Case No. 81844

IN THE SUPREME COURT OF NEVADA

THE NEVADA INDEPENDENT,
Appellant,

vs.

RICHARD WHITLEY, IN HIS OFFICIAL CAPACITY AS THE DIRECTOR OF THE NEVADA DEPARTMENT OF HEALTH AND HUMAN SERVICES; THE STATE OF NEVADA, EX REL. DEPARTMENT OF HEALTH AND HUMAN SERVICES; and SANOFI-AVENTIS U.S. LLC,
Respondents.

District Court Case No. A-19-799939-W, Department XIV

RESPONDENT SANOFI-AVENTIS U.S. LLC'S SUPPLEMENT TO JOINT APPENDIX VOLUME 2 OF 2

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SANOFI-AVENTIS U.S. LLC

April 26, 2021

RESPONDENT SANOFI-AVENTIS U.S. LLC'S
SUPPLEMENT TO THE JOINT APPENDIX - VOLUME 2 OF 2

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TAB 8

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

PHARMACEUTICAL RESEARCH AND MANUFACTURERS OF AMERICA; and BIOTECHNOLOGY INNOVATION ORGANIZATION,

Plaintiffs,

vs.

BRIAN SANDOVAL, in his official capacity as Governor of the State of Nevada; RICHARD WHITLEY, in his official capacity as Director of the Nevada Department for Health and Human Services; and the NEVADA LEGISLATURE,

Defendants.

Case No. 2:17-cv-02315-JCM-CWH

DEFENDANT NEVADA LEGISLATURE'S MOTION FOR LEAVE TO SUPPLEMENT SUMMARY-JUDGMENT RECORD WITH NEW AND RELEVANT INFORMATION REGARDING STATE OF NEVADA'S NOTICE OF INTENT TO ACT UPON REGULATIONS TO ADMINISTER CHALLENGED PROVISIONS OF SB 539 (2017)

MOTION

Defendant Nevada Legislature (Legislature), by and through its counsel the Legal Division of the Legislative Counsel Bureau (LCB), hereby files this motion for leave to supplement the summary-judgment record with new and relevant information—set forth in attached Exhibits 1 and 2—regarding the State of Nevada's notice of intent to act upon regulations to administer the challenged provisions of Senate Bill No. 539 (hereafter the "challenged provisions"). SB 539, 2017 Nev. Stat., ch. 592, §§ 3.6, 3.8, 4, 4.3, 6, 7, 8 & 9, at 4297-4307. The Legislature's motion for leave to supplement the summary-

judgment record is made under FRCP 56 and Local Rule 7-2(g) and is based upon the following Memorandum of Points and Authorities, all pleadings, documents and exhibits on file in this case and any oral arguments the Court may allow.

MEMORANDUM OF POINTS AND AUTHORITIES

I. Introduction.

In this case, Plaintiffs claim that the challenged provisions are unconstitutional on their face based on the allegation that the challenged provisions require manufacturers to disclose information that constitutes a trade secret in the reports that they must submit to the Nevada Department of Health and Human Services (NDHHS). The Legislature respectfully asks the Court to grant the Legislature's motion for leave to supplement the summary-judgment record because the new and relevant information set forth in the attached exhibits demonstrates that, as the agency charged with administering and enforcing the challenged provisions, NDHHS intends to adopt regulations which will provide manufacturers with reasonable procedures to safeguard the confidentiality of information included in their reports if the manufacturers reasonably believe that public disclosure of the information would constitute misappropriation of a trade secret under the federal Defend Trade Secrets Act of 2016 (DTSA), 18 U.S.C. § 1836. Because this new and relevant information will impact the Court's resolution of the federal constitutional issues raised in the pending motions for summary judgment, the Court should grant the Legislature's motion for leave to supplement the summary-judgment record.

II. Background.

In their complaint, Plaintiffs claim that the challenged provisions are unconstitutional on their face because they are preempted under the Supremacy Clause by federal patent laws and federal trade-secret laws and because they violate the Takings Clause and the dormant Commerce Clause. (ECF No. 1 at 2-4.) Plaintiffs' facial claims are all based on their allegation that "SB 539 strips pharmaceutical manufacturers of trade-secret protection for confidential, competitively sensitive, proprietary

information regarding the production, cost, pricing, marketing, and advertising of their patented diabetes medicines." (ECF No. 1 at 2; ECF No. 66 at 9-11.)

On October 5, 2017, the Legislature filed a motion for summary judgment asking the Court to enter final judgment in favor of Defendants on all causes of action and claims for relief alleged in Plaintiffs' complaint because: (1) Plaintiffs' facial claims present only pure issues of law that require no factual development, so there are no genuine issues or disputes as to any material fact; and (2) the challenged provisions are constitutional on their face, so Defendants are entitled to summary judgment on the facial claims as a matter of law. (ECF No. 46 at 2.) On October 26, 2017, Plaintiffs filed an opposition to the Legislature's motion for summary judgment (ECF No. 65), and Plaintiffs also filed a cross-motion for summary judgment (ECF No. 66). These summary-judgment motions are pending before the Court.[1]

As thoroughly discussed in the Legislature's summary-judgment motion, the plain language and legislative history of the challenged provisions—along with reason and public policy—amply demonstrate that, on their face, the challenged provisions do not require manufacturers to disclose information that constitutes a trade secret in their reports submitted to NDHHS. (ECF No. 46 at 7-18.) Consequently, because Plaintiffs' facial claims are all based on their incorrect statutory interpretation that the challenged provisions require manufacturers to disclose information that constitutes a trade secret in their reports submitted to NDHHS, Plaintiffs cannot prove the merits of their facial claims as a matter of law, and Defendants are entitled to summary judgment as a matter of law.

[1] The other Defendants, Governor Brian Sandoval and Director Richard Whitley, have not filed a motion for summary judgment or joined in the Legislature's motion for summary judgment, but they have filed an opposition (ECF No. 74) to Plaintiffs' cross-motion for summary judgment. Even though the other Defendants have not requested summary judgment in their favor, it is well settled that if a plaintiff's claims fail as a matter of law on a motion for summary judgment filed by any defendant, then all defendants are entitled to a final judgment in their favor on those claims, regardless of whether they joined in the motion. See Lewis v. Lynn, 236 F.3d 766, 768 (5th Cir. 2001); True the Vote v. Hosemann, 43 F.Supp.3d 693, 708 n.59 (S.D. Miss. 2014).

In filing this motion for leave to supplement the summary-judgment record, the Legislature reiterates that, on their face, the challenged provisions do not require manufacturers to disclose information that constitutes a trade secret in their reports submitted to NDHHS. However, even assuming that the challenged provisions could be interpreted to require manufacturers to disclose information that constitutes a trade secret, NDHHS has issued a notice of intent under Nevada law to act upon regulations to administer the challenged provisions in a manner that: (1) authorizes a manufacturer to request that NDHHS keep information included in their reports confidential as a trade secret under the federal DTSA; and (2) establishes procedures for NDHHS to follow when it receives a request for public records under state law seeking disclosure of information for which a manufacturer has submitted a request for confidentiality. (Ex. 2 at 6-9.) Thus, the agency charged with administering and enforcing the challenged provisions intends to adopt regulations which will provide manufacturers with reasonable procedures to safeguard the confidentiality of information included in their reports if the manufacturers reasonably believe that public disclosure of the information would constitute misappropriation of a trade secret under the federal DTSA.

In a facial challenge like this case, it is a fundamental principle of constitutional review that any administrative interpretation of the challenged statutes by the state agency charged with their administration and enforcement is "highly relevant" to determining whether the statutes are facially constitutional because a federal court must consider any limiting construction that the state agency has proffered when the court assesses the facial validity of the statutes. Ward v. Rock Against Racism, 491 U.S. 781, 795-96 (1989). Consequently, when deciding the pending motions for summary judgment, the Court must consider the new and "highly relevant" information set forth in the attached exhibits in its assessment of the facial validity of the challenged provisions. Therefore, because this new and "highly relevant" information is essential to resolving the federal constitutional issues raised in the pending motions for summary judgment, the Court should grant the Legislature's motion for leave to supplement

the summary-judgment record.

III. Discussion.

It is well established that district courts "have broad discretion in deciding whether to permit supplementation of the summary judgment record." Apex Oil Co. v. Artoc Bank & Trust, 265 B.R. 144, 151 (B.A.P. 8th Cir. 2001), *rev'd in part on other grounds*, 297 F.3d 712 (8th Cir. 2002). In determining whether to permit supplementation of the summary-judgment record, district courts generally analyze whether the proposed supplemental materials provide any new and relevant information or evidence that could impact resolution of the issues raised in the pending motions for summary judgment. See, e.g., Hinkle v. City of Wilmington, 205 F. Supp. 3d 558, 579 (D. Del. 2016); France v. Lucas, 836 F.3d 612, 632 (6th Cir. 2016); Children's Healthcare Is a Legal Duty, Inc. v. Min De Parle, 212 F.3d 1084, 1090 n.3 (8th Cir. 2000).

In this case, Plaintiffs have directed their constitutional claims only at the facial validity of the challenged provisions because they are attacking the validity of the provisions before they have been implemented and applied by the state. See Wash. State Grange v. Wash. State Republican Party, 552 U.S. 442, 449-50 (2008). Therefore, the federal constitutional issues raised in the pending motions for summary judgment are pure issues of law regarding the facial validity of the challenged provisions. When a federal court reviews such a facial challenge, any administrative interpretation of the challenged provisions by the state agency charged with their administration and enforcement is "highly relevant" to determining whether the challenged provisions are facially constitutional because "[i]n evaluating a facial challenge to a state law, a federal court must, of course, consider any limiting construction that a state court or enforcement agency has proffered." Ward v. Rock Against Racism, 491 U.S. 781, 795-96 (1989) (quoting Vill. of Hoffman Estates v. Flipside, Hoffman Estates, Inc., 455 U.S. 489, 494 n.5 (1982)); Wash. State Grange, 552 U.S. at 455-56; IDK, Inc. v. Clark Cnty., 599 F. Supp. 1402, 1405 (D. Nev. 1984), *aff'd*, 836 F.2d 1185 (9th Cir. 1988).

Under Nevada law, NDHHS is the state agency charged with the administration and enforcement of the challenged provisions. NRS 439.930, as amended by SB 539, 2017 Nev. Stat., ch. 592, § 7, at 4302-03. In administering and enforcing the challenged provisions, NDHHS is authorized to adopt "such regulations as it determines to be necessary or advisable to carry out the provisions," including regulations that provide for the "form and manner" in which manufacturers must provide information in their reports submitted to NDHHS. Id.

On April 30, 2018, NDHHS issued a notice of intent to act upon regulations to carry out the challenged provisions. (Ex. 1 at 1.) Under Nevada's Administrative Procedure Act, NDHHS is required to give at least 30 days' notice of its hearing regarding adoption of the regulations. NRS 233B.060. Accordingly, NDHHS has scheduled a hearing regarding adoption of the regulations for May 31, 2018. (Ex. 1 at 1.)

Under the regulations proposed for adoption by NDHHS, manufacturers may request that NDHHS keep information included in their reports confidential as a trade secret under the federal DTSA. (Ex. 2 at 6.) The proposed regulations also establish specific procedures that NDHHS will follow when it receives a request for public records under the Nevada Public Records Act seeking disclosure of information for which a manufacturer has submitted a request for confidentiality. (Ex. 2 at 6-9.)

The procedures in the proposed regulations are similar to the procedures that federal agencies follow when they receive requests for public records under the federal Freedom of Information Act (FOIA), 5 U.S.C. § 552, seeking disclosure of information that may constitute a trade secret or other confidential commercial information under the federal Trade Secrets Act, 18 U.S.C. § 1905, and the "trade secrets" exemption in FOIA, which is commonly referred to as "Exemption 4," 5 U.S.C. § 552(b)(4). The purpose of such procedures is to ensure that persons who have submitted trade secrets or other confidential commercial information to federal agencies are provided with notice of the potential disclosure of the information under FOIA and an opportunity to respond and protect their

interests in the confidentiality of the information before the federal agencies may disclose the information to the public. Predisclosure Notification Procedures for Confidential Commercial Information, Exec. Order No. 12,600, 52 Fed. Reg. 23,781 (June 23, 1987); OSHA Data/CIH v. Dep't of Labor, 220 F.3d 153, 163-64 (3d Cir. 2000); Venetian Casino Resort v. EEOC, 530 F.3d 925, 934-35 (D.C. Cir. 2008).

Because the procedures that NDHHS will follow under its proposed regulations are similar to the procedures that federal agencies have been following for decades under federal law, the proposed regulations will provide manufacturers with reasonable procedures to safeguard the confidentiality of information included in their reports if the manufacturers reasonably believe that public disclosure of the information would constitute misappropriation of a trade secret under the federal DTSA. Therefore, given that the proposed regulations amount to an administrative interpretation of the challenged provisions by the state agency charged with their administration and enforcement, the proposed regulations are highly relevant to determining whether the statutes are facially constitutional. Consequently, when deciding the pending motions for summary judgment, the Court must consider this new and highly relevant information in its assessment of the facial validity of the challenged provisions. Therefore, because this new and highly relevant information is essential to resolving the federal constitutional issues raised in the pending motions for summary judgment, the Court should grant the Legislature's motion for leave to supplement the summary-judgment record.

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CONCLUSION

Based upon the foregoing, the Legislature respectfully asks the Court to grant the Legislature's motion for leave to supplement the summary-judgment record with the new and highly relevant information set forth in the attached exhibits regarding the State of Nevada's notice of intent to act upon regulations to administer the challenged provisions of SB 539.

DATED: This **3rd** day of May, 2018.

Respectfully submitted,

BRENDA J. ERDOES
Legislative Counsel

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 **3rd** day of May, 2018, pursuant to FRCP 5(b) and Local Rule Part IC, I filed and served a true and correct copy of Nevada Legislature's Motion for Leave to Supplement Summary-Judgment Record with New and Relevant Information Regarding State of Nevada's Notice of Intent to Act Upon Regulations to Administer Challenged Provisions of SB 539 (2017), by using the Court's CM/ECF system. I further certify that service will be accomplished electronically by the CM/ECF system directed to the following:

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/s/ Kevin C. Powers
An Employee of the Legislative Counsel Bureau

INDEX OF EXHIBITS TO NEVADA LEGISLATURE'S MOTION FOR LEAVE TO SUPPLEMENT SUMMARY-JUDGMENT RECORD WITH NEW AND RELEVANT INFORMATION REGARDING STATE OF NEVADA'S NOTICE OF INTENT TO ACT UPON REGULATIONS TO ADMINISTER CHALLENGED PROVISIONS OF SB 539 (2017)

Nevada Legislature's Motion for Leave to Supplement Summary-Judgment Record with New and Relevant Information Regarding State of Nevada's Notice of Intent to Act Upon Regulations to Administer Challenged Provisions of SB 539 (2017)

Legislature Exhibit 1—

State of Nevada, Department of Health and Human Services, Notice of Intent to Act Upon a Regulation (Apr. 30, 2018)

NOTICE OF INTENT TO ACT UPON A REGULATION

Notice of Hearing for the adoption of Regulations of the Department of Health and Human Services

HEARING AGENDA

State of Nevada, Department of Health and Human Services

May 31, 2018 • 11:00 a.m.

Location of Hearing:
Legislative Counsel Bureau
Room 3138
401 S. Carson St.
Carson City, NV 89701

Available via Videoconference at:
Legislative Counsel Bureau
Grant Sawyer State Office Building
Room 4412
555 E. Washington Ave.
Las Vegas, NV 89101

A live broadcast of the hearing may be viewed at www.leg.state.nv.us

1. Open Hearing with presentation:
   LCB File No. R042-18. Revises provisions related to drug transparency.
   A REGULATION relating to prescription drugs; providing that the Department of Health and Human Services will make available on an Internet website maintained by the Department certain forms that must be used by manufacturers of prescription drugs, pharmacy benefit managers and pharmaceutical sales representatives to submit certain reports to the Department; authorizing a manufacturer or pharmacy benefit manager that submits such a report to request that the Department keep certain information confidential as a trade secret under federal law; establishing procedures for the Department to follow when it receives a request for public records seeking disclosure of information for which a manufacturer or pharmacy benefit manager has submitted a request for confidentiality; prescribing certain requirements for reports compiled by the Department concerning the prices of certain prescription drugs; and providing other matters properly relating thereto.
2. Public Comment on LCB File No. R042-18
3. Adoption of regulations contained in LCB File No. 42-18 (for possible action)
4. Close Hearing.

Members of the public are encouraged to submit written comments for the record.

Members of the public who are disabled and require special accommodations or assistance at the hearing are requested to notify Veronica Sheldon, in writing, no later than five (5) working

days before the hearing: 4150 Technology Way, Suite 300, Carson City, Nevada 89706, or drugtransparency@health.nv.gov.

