

**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.

Electronically Filed  
May 18 2021 10:19 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**Case No. 81281**

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

**RESPONDENT NEVADA LEGISLATURE'S RESPONSE TO  
APPELLANTS' NOTICE OF SUPPLEMENTAL AUTHORITIES**

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## RESPONSE

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 response to Appellants' notice of supplemental authorities under NRAP 31(e).

In their notice of supplemental authorities, Appellants notify this Court of its own published opinion in Legislature of the State of Nev. v. Settlemeyer, 137 Nev. Adv. Op. 21, --- P.3d --- (May 13, 2021). In Settlemeyer, this Court held that the supermajority provision in Article 4, Section 18(2) of the Nevada Constitution applied to: (1) a 2019 bill which extended a sunset provision for a state fee that would have expired on June 30, 2020; and (2) a 2019 bill which eliminated a reduction of state tax rates that would have taken effect on July 1, 2019. However, because this case does not involve similar legislation, this Court's decision in Settlemeyer has limited pertinence and significance to this case. In particular, this case involves Assembly Bill No. 458 (AB 458) of the 2019 legislative session, which froze the existing amount of allowable tax credits under the Nevada Educational Choice Scholarship Program. 2019 Nev. Stat., ch. 366, at 2295-99. There are no provisions in AB 458 which are similar to the legislation invalidated by this Court's decision in Settlemeyer.

In their notice of supplemental authorities, Appellants also notify this Court of Senate Bill No. 367 (SB 367) of the 2021 legislative session because SB 367 proposes removing the existing “pro sports exemption” in NRS 368A.200(4)(o) from the live entertainment tax. However, in an attempt to give SB 367 pertinence and significance to this case, Appellants wrongly state that “[t]he bill is marked as requiring a two-thirds supermajority vote in order to repeal that tax exemption.” (*Appellants’ Notice at 3.*) Appellants are wrong because the Legislative Counsel placed the two-thirds designation on SB 367 solely because the bill proposes changing the existing and legally operative computation base in NRS 368A.200(2)(a) for calculating the live entertainment tax imposed on certain nonprofit organizations in a manner that will have the effect of creating, generating or increasing state revenue. The Legislative Counsel **did not** place the two-thirds designation on SB 367 because the bill proposes removing the existing “pro sports exemption” in NRS 368A.200(4)(o) from the live entertainment tax.

SB 367 proposes two primary amendments to the live entertainment tax in NRS Chapter 368A. First, SB 367 proposes changing the existing and legally operative computation base in NRS 368A.200(2)(a) for calculating the amount of live entertainment tax that must be paid by certain nonprofit organizations. Specifically, under the existing and legally operative computation base, the nonprofit organizations must pay a tax on admission charges to a facility where

live entertainment is provided if the number of tickets offered for sale or other distribution to patrons is 7,500 or more. SB 367 proposes changing the existing and legally operative computation base by requiring the nonprofit organizations to pay the tax on admission charges if the number of tickets offered for sale or other distribution to patrons is 5,000 or more. Because SB 367 proposes changing the existing and legally operative computation base for the live entertainment tax in a manner that will have the effect of creating, generating or increasing state revenue, the Legislative Counsel placed the two-thirds designation on the bill.

Second, SB 367 proposes removing from the live entertainment tax the existing “pro sports exemption” in NRS 368A.200(4)(o) for an athletic contest, event or exhibition conducted by a professional team based in this State if the professional team based in this State is a participant in the contest, event or exhibition. However, the Legislative Counsel **did not** place the two-thirds designation on SB 367 because the bill proposes removing the existing “pro sports exemption” in NRS 368A.200(4)(o) from the live entertainment tax. Instead, the Legislative Counsel placed the two-thirds designation on SB 367 solely because the bill proposes changing the existing and legally operative computation base in NRS 368A.200(2)(a) for calculating the live entertainment tax imposed on certain nonprofit organizations in a manner that will have the effect of creating, generating or increasing state revenue.

DATED: This 18th day of May, 2021.

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 18th day of May, 2021, pursuant to NRAP 25 and NEFCR 9, I filed and served a true and correct copy of Respondent Nevada Legislature’s Response to Appellants’ Notice of Supplemental Authorities, by means of the Nevada Supreme Court’s electronic filing system, directed to:

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