 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, this 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, this 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, this Court will look "beyond the language to adopt a construction that best reflects the intent behind the provision." Sparks Nugget 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 2020))).

Lastly, in matters involving state constitutional law, this 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 this 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, this 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 its 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, this 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 its counsel which interprets the constitutional provision,

and this Court will typically afford the Legislature deference in its counseled selection of that interpretation. Nev. Mining, 117 Nev. at 40.

III. 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.

Under Article 4, Section 18(1), 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 requirement in Article 4, Section 18(2), which provides:

> [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 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 this 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, this 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, this 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.

Additionally, 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 AB 458's passage, 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% 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 2020) ("A statute's effective date is considered that date upon which the statute came into being as existing law, while a statute's operative date is the date upon which the directives of the statute may be actually implemented."). 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 2020); 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 2020); 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**.

Despite the fact that at the time of AB 458's passage, it did not alter public revenue at all, the Plaintiffs attempt to ignore the actual effect of the bill by arguing that AB 458 raised or increased public revenue because it eliminated potential future increases in subsection 4 credits in future biennia. (*Opening Br. at 17-32*.) However, the 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 or increase public revenue "in any form" and, in fact, did not alter public 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)).[4]

[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). The public record of the legislative history is available at: https://www.leg.state.nv.us/Division/Research/Library/LegHistory/LHs/2019/AB458,2019.pdf.

The actual effect of AB 458 was also explained in the Legislative Counsel's Digest included in the bill. NRS 218D.290 (providing for the Legislative Counsel's Digest to be included in each bill).[5] 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).

In an attempt to sidestep the actual effect of AB 458, the 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

[5] Both this 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).

credits at the beginning of each fiscal year—was enacted into law during the 2015 legislative session. (*Opening Br. at 25-32*.) 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. Thus, 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.

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 or increase public revenue "in any form" and, in fact, did not alter public 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**, 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 district court correctly determined that the Legislature did not violate Article 4, Section 18(2) when it passed AB 458.

IV. 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.

The Plaintiffs argue that any bill which changes or reduces potential future tax credits is a bill that raises or increases revenue under the two-thirds requirement. (*Opening Br. at 17-47*.) However, although 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 two-thirds requirement is entirely silent with regard to changes in tax credits. Undoubtedly, the legislative framers of the constitutional provision 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. However, based on well-established rules of construction, their omission of such changes in tax credits from the two-thirds requirement unravels the Plaintiffs' interpretation of the constitutional provision.

Under the rules of construction, this 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)). This 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 constitutional provision 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 two-thirds requirement—while clearly omitting any references to changes in tax credits—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 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. 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 district court correctly determined that the Legislature did not violate Article 4, Section 18(2) when it passed AB 458.

V. 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.

When interpreting constitutional provisions approved by the voters through a ballot initiative, this 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 2020) ("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."). This Court may find contemporaneous extrinsic evidence of purpose and intent from the legislative history surrounding the proposal and approval of the ballot measure. See Ramsey

v. City of N. Las Vegas, 133 Nev. 96, 99-101 (2017). This Court also may find contemporaneous extrinsic evidence of purpose and intent from statements made by proponents and opponents of the ballot measure. See Guinn II, 119 Nev. at 471-72. Finally, this Court may find contemporaneous extrinsic evidence of purpose and 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).[6]

[6] The public record of the legislative history is available at: https://www.leg.state.nv.us/Division/Research/Library/LegHistory/LHs/1993/AJR21,1993.pdf.

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 requirement, this Court has reviewed and considered that testimony when discussing the two-thirds 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 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 requirement "would not impair any existing revenues." Id. Instead, Assemblyman Gibbons indicated that the two-thirds 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).[7]

Finally, based on Assemblyman Gibbons' legislative testimony on AJR 21 in 1993 and the ballot materials presented to the voters in 1994 and 1996, this 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).

[7] The public record of the ballot materials is available at: https://www.leg.state.nv.us/Division/Research/VoteNV/BallotQuestions/1994.pdf.

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 "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, based on contemporaneous extrinsic evidence of the purpose and intent of the two-thirds requirement, 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 district court correctly determined that the Legislature did not violate Article 4, Section 18(2) when it passed AB 458.

VI. 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.

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, this Court may 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 some 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 district court correctly determined that the Legislature did not violate Article 4, Section 18(2) when it passed AB 458.

CONCLUSION

Based on the foregoing, the Legislature asks this Court to affirm the district court's order granting summary judgment in favor of the State on all causes of action and claims for relief alleged in Plaintiffs' complaint.

DATED: This **24th** day of September, 2020.

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.

_____

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CERTIFICATE OF COMPLIANCE

1. We hereby certify that this answering brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Office Word 2010 in 14-point font and Times New Roman type.

2. We hereby certify that this answering brief complies with the type-volume limitations of NRAP 32(a)(7) because, excluding the parts of this brief exempted by NRAP 32(a)(7)(C), this brief is proportionately spaced, has a typeface of 14 points or more, and contains **13,417** words, which is less than the type-volume limit of 14,000 words.

3. We hereby certify that we have read this answering brief, and to the best of our knowledge, information and belief, it is not frivolous or interposed for any improper purpose. We further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in this brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. We understand that we may be subject to sanctions in the event that this brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED: This **24th** day of September, 2020.

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 **24th** day of September, 2020, pursuant to NRAP 25 and NEFCR 9, I filed and served a true and correct copy of Respondent Nevada Legislature's Answering Brief, by means of the Nevada Supreme Court's electronic filing system, directed to:

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