Supporting public material for this hearing may be requested from Veronica Sheldon, Nevada Department of Health and Human Services, 4150 Technology Way, Suite 300, Carson City, Nevada 89706, (775) 684-4255, or drugtransparency@dhhs.nv.gov.

The following information is provided pursuant to the requirements of NRS 233B.0603:

1) **The need for and the purpose of the proposed regulation or amendment.**

LCB File No. R042-18: A REGULATION relating to prescription drugs; providing that the Department of Health and Human Services will make available on an Internet website maintained by the Department certain forms that must be used by manufacturers of prescription drugs, pharmacy benefit managers and pharmaceutical sales representatives to submit certain reports to the Department; authorizing a manufacturer or pharmacy benefit manager that submits such a report to request that the Department keep certain information confidential as a trade secret under federal law; establishing procedures for the Department to follow when it receives a request for public records seeking disclosure of information for which a manufacturer or pharmacy benefit manager has submitted a request for confidentiality; prescribing certain requirements for reports compiled by the Department concerning the prices of certain prescription drugs; and providing other matters properly relating thereto.

2) **If the proposed regulation is a temporary regulation, either the terms or the substance of the regulations to be adopted, amended, or repealed, or a description of the subjects and issues involved. If the proposed regulation is a permanent regulation, a statement explaining how to obtain the approved or revised text of the proposed regulation prepared by the Legislative Counsel pursuant to NRS 233B.063.**

A copy of the proposed regulation can be obtained at the Department website at www.dhhs.nv.gov and selecting "Drug Transparency" in the right hand column, or by contacting Veronica Sheldon at (775) 684-4255, drugtransparency@dhhs.nv.gov. A reasonable fee for coping may be charged.

3) **A statement identifying the methods used by the agency in determining the impact on a small business prepared pursuant to subsection 3 of NRS 233B.0608.**

The request for input regarding impact was sent to the following websites and listservs:

- Nevada Department of Health and Human Services webpage
- Nevada Board of Pharmacy website
- Bureau of Health Care Quality and Compliance Nevada health facilities listserv
- Nevada Medical Association website
- Indian Health Services, Nevada Services Units
- Nevada Department of Health and Human Services Facebook page
- Nevada Division of Public and Behavioral Health Facebook page

- Nevada Primary Care Association newsletter
- Nevada Department of Health and Human Services Twitter page

A workshop to hear input was held February 15, 2018. Comments and recommendations were considered by the Department and incorporated into draft regulations submitted to Nevada Legislative Counsel Bureau on March 9, 2018.

4) **The estimated economic effect of the regulation on the business which it is to regulate and on the public. These must be stated separately and, in each case, must include:**
   a) **Both adverse and beneficial effects; and**
   The regulation does not economically affect business owners.
   (b) **Both immediate and long-term effects.**
   Benefits stated above appear to be immediate and long term.

5) **The estimated cost to the agency for enforcement of the proposed regulation.**
   The Nevada Department of Health and Human Services believes that the cost of enforcement of the proposed regulations will be minimal.

6) **A description of the citation to any regulations of other state or local governmental agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping necessary. If the proposed regulation overlaps or duplicates a federal regulation, the notice must include the name of the regulating federal agency.**
   The Department is not aware of any overlapping or duplicating of federal or state regulations.

7) **If the regulation is required pursuant to federal law, a citation and description of the federal law.**
   The Department is not aware of any requirement to federal law.

8) **If the regulation includes provisions which are more stringent than a federal regulation that regulates the same activity, a summary of such provisions.**
   No duplication of a federal regulation.

9) **Whether the proposed regulation establishes a new fee or increases an existing fee.**
   The regulation does not establish any new fees.

Persons wishing to comment upon the proposed action by the Nevada Department of Health and Human Services may appear at the scheduled public hearing or may address their comments, data, views, or arguments, in written form, to Nevada Department of Health and Human Services, 4150 Technology Way, Suite 300, Carson City, NV 89703 or by e-mail to drugtransparency@dhhs.nv.gov. Written submissions must be received by the Nevada Department of Health and Human Services on or before May 31, 2018 at 5:00 P.M. If no person who is directly affected by the proposed action appears to request time to make an oral

presentation, the Nevada Department of Health and Human Services may proceed immediately to act upon any written submissions.

A copy of this notice and the regulation to be adopted will be on file at the Nevada State Library and Archives, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notice and the regulation to be adopted will be available at Department of Health and Human Services, for inspection and copying by members of the public during business hours. This notice and the text of the proposed regulation are also available in the State of Nevada Register of Administrative Regulations, which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653, and on the Internet at http://www.leg.state.nv.us. Copies of this notice and the proposed regulation will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

Upon adoption of any regulation, the agency, if requested to do so by an interested person either before adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption and incorporate therein its reason for overruling the consideration urged against its adoption.

NOTICES FOR THIS HEARING HAVE BEEN POSTED IN ACCORDANCE WITH NRS 241 AT THE FOLLOWING LOCATIONS:

1. Office of the Attorney General, 100 N. Carson Street, Carson City, NV
2. Office of the Attorney General, Grant Sawyer Building, 555 E. Washington Avenue, Las Vegas, NV
3. Health Care Quality and Compliance, 4220 S. Maryland Pkwy, Las Vegas, NV
4. Department of Health and Human Services, 4126 Technology Way, First Floor Lobby, Carson City
5. Department of Health and Human Services, 4150 Technology Way, First Floor Lobby, Carson City
6. Legislative Building, 401 S. Carson Street, Carson City
7. Early Intervention Services, 1020 Ruby Drive, Suite 102, Elko, NV 89801
8. Division of Child and Family Services, 2655 Enterprise Road, Reno, NV 89512
9. Nevada State Library and Archives, 100 Stewart Street, Carson City, NV
10. The State of Nevada Website (www.notice.nv.gov)
11. The Nevada State Legislature Website (www.leg.state.nv.us)
12. The Nevada Department of Health and Human Services Website (www.dhhs.nv.gov)
13. Copies may also be obtained from any of the public libraries listed below:

Carson City Library
900 North Roop Street
Carson City, NV 89702

Churchill County Library
553 South Main Street
Fallon, NV 89406

Clark County District Library

Douglas County Library

833 Las Vegas Boulevard North
Las Vegas, NV 89101

Elko County Library
720 Court Street
Elko, NV 89801

Eureka Branch Library
210 South Monroe Street
Eureka, NV 89316-0283

Humboldt County Library
85 East 5th Street
Winnemucca, NV 89445-3095

Lincoln County Library
93 Maine Street
Pioche, NV 89043-0330

Mineral County Library
110 1st Street
Hawthorne, NV 89415-1390

Pershing County Library
1125 Central Avenue
Lovelock, NV 89419-0781

Tonopah Public Library
167 Central Street
Tonopah, NV 89049-0449

White Pine County Library
950 Campton Street
Ely, NV 89301-1965

1625 Library Lane
Minden, NV 89423

Esmeralda County Library
Corner of Crook and 4th Street
Goldfield, NV 89013-0484

Henderson District Public Library
280 South Water Street
Henderson, NV 89105

Lander County Library
625 South Broad Street
Battle Mountain, NV 89820-0141

Lyon County Library
20 Nevin Way
Yerington, NV 89447-2399

Pahrump Library District
701 East Street
Pahrump, NV 89041-0578

Storey County Library
95 South R Street
Virginia City, NV 89440-0014

Washoe County Library
301 South Center Street
Reno, NV 89505-2151

Nevada Legislature's Motion for Leave to Supplement Summary-Judgment Record with New and Relevant Information Regarding State of Nevada's Notice of Intent to Act Upon Regulations to Administer Challenged Provisions of SB 539 (2017)

Legislature Exhibit 2—

Proposed Regulation of the Department of Health and Human Services, LCB File No. R042-18 (Apr. 23, 2018)

PROPOSED REGULATION OF THE

DEPARTMENT OF HEALTH AND HUMAN SERVICES

LCB File No. R042-18

April 23, 2018

EXPLANATION – Matter in ***italics*** is new; matter in brackets **[~~omitted material~~]** is material to be omitted.

AUTHORITY: §§1-4, NRS 439.930.

