

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

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

Appellants,

vs.

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

Respondents,

and

Electronically Filed  
May 19 2021 09:45 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

Supreme Court No. 81281

On Appeal  
District Court for  
Clark County,  
Case No.: A-19-800267-C  
Honorable Rob Bare

**EXECUTIVE  
RESPONDENTS'  
RESPONSE TO  
SUPPLEMENTAL  
AUTHORITY**

THE LEGISLATURE OF THE STATE OF  
NEVADA,

Respondent-Intervenors.

### **RULE 26.1 Disclosure**

Undersigned counsel of record certifies that each Executive Defendant has been named in their official governmental capacity, such that no further disclosure is required for purposes of evaluating possible disqualification or recusal.

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Pursuant to Nevada Rule of Appellate Procedure 31(e), the Executive Respondents submit the following response to Appellants' May 14, 2021 Notice of Supplemental Authorities.

**I. *Legislature v. Settlemeyer*, 137 Nev. Adv. Op. 21 (May 13, 2021).**

This Court does not need explanation of last week's decision, which addressed the applicability of the Supermajority Provision to elimination of sunset provisions and the automatic recalculation of the MBT rate. Neither bill addressed by this Court in *Settlemeyer* pertained to the freeze (rather than perpetual increase) of tax expenditures for private school vouchers.

Instead, Appellants in this case challenge the Legislature's redistribution of public revenue, from future tax expenditures for private school tax credits to general state funds, contending that it violates the Supermajority Provision. "From a taxpayer's perspective, they pay the same amount as a result of the MBT, no matter its relative distribution to the Program versus other tax-funded programs." Executive Respondents' Brief at 18. The *Settlemeyer* decision did not determine whether Nevada statutory tax expenditures redistribute tax revenue for private use, or merely reallocate tax revenue between different public uses. If it is the latter, the Supermajority Provision is inapplicable because freezing those expenditures neither increases the public's aggregate tax burden nor increases the state's tax revenue.

That issue remains open for further consideration by this Court in this case (should it determine this case is justiciable) or a future case.

## **II. Senate Bill No. 367 (2021 Legislature)**

First, the Executive Respondents submit that Appellants' submission of an unpassed bill violates NRAP 31(e) because it is not authority of any kind for the Nevada Supreme Court. Indeed, Senate Bill No. 367 will never become Nevada statute because it failed to pass out of committee. *See* <https://www.leg.state.nv.us/App/NELIS/REL/81st2021/Bill/8042/Overview> (last accessed May 17, 2021).

Second, even if Senate Bill No. 367 could become statute (it cannot), it is not clear that it would be pertinent to this pending case because the bill contains multiple provisions, one of which reduces the attendance threshold at which nonprofit organization events are required to pay the live entertainment tax. *See* <https://www.leg.state.nv.us/App/NELIS/REL/81st2021/Bill/8042/Text> (last accessed May 17, 2021) at pp. 2-3. Appellants' supplement, without further fact

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discovery, cannot determinatively answer why the bill was marked as requiring compliance with the Supermajority Provision because the unpassed bill has multiple provisions.

RESPECTFULLY SUBMITTED this 19th day of May, 2021.

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## **CERTIFICATE OF SERVICE**

I certify that I am an employee of the Office of the Attorney General and that on this 19th day of May, 2021, I served a copy of the foregoing **EXECUTIVE RESPONDENTS RESPONSE TO SUPPLEMENTAL AUTHORITY**, by electronic filing to:

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