A REGULATION relating to prescription drugs; providing that the Department of Health and Human Services will make available on an Internet website maintained by the Department certain forms that must be used by manufacturers of prescription drugs, pharmacy benefit managers and pharmaceutical sales representatives to submit certain reports to the Department; authorizing a manufacturer or pharmacy benefit manager that submits such a report to request that the Department keep certain information confidential as a trade secret under federal law; establishing procedures for the Department to follow when it receives a request for public records seeking disclosure of information for which a manufacturer or pharmacy benefit manager has submitted a request for confidentiality; prescribing certain requirements for reports compiled by the Department concerning the prices of certain prescription drugs; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires the Department of Health and Human Services to compile each year: (1) a list of prescription drugs essential for treating diabetes in this State; and (2) a list of such prescription drugs which have been subject to an increase in wholesale acquisition cost that exceeds a prescribed amount. (Section 3.6 of Senate Bill No. 539, chapter 592, Statutes of Nevada 2017, at page 4297 (NRS 439B.630)) Existing law also requires the manufacturers of drugs that appear on those lists and pharmacy benefit managers to submit to the Department annual reports containing certain information about the prices of those drugs. (Sections 3.8, 4 and 4.2 of Senate Bill No. 539, chapter 592, Statutes of Nevada 2017, at pages 4297-98 (NRS 439B.635, 439B.640 and 439B.645)) Existing law further requires a pharmaceutical sales representative who markets prescription drugs on behalf of a manufacturer in this State to submit to the Department an annual report concerning the provision of compensation and free samples to certain persons. (Section 4.6 of Senate Bill No. 539, chapter 592, Statutes of Nevada 2017, at page 4299 (NRS 439B.660)) **Section 2** of this regulation provides that the Department will make available on an Internet website maintained by the Department the forms that must be used by the manufacturers, pharmacy benefit managers and pharmaceutical sales representatives to submit such annual reports.

Under existing law, commonly known as the Nevada Public Records Act, when a state or local governmental entity receives a request to disclose information contained in public records within its legal custody or control, the governmental entity must disclose the information, unless the information is confidential under state or federal law. (NRS 239.010; *City of Reno v. Reno Gazette-Journal*, 119 Nev. 55, 58-61 (2003)) Upon receiving such a request for public records, the governmental entity must respond to the requester within five business days by doing one of the following: (1) if the requested information is confidential under state or federal law, the governmental entity must provide the requester with written notice of the denial of the request and a citation to the specific statute or other legal authority that makes the information confidential; (2) if the requested information is not confidential under state or federal law and the governmental entity is able to make the information available within those five business days, the governmental entity must provide the requester with the information; or (3) if the governmental entity is unable to make the information available within those five business days, the governmental entity must provide the requester with written notice of that fact and a date and time after which the information will be made available. (NRS 239.0107)

Under existing federal law, when a state or local governmental entity is exercising its powers and duties under state or local law, the governmental entity must also comply with federal law, which supersedes any conflicting state or local law, because federal law is the supreme law of the land under the Supremacy Clause of the United States Constitution. (U.S. Const. Art. VI, cl. 2; *Alden v. Maine*, 527 U.S. 706, 755 (1999)) For example, if information is provided to state governmental entities and maintained in their databases as part of state regulatory programs and the information has potential commercial value in interstate commerce, Congress may exercise its power under the Commerce Clause of the United States Constitution to prohibit the state governmental entities from disclosing the information, even if such disclosure is authorized by state law. (U.S. Const. Art. I, § 8, cl. 3; *Reno v. Condon*, 528 U.S. 141, 143-51 (2000))

In the context of trade secrets related to products or services used in interstate commerce, Congress has exercised its power under the Commerce Clause to enact the federal Defend Trade Secrets Act of 2016 (DTSA), which authorizes the owner of a trade secret to bring a civil action to prevent the improper disclosure of information that would constitute misappropriation of a trade secret under federal law and, if such information is improperly disclosed, to provide remedies for violations of the federal law. (18 U.S.C. § 1836) In such a civil action brought under the federal DTSA, a court of competent jurisdiction may award legal and equitable relief, including protective orders, injunctive relief, compensatory damages, punitive damages and attorney's fees, to the owner of a trade secret to prevent or remedy violations of the federal law. (18 U.S.C. §§ 1833-1839) In addition to the remedies established by the federal DTSA, federal law also prohibits certain conduct that constitutes theft of a trade secret and prescribes criminal penalties for such violations. (18 U.S.C. § 1832)

Because information that constitutes a trade secret may be submitted to federal agencies, the federal Trade Secrets Act prohibits federal officers and employees from disclosing such information, unless the disclosure is specifically authorized by federal law. (18 U.S.C. § 1905; *Chrysler Corp. v. Brown*, 441 U.S. 281, 294-319 (1979)) As a result of this federal prohibition, when federal agencies receive requests for public records under the federal Freedom of Information Act (FOIA), the federal agencies cannot disclose information that constitutes a trade

secret under the federal Trade Secrets Act, and such information is also exempt from disclosure under the "trade secrets" exemption in FOIA, which is commonly referred to as "Exemption 4." (5 U.S.C. § 552(b)(4); 18 U.S.C. § 1905; *Canadian Commercial Corp. v. Dep't of Air Force*, 514 F.3d 37, 39 (D.C. Cir. 2008); *Pac. Architects & Eng'rs v. Dep't of State*, 906 F.2d 1345, 1346-47 (9th Cir. 1990); *Pub. Citizen Health Research Grp. v. FDA*, 704 F.2d 1280, 1286-90 (D.C. Cir. 1983))

To ensure that trade secrets are not improperly disclosed under the federal Trade Secrets Act and FOIA, federal agencies have a duty to adopt regulations establishing specific procedures that the federal agencies must follow when they receive requests for public records under FOIA seeking disclosure of information that may constitute a trade secret or other confidential commercial information. The purpose of such procedures is to ensure that persons who have submitted trade secrets or other confidential commercial information to federal agencies are provided with notice of the potential disclosure of the information under FOIA and an opportunity to respond and protect their interests in the confidentiality of the information before the federal agencies may disclose the information to the public. (*Predisclosure Notification Procedures for Confidential Commercial Information*, Exec. Order No. 12,600, 52 Fed. Reg. 23,781 (June 23, 1987); *OSHA Data/CIH v. Dep't of Labor*, 220 F.3d 153, 163-64 (3d Cir. 2000); *Venetian Casino Resort v. EEOC*, 530 F.3d 925, 934-35 (D.C. Cir. 2008))

Section 3 of this regulation establishes specific procedures that the Department will follow when it receives a request for public records under the Nevada Public Records Act seeking disclosure of information which: (1) may constitute a trade secret under the federal DTSA; and (2) is included by a manufacturer or pharmacy benefit manager in an annual report concerning the prices of prescription drugs submitted to the Department under sections 3.8, 4 or 4.2 of Senate Bill No. 539, chapter 592, Statutes of Nevada 2017, at pages 4297-98 (NRS 439B.635, 439B.640 or 439B.645). **Section 3** provides that a manufacturer or pharmacy benefit manager which is required to submit such a report may submit to the Department a request to keep information included in the report confidential if the manufacturer or pharmacy benefit manager reasonably believes that public disclosure of the information would constitute misappropriation of a trade secret under the federal DTSA. If a manufacturer or pharmacy benefit manager submits a request for confidentiality, **section 3** requires the request to: (1) describe, with particularity, the information sought to be protected from public disclosure; and (2) include an explanation of the reasons why public disclosure of the information would constitute misappropriation of a trade secret under the federal DTSA.

If the Department receives a request for public records under the Nevada Public Records Act seeking disclosure of information for which the manufacturer or pharmacy benefit manager has submitted a request for confidentiality, **section 3** requires the Department, as soon as reasonably practicable after receiving the request, to provide the manufacturer or pharmacy benefit manager with: (1) written notice of the request for public records and the procedures set forth in **section 3**; and (2) a copy of the request for public records and the date on which the Department received the request. **Section 3** also requires the Department to undertake an initial review to determine whether the Department reasonably believes that public disclosure of the information would constitute misappropriation of a trade secret under the federal DTSA. When the Department undertakes its initial review, **section 3** states that the Department will consider,

as persuasive authority, the interpretation and application given to the term "trade secrets" under Exemption 4 of FOIA.

If, after undertaking its initial review, the Department reasonably believes that public disclosure of the information would constitute misappropriation of a trade secret under the federal DTSA, **section 3** provides that the Department will: (1) within the time required by the Nevada Public Records Act, provide the requester of public records with written notice that the Department must deny the request on the basis that the information is confidential under the federal DTSA; and (2) as soon as reasonably practicable after notifying the requester, provide the manufacturer or pharmacy benefit manager with written notice that the Department denied the request and a copy of the written notice provided to the requester and the date on which it was sent to the requester. Under the Nevada Public Records Act, the requester would have the right to bring an action against the Department to challenge the denial of the request for public records. (NRS 239.011; *City of Sparks v. Reno Newspapers*, 133 Nev. Adv. Op. 56, 399 P.3d 352, 354 (2017); *DR Partners v. Bd. of County Comm'rs*, 116 Nev. 616, 620-21 (2000)) If the requester were to bring such an action against the Department, the manufacturer or pharmacy benefit manager could assert a right to intervene in the action to protect its interests in the confidentiality of the information. (*Appleton v. FDA*, 310 F. Supp. 2d 194, 196-97 (D.D.C. 2004); *Yorkshire v. IRS*, 26 F.3d 942, 944-45 (9th Cir. 1994))

If, after undertaking its initial review, the Department reasonably believes that public disclosure of the information would not constitute misappropriation of a trade secret under the federal DTSA, **section 3** requires the Department, within the time required by the Nevada Public Records Act, to provide the requester of public records with written notice that the Department intends to disclose the information. However, **section 3** also requires the Department to inform the requester that: (1) the Department will not be able to disclose the information until 30 days have elapsed following the date on which such written notice was sent to the requester; and (2) if the manufacturer or pharmacy benefit manager timely commences an action within that 30-day period to enjoin disclosure of the information under the federal DTSA, the Department will not be able to disclose the information, unless the disclosure is permitted after final resolution of the action, including any appeals. **Section 3** additionally requires the Department, as soon as reasonably practicable after notifying the requester, to provide the manufacturer or pharmacy benefit manager with: (1) written notice that the Department intends to disclose the information; and (2) a copy of the written notice sent to the requester and the date on which it was sent to the requester.

If, within the 30-day period following the date on which the Department sent the written notice to the requester, the manufacturer or pharmacy benefit manager does not commence an action to enjoin the Department from disclosing the information under the federal DTSA, **section 3** requires the Department to disclose the information. However, if such an action is timely commenced within the 30-day period, **section 3** provides that the Department will not disclose the information until final resolution of the action, including any appeals. Following commencement of the action, the requester of the public records could assert a right to intervene in the action to protect its interests in the disclosure of the information. (*Entergy Gulf States La. v. EPA*, 817 F.3d 198, 203-06 (5th Cir. 2016); *LaRouche v. FBI*, 677 F.2d 256, 257-58 (2d Cir. 1982))

After final resolution of the action, including any appeals, if the court enjoins the Department from disclosing the information as a trade secret, **section 3** provides that the Department will not disclose the information so long as the information retains its status as a trade secret. However, if the court does not enjoin the Department from disclosing the information as a trade secret, **section 3** provides that the Department will disclose the information as soon as reasonably practicable after final resolution of the action.

Finally, existing law requires the Department to: (1) analyze the information submitted by manufacturers and pharmacy benefit managers in their annual reports; and (2) compile a report on the prices of the prescription drugs that appear on the most current lists of essential diabetes drugs compiled by the Department. (Section 4.3 of Senate Bill No. 539, chapter 592, Statutes of Nevada 2017, at page 4299 (NRS 439B.650)) **Section 4** of this regulation provides that the report compiled by the Department will include only aggregated data that does not disclose the identity of any drug, manufacturer or pharmacy benefit manager. **Section 4** also provides that the Department will include in the report: (1) a description of trends concerning the prices of the prescription drugs that appear on the most current lists of essential diabetes drugs compiled by the Department; and (2) an explanation of how those prices and trends may affect the prevalence and severity of diabetes in this State and the system of health care in this State.

Section 1. Chapter 439 of NAC is hereby amended by adding thereto the provisions set forth as sections 2, 3 and 4 of this regulation.

Sec. 2. ***The Department will make available on an Internet website maintained by the Department the forms on which:***

1. A manufacturer is required to submit the reports required by sections 3.8 and 4 of Senate Bill No. 539, chapter 592, Statutes of Nevada 2017, at pages 4297-98 (NRS 439B.635 and 439B.640).

2. A pharmacy benefit manager is required to submit the report required by section 4.2 of Senate Bill No. 539, chapter 592, Statutes of Nevada 2017, at page 4298 (NRS 439B.645).

3. A person included on a list of pharmaceutical sales representatives provided by a manufacturer to the Department pursuant to subsection 1 of section 4.6 of Senate Bill No. 539, chapter 592, Statutes of Nevada 2017, at page 4299 (NRS 439B.660), is required to submit the report required by subsection 4 of that section.

Sec. 3. ***1. In complying with section 3.8, 4 or 4.2 of Senate Bill No. 539, chapter 592, Statutes of Nevada 2017, at pages 4297-98 (NRS 439B.635, 439B.640 or 439B.645), if a manufacturer or pharmacy benefit manager reasonably believes that public disclosure of information that it submits to the Department would constitute misappropriation of a trade secret for which a court may award relief pursuant to the federal Defend Trade Secrets Act of 2016, 18 U.S.C. § 1836, as amended, the manufacturer or pharmacy benefit manager may submit to the Department a request to keep the information confidential.***

2. A request for confidentiality submitted pursuant to subsection 1 must be divided into the following parts, which must be severable from each other:

(a) The first part of the request for confidentiality must describe, with particularity, the information sought to be protected from public disclosure. Upon a request for public records pursuant to NRS 239.010, the Department will not disclose the description set forth in the request for confidentiality or the information sought to be protected from public disclosure, unless the description and information are disclosed pursuant to subsections 5 and 6.

(b) The second part of the request for confidentiality must include an explanation of the reasons why public disclosure of the information would constitute misappropriation of a trade secret for which a court may award relief pursuant to the federal Defend Trade Secrets Act of 2016, 18 U.S.C. § 1836, as amended. Upon a request for public records pursuant to NRS 239.010, the Department will disclose the explanation set forth in the request for confidentiality.

3. If the Department receives a request for public records pursuant to NRS 239.010 seeking disclosure of any information for which a manufacturer or pharmacy benefit

manager has submitted a request for confidentiality pursuant to subsection 1, the Department will:

(a) As soon as reasonably practicable after receiving the request for public records, provide the manufacturer or pharmacy benefit manager with:

(1) Written notice of the request for public records and the procedures set forth in this section; and

(2) A copy of the request for public records and the date on which the Department received the request.

(b) Undertake an initial review to determine whether the Department reasonably believes that public disclosure of the information would constitute misappropriation of a trade secret for which a court may award relief pursuant to the federal Defend Trade Secrets Act of 2016, 18 U.S.C. § 1836, as amended. In undertaking its initial review, the Department will consider, as persuasive authority, the interpretation and application given to the term "trade secrets" in Exemption 4 of the federal Freedom of Information Act, 5 U.S.C. § 552(b)(4), as amended.

4. If, after undertaking its initial review pursuant to subsection 3, the Department reasonably believes that public disclosure of the information would constitute misappropriation of a trade secret for which a court may award relief pursuant to the federal Defend Trade Secrets Act of 2016, 18 U.S.C. § 1836, as amended, the Department will:

(a) Within the time prescribed by NRS 239.0107, provide the requester of the public records with written notice pursuant to paragraph (d) of subsection 1 of NRS 239.0107 that the Department must deny the request for public records on the basis that the information is confidential pursuant to the federal Defend Trade Secrets Act of 2016, 18 U.S.C. § 1836, as amended.

(b) As soon as reasonably practicable after providing the written notice to the requester pursuant to paragraph (a), provide the manufacturer or pharmacy benefit manager with:

(1) Written notice that the Department denied the request for public records; and

(2) A copy of the written notice that the Department provided to the requester pursuant to paragraph (a) and the date on which the Department sent the written notice to the requester.

5. If, after undertaking its initial review pursuant to subsection 3, the Department reasonably believes that public disclosure of the information would not constitute misappropriation of a trade secret for which a court may award relief pursuant to the federal Defend Trade Secrets Act of 2016, 18 U.S.C. § 1836, as amended, the Department will:

(a) Within the time prescribed by NRS 239.0107, provide the requester of the public records with written notice pursuant to paragraph (c) of subsection 1 of NRS 239.0107 that the Department intends to disclose the information, except that:

(1) The Department will not be able to disclose the information until 30 days have elapsed following the date on which such written notice was sent to the requester; and

(2) If the manufacturer or pharmacy benefit manager timely commences an action within the 30-day period as provided in subsection 6, the Department will not be able to disclose the information, unless the disclosure is permitted by that subsection.

(b) As soon as reasonably practicable after providing the written notice to the requester pursuant to paragraph (a), provide the manufacturer or pharmacy benefit manager with:

(1) Written notice that the Department intends to disclose the information; and

(2) A copy of the written notice that the Department provided to the requester pursuant to paragraph (a) and the date on which the Department sent the written notice to the requester.

6. If, within the 30-day period following the date on which the Department sent the written notice to the requester of public records pursuant to subsection 5, the manufacturer or pharmacy benefit manager:

(a) Does not commence an action in a court of competent jurisdiction to enjoin the Department from disclosing the information pursuant to the federal Defend Trade Secrets Act of 2016, 18 U.S.C. § 1836, as amended, the Department will disclose the information.

(b) Commences an action in a court of competent jurisdiction to enjoin the Department from disclosing the information pursuant to the federal Defend Trade Secrets Act of 2016, 18 U.S.C. § 1836, as amended, the Department will not disclose the information until final resolution of the action, including any appeals. After final resolution of the action, if the court:

(1) Enjoins the Department from disclosing the information as a trade secret, the Department will not disclose the information so long as the information retains its status as a trade secret.

(2) Does not enjoin the Department from disclosing the information as a trade secret, the Department will disclose the information as soon as reasonably practicable after final resolution of the action.

Sec. 4. *In the report compiled by the Department pursuant to section 4.3 of Senate Bill No. 539, chapter 592, Statutes of Nevada 2017, at page 4299 (NRS 439B.650), the Department will include:*

1. Only aggregated data that does not disclose the identity of any drug, manufacturer or pharmacy benefit manager; and

2. In addition to the information required by section 4.3 of Senate Bill No. 539, chapter 592, Statutes of Nevada 2017, at page 4299 (NRS 439B.650), a description of trends concerning the prices of prescription drugs that appear on the most current lists compiled by the Department pursuant to section 3.6 of Senate Bill No. 539, chapter 592, Statutes of Nevada 2017, at page 4297(NRS 439B.630), and an explanation of how those prices and trends may affect:

(a) The prevalence and severity of diabetes in this State; and

(b) The system of health care in this State.

TAB 9

TAB 9

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

PHARMACEUTICAL RESEARCH AND MANUFACTURERS OF AMERICA; and BIOTECHNOLOGY INNOVATION ORGANIZATION,

Plaintiffs,

vs.

BRIAN SANDOVAL, in his official capacity as Governor of the State of Nevada; RICHARD WHITLEY, in his official capacity as Director of the Nevada Department for Health and Human Services; and the NEVADA LEGISLATURE,

Defendants.

Case No. 2:17-cv-02315-JCM-CWH

DEFENDANT NEVADA LEGISLATURE'S REPLY IN SUPPORT OF ITS MOTION FOR LEAVE TO SUPPLEMENT SUMMARY-JUDGMENT RECORD WITH NEW AND RELEVANT INFORMATION REGARDING STATE OF NEVADA'S NOTICE OF INTENT TO ACT UPON REGULATIONS TO ADMINISTER CHALLENGED PROVISIONS OF SB 539 (2017)

REPLY

Defendant Nevada Legislature (Legislature), by and through its counsel the Legal Division of the Legislative Counsel Bureau (LCB), hereby files this reply in support of its motion (ECF No. 86) for leave to supplement the summary-judgment record with new and relevant information regarding the State of Nevada's notice of intent to act upon regulations to administer the challenged provisions of Senate Bill No. 539 (hereafter the "challenged provisions"). SB 539, 2017 Nev. Stat., ch. 592, §§ 3.6, 3.8, 4, 4.3, 6, 7, 8 & 9, at 4297-4307. The Legislature's reply is made under FRCP 56 and Local Rule 7-

2(b) and is based upon the following Memorandum of Points and Authorities, all pleadings, documents and exhibits on file in this case and any oral arguments the Court may allow.[1]

MEMORANDUM OF POINTS AND AUTHORITIES

I. Introduction.

On May 3, 2018, the Legislature filed its motion for leave to supplement the summary-judgment record. In its motion, the Legislature asked this Court to supplement the summary-judgment record with exhibits of the following documents from the Nevada Department of Health and Human Services (NDHHS), which is the state agency charged with administering and enforcing the challenged provisions of SB 539: (1) the notice of intent issued by NDHHS under Nevada law to act upon proposed regulations to administer the challenged provisions; and (2) the proposed regulations being considered by NDHHS under Nevada law, which are designated as LCB File No. R042-18.

Plaintiffs do not object to supplementing the summary-judgment record with these documents. (ECF No. 89 at 2.) Plaintiffs contend, however, that finalized regulations "almost certainly will not be in place by July 1, 2018," which is the deadline for manufacturers to submit their reports to NDHHS under the challenged provisions. Id. at 3-5. Plaintiffs also contend that unless finalized regulations become effective before July 1, 2018, and bind NDHHS to protect trade-secret information that manufacturers include in their reports, the challenged provisions are facially unconstitutional because NDHHS will be allowed to publicly disclose trade-secret information in violation of the federal Defend

[1] In responding to the Legislature's motion for leave to supplement the summary-judgment record, Plaintiffs combined their response (ECF No. 89) with a motion for a preliminary injunction. After receiving notice from the clerk's office (ECF No. 90) that they were required by Local Rule IC 2-2(b) to file their response and their motion for a preliminary injunction as separate documents and events in the electronic filing system, Plaintiffs refiled their motion for a preliminary injunction (ECF No. 92) as a separate document and event in the electronic filing system. Therefore, this reply is limited to supporting the Legislature's motion for leave to supplement the summary-judgment record, and the Legislature will file its opposition to Plaintiffs' motion for a preliminary injunction as a separate document and event in the electronic filing system.

Trade Secrets Act of 2016 (DTSA), 18 U.S.C. § 1836. Id.

Plaintiffs' contentions have no merit for several reasons. First, because the Legislative Commission, at its meeting on May 16, 2018, approved the proposed regulations under the early review provisions of Nevada's Administrative Procedure Act (APA), the proposed regulations can become effective immediately after NDHHS holds its public hearing on May 31, 2018—without the need for any additional legislative review or approval—if NDHHS adopts the proposed regulations in their current form after the public hearing. Second, even if NDHHS adopts the proposed regulations in revised form after its public hearing on May 31, 2018, there are several avenues under the APA for the regulations to become effective before July 1, 2018. Finally, even if the proposed regulations do not become effective before July 1, 2018, the Court must nevertheless presume that NDHHS will interpret and apply the challenged provisions of SB 539 in the manner set forth in the proposed regulations when the Court determines whether the challenged provisions are facially constitutional.

II. Discussion.

A. Because the Legislative Commission, at its meeting on May 16, 2018, approved the proposed regulations under the early review provisions of the APA, the proposed regulations can become effective immediately after NDHHS holds its public hearing on May 31, 2018—without the need for any additional legislative review or approval—if NDHHS adopts the proposed regulations in their current form after the public hearing.

Plaintiffs contend that finalized regulations "almost certainly will not be in place by July 1, 2018." (ECF No. 89 at 3.) Plaintiffs base their contention on the inaccurate statement that "[e]ven if the Department adopts the regulation on May 31, 2018, the regulation still must go to Legislative Counsel for review and to the Legislative Commission for approval." (ECF No. 89 at 3-4.) This statement is inaccurate because Plaintiffs do not properly understand or explain the process for legislative review and approval of proposed regulations under the early review provisions of the APA.

Under the Nevada Constitution, the Legislature is given the express power to provide by law for the legislative branch to: (1) review regulations proposed and adopted by executive branch agencies to

determine whether they conform with statutory authority and carry out legislative intent; and (2) approve or reject those regulations before they become effective. Nev. Const. art. 3, § 1(2). In exercising its expressly granted constitutional power, the Legislature has enacted provisions in the APA which set forth the procedures for certain executive branch agencies to propose and adopt regulations and for the legislative branch to review those regulations and determine whether to approve or reject them before they become effective.[2] NRS 233B.0395-233B.120.

Under the APA, the Legislative Commission and its Subcommittee to Review Regulations have the authority to review and determine whether to approve or reject regulations before they become effective. NRS 233B.067-233B.070. The Legislative Commission consists of 12 members of the Legislature, with 6 members being designated by the State Senate and 6 members being designated by the State Assembly. NRS 218E.150; Joint Standing Rule No. 11, Assembly Concurrent Resolution No. 1, 2017 Nev. Stat., File No. 4, at 4508-09; Senate Resolution No. 6, 2017 Nev. Stat., File No. 25, at 4566-67; Assembly Resolution No. 7, 2017 Nev. Stat., File No. 26, at 4568. The Subcommittee to Review Regulations consists of members of the Legislative Commission. NRS 233B.067(6).

In the typical situation, the Legislative Commission or the Subcommittee to Review Regulations reviews proposed regulations after they have been adopted by the agency but before they become effective. NRS 233B.067. However, the APA contains an exception that authorizes the Legislative Commission to provide for its early review and approval of proposed regulations after the agency has given notice of its public hearing on the proposed regulations but before the public hearing is held and the proposed regulations are adopted. NRS 233B.0681(1). Specifically, the exception states that:

[2] Under the APA, executive branch agencies may propose and adopt emergency regulations, temporary regulations and permanent regulations. NRS 233B.0395-233B.120. Because the regulations proposed by NDHHS are permanent regulations, the Legislature will limit its discussion to legislative review of permanent regulations under the APA.

> The Legislative Commission may provide for:
>
> 1. Its early review of a proposed permanent regulation after the agency has given notice of a hearing on the regulation but before the hearing is held. If the permanent regulation adopted after the hearing is identical to the regulation submitted for early review, the Legislative Counsel shall promptly file the regulation with the Secretary of State and notify the agency of the filing.

NRS 233B.0681(1).

Thus, the Legislative Commission may provide for its early review and approval of proposed regulations during the period after the agency gives notice of its public hearing but before the agency actually adopts the proposed regulations. If, during that period, the Legislative Commission approves the proposed regulations and thereafter the agency adopts the proposed regulations without revisions after its public hearing, the Legislative Counsel must promptly file the regulations with the Secretary of State, and they become effective on the date of filing. NRS 233B.0681(1); NRS 233B.070(1).

In this case, the Legislative Commission, at its meeting on May 16, 2018, provided for its early review and approval of the proposed regulations being considered by NDHHS at its public hearing on May 31, 2018. Specifically, the Legislative Commission reviewed the proposed regulations and approved them under Agenda Item VI(B), which stated:

> B. Early review of proposed permanent regulation of the Division of Public and Behavioral Health of the Department of Health and Human Services by the Legislative Commission Pursuant to NRS 233B.0681
>
> R042-18: Implements provisions of Senate Bill No. 539 (2017) regarding prescription drugs

(Ex. 3 at 2.) The Legislative Commission approved the proposed regulations by a vote of seven members in favor and five members against approval.[3]

[3] The seven members who voted in favor of approval were State Assemblymen Jason Frierson, Teresa Benitez-Thompson and Maggie Carlton and State Senators Kelvin Atkinson, Nicole Cannizzaro, Moises Denis and Patricia Farley. The five members who voted against approval were State Assemblymen Chris Edwards, John Hambrick and Keith Pickard and State Senators Pete Goicoechea and James Settelmeyer.

A video recording of the Legislative Commission's meeting on May 16, 2018, may be viewed on the Legislature's website at http://nvleg.granicus.com/MediaPlayer.php?clip_id=9725. Under Fed. R. Evid. 201, the Legislature requests the Court to take judicial notice of the video recording of the meeting because it is a public record maintained by a governmental agency.[4]

Because the Legislative Commission approved the proposed regulations under the early review provisions of the APA, the proposed regulations can become effective immediately after NDHHS holds its public hearing on May 31, 2018—without the need for any additional legislative review or approval—if NDHHS adopts the proposed regulations in their current form after the public hearing. Therefore, contrary to Plaintiffs' dire predictions that finalized regulations "almost certainly will not be in place by July 1, 2018," the regulations can become effective as soon as May 31, 2018.

Moreover, given that the regulations amount to an administrative interpretation of the challenged provisions of SB 539 by the state agency charged with their administration and enforcement, the regulations are highly relevant to determining whether the challenged provisions are facially constitutional because "[i]n evaluating a facial challenge to a state law, a federal court must, of course, consider any limiting construction that a state court or enforcement agency has proffered." Ward v. Rock Against Racism, 491 U.S. 781, 795-96 (1989) (quoting Vill. of Hoffman Estates v. Flipside, Hoffman Estates, Inc., 455 U.S. 489, 494 n.5 (1982)). Consequently, because the regulations are essential to resolving the federal constitutional issues raised in the pending motions for summary

[4] See Daniels-Hall v. Nat'l Educ. Ass'n, 629 F.3d 992, 998-99 (9th Cir. 2010) (taking judicial notice of materials available on the websites of governmental entities); United States v. Garcia, 855 F.3d 615, 621 (4th Cir. 2017) ("This court and numerous others routinely take judicial notice of information contained on state and federal government websites."); Comm. to Protect our Agric. Water v. Occidental Oil & Gas Corp., 235 F. Supp. 3d 1132, 1153 (E.D. Cal. 2017) (taking judicial notice of materials available on "the California Secretary of State website" because the materials are "a matter of public record maintained by a governmental agency."); United States v. DJO Global Inc., 48 F. Supp. 3d 1362, 1381 (C.D. Cal. 2014) (taking judicial notice of materials available on websites of governmental agencies), *aff'd*, 678 F. App'x 594 (9th Cir. 2017).

judgment, the Court should grant the Legislature's motion for leave to supplement the summary-judgment record.

B. Even if NDHHS adopts the proposed regulations in revised form after its public hearing on May 31, 2018, there are several avenues under the APA for the regulations to become effective before July 1, 2018.

Under the APA, there are several avenues available for legislative review and approval of regulations after they have been adopted by an agency but before they become effective. In the typical situation, the Legislative Commission must: (1) review the regulations at its next regularly scheduled meeting if the regulations are received more than 10 working days before the meeting; or (2) refer the regulations for review to the Subcommittee to Review Regulations. NRS 233B.067(3). If the Legislative Commission or Subcommittee to Review Regulations, as applicable, approves the regulations, the Legislative Counsel must promptly file the regulations with the Secretary of State, and they become effective on the date of filing. NRS 233B.067(5); NRS 233B.070(1).

However, the APA also includes an emergency exception that provides for emergency review by the Subcommittee to Review Regulations. NRS 233B.067(4). Under the emergency exception, if an agency determines that an emergency exists which requires the regulations to become effective before the Legislative Commission's next regularly scheduled meeting, the agency may notify the Legislative Counsel in writing of the emergency, and the Legislative Counsel is required to refer the regulations for review by the Subcommittee to Review Regulations, which must meet to review the regulations as soon as practicable. NRS 233B.067(4). If the Subcommittee to Review Regulations approves the regulations, the Legislative Counsel must promptly file the regulations with the Secretary of State, and they become effective on the date of filing. NRS 233B.067(5); NRS 233B.070(1).

In this case, the Legislative Commission's next regularly scheduled meeting is on June 26, 2018, which precedes the deadline for manufacturers to submit their reports to NDHHS under the challenged provisions of SB 539. Therefore, even if NDHHS adopts the regulations in revised form after its public

hearing on May 31, 2018, the Legislative Commission can review and approve the regulations at its next regularly scheduled meeting on June 26, 2018, and the regulations still can become effective before July 1, 2018. NRS 233B.067(5); NRS 233B.070(1).

In addition, if NDHHS determines that an emergency exists which requires the regulations to become effective before the Legislative Commission's next regularly scheduled meeting on June 26, 2018, NDHHS can notify the Legislative Counsel in writing of the emergency, and the Legislative Counsel is required to refer the regulations for review by the Subcommittee to Review Regulations, which must meet to review the regulations as soon as practicable. NRS 233B.067(4). Therefore, even if NDHHS adopts the regulations in revised form after its public hearing on May 31, 2018, the Subcommittee to Review Regulations can review and approve the regulations under the emergency exception, and the regulations still can become effective before July 1, 2018. NRS 233B.067(5); NRS 233B.070(1).

Consequently, contrary to Plaintiffs' dire predictions that finalized regulations "almost certainly will not be in place by July 1, 2018," there are several avenues for the regulations to become effective before July 1, 2018, even if NDHHS adopts the regulations in revised form after its public hearing on May 31, 2018. As a result, because the regulations are essential to resolving the federal constitutional issues raised in the pending motions for summary judgment, the Court should grant the Legislature's motion for leave to supplement the summary-judgment record.

C. Even if the proposed regulations do not become effective before July 1, 2018, the Court must nevertheless presume that NDHHS will interpret and apply the challenged provisions of SB 539 in the manner set forth in the proposed regulations when the Court determines whether the challenged provisions are facially constitutional.

Plaintiffs contend that unless the proposed regulations become effective before July 1, 2018, and bind NDHHS to protect trade-secret information that manufacturers include in their reports, the challenged provisions of SB 539 are facially unconstitutional because NDHHS will be allowed to

publicly disclose trade-secret information in violation of the federal DTSA. (ECF No. 89 at 3-5.) Plaintiffs' contention has no merit as a matter of law.

Under both federal law and Nevada law, there are two types of regulations: (1) regulations that establish substantive or legislative rules; and (2) regulations that establish procedural or interpretative rules. Reno-Sparks Indian Colony v. EPA, 336 F.3d 899, 909 (9th Cir. 2003); Fmali Herb, Inc. v. Heckler, 715 F.2d 1385, 1387 (9th Cir. 1983); County of Clark v. LB Props., 315 P.3d 294, 296 (Nev. 2013). Generally speaking, substantive or legislative rules are "those which effect a change in existing law or policy," such as "imposing general, extra-statutory obligations pursuant to authority properly delegated by the legislature." Reno-Sparks Indian Colony, 336 F.3d at 909 (quoting Powderly v. Schweiker, 704 F.2d 1092, 1098 (9th Cir. 1983)); Alcaraz v. Block, 746 F.2d 593, 613 (9th Cir. 1984). By contrast, procedural or interpretative rules "merely clarify or explain existing law or regulations," such as "instruct[ing] as to what an agency thinks a statute or regulation means." Reno-Sparks Indian Colony, 336 F.3d at 909 (quoting Powderly, 704 F.2d at 1098).

Plaintiffs contend that unless the proposed regulations become effective before July 1, 2018, NDHHS will be allowed to publicly disclose trade-secret information in violation of the federal DTSA. (ECF No. 89 at 3-5.) However, Plaintiffs' contention is based on their mistaken belief that the proposed regulations will establish substantive or legislative rules regarding trade secrets which will prevent NDHHS from publicly disclosing trade-secret information in violation of the federal DTSA. This belief is mistaken because the proposed regulations will not establish any substantive or legislative rules regarding trade secrets. Rather, according to Plaintiffs' own legal arguments, it is the federal DTSA which establishes the substantive or legislative rules regarding trade secrets that prevent NDHHS from publicly disclosing trade-secret information. Therefore, the proposed regulations will not establish any new substantive or legislative rules regarding trade secrets because NDHHS does not possess any regulation-making authority that would allow it to adopt substantive or legislative rules relating to

existing federal law or policy regarding trade secrets.

As a result, because the proposed regulations will not establish any new substantive or legislative rules regarding trade secrets, the proposed regulations will establish only procedural or interpretative rules that will guide NDHHS in complying with the substantive or legislative rules regarding trade secrets already established in the federal DTSA. However, even if those procedural or interpretative rules do not become effective before July 1, 2018, the Court must nevertheless presume that NDHHS will interpret and apply the challenged provisions of SB 539 in the manner set forth in those procedural or interpretative rules when the Court determines whether the challenged provisions are facially constitutional.

It is a fundamental rule of constitutional review that federal courts must presume that state officers will not "disregard the Constitution or valid federal law." Alden v. Maine, 527 U.S. 706, 755 (1999). As further explained by the U.S. Supreme Court:

> The States and their officers are bound by obligations imposed by the Constitution and by federal statutes that comport with the constitutional design. We are unwilling to assume the States will refuse to honor the Constitution or obey the binding laws of the United States. The good faith of the States thus provides an important assurance that "[t]his Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land." U.S. Const., Art. VI.

Id.

It also is a fundamental rule of constitutional review that "[i]n adjudicating facial challenges, federal courts do not assume that state officials will construe state law in the most expansive way imaginable." Ctr. for Individual Freedom v. Madigan, 697 F.3d 464, 494 (7th Cir. 2012). On the contrary, federal courts must presume that state officials "will attempt to construe the statute consistently with constitutional requirements." Id. (quoting City of Akron v. Akron Ctr. for Reproductive Health, 462 U.S. 416, 441 (1983), *overruled in part on other grounds by* Planned Parenthood v. Casey, 505 U.S. 833, 881-83 (1992)).

In this case, the Court must presume that NDHHS will interpret and apply the challenged provisions of SB 539 in a constitutional manner that complies with the federal DTSA. See Alden, 527 U.S. at 755. To this end, the Court must consider any administrative interpretation that NDHHS has proffered because it is the state agency charged with administration and enforcement of the challenged provisions. See Ward, 491 U.S. at 795-96. By giving its notice of intent under Nevada law to act upon the proposed regulations, NDHHS has proffered an administrative interpretation of how it will interpret and apply the challenged provisions. Even though the administrative interpretation is presently reflected in the proposed regulations that have not become effective yet, the Court must nevertheless give deference to the administrative interpretation in those proposed regulations.

It is axiomatic that proposed regulations do not have "the force of law," unless they are finalized and adopted by the agency in accordance with the APA. See Vanscoter v. Sullivan, 920 F.2d 1441, 1449 (9th Cir. 1990); Tedori v. United States, 211 F.3d 488, 493 (9th Cir. 2000). However, the U.S. Supreme Court has recognized that there are circumstances when federal courts must give "deference to agency interpretations that did not emerge out of notice-and-comment rulemaking." Barnhart v. Walton, 535 U.S. 212, 222 (2002); United States v. Mead Corp., 533 U.S. 218, 230-31 (2001). Thus, the fact that an agency "reached its interpretation through means less formal than 'notice and comment' rulemaking does not automatically deprive that interpretation of the judicial deference otherwise its due." Barnhart, 535 U.S. at 221 (citations omitted); Fournier v. Sebelius, 718 F.3d 1110, 1120 (9th Cir. 2013). Simply stated, "an agency's interpretation may merit some deference whatever its form." Mead Corp., 533 U.S. at 234.

In this case, the administrative interpretation proffered by NDHHS is presently reflected in the proposed regulations that have not become effective yet. Nevertheless, the Court must give deference to the administrative interpretation in those proposed regulations. As a result, even if the proposed regulations do not become effective before July 1, 2018, the Court must presume that NDHHS will

interpret and apply the challenged provisions of SB 539 in the manner set forth in the proposed regulations when the Court determines whether the challenged provisions are facially constitutional. Accordingly, because the proposed regulations are essential to resolving the federal constitutional issues raised in the pending motions for summary judgment, the Court should grant the Legislature's motion for leave to supplement the summary-judgment record.

CONCLUSION

Based upon the foregoing, the Legislature respectfully asks the Court to grant the Legislature's motion for leave to supplement the summary-judgment record.

DATED: This **28th** day of May, 2018.

Respectfully submitted,

BRENDA J. ERDOES
Legislative Counsel

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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 **28th** day of May, 2018, pursuant to FRCP 5(b) and Local Rule Part IC, I filed and served a true and correct copy of Nevada Legislature's Reply in Support of Motion for Leave to Supplement Summary-Judgment Record with New and Relevant Information Regarding State of Nevada's Notice of Intent to Act Upon Regulations to Administer Challenged Provisions of SB 539 (2017), by using the Court's CM/ECF system. I further certify that service will be accomplished electronically by the CM/ECF system directed to the following:

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/s/ Kevin C. Powers
An Employee of the Legislative Counsel Bureau

INDEX OF EXHIBITS TO NEVADA LEGISLATURE'S REPLY IN SUPPORT OF MOTION FOR LEAVE TO SUPPLEMENT SUMMARY-JUDGMENT RECORD WITH NEW AND RELEVANT INFORMATION REGARDING STATE OF NEVADA'S NOTICE OF INTENT TO ACT UPON REGULATIONS TO ADMINISTER CHALLENGED PROVISIONS OF SB 539 (2017)

Exhibit No.	Description of Exhibits
3	State of Nevada, Legislative Counsel Bureau, Meeting Notice and Agenda for the Legislative Commission (May 16, 2018).

Nevada Legislature's Reply in Support of Motion for Leave to Supplement Summary-Judgment Record with New and Relevant Information Regarding State of Nevada's Notice of Intent to Act Upon Regulations to Administer Challenged Provisions of SB 539 (2017)

Legislature Exhibit 3—

State of Nevada, Legislative Counsel Bureau, Meeting Notice and Agenda for the Legislative Commission (May 16, 2018)

STATE OF NEVADA
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LEGISLATIVE BUILDING
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Rick Combs, *Director, Secretary*

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BRENDA J. ERDOES, Legislative *Counsel* (775) 684-6830
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MICHAEL J. STEWART, Research *Director* (775) 684-6825

MEETING NOTICE AND AGENDA

Name of Organization: LEGISLATIVE COMMISSION (NRS 218E.150)

Date and Time of Meeting: Wednesday, May 16, 2018 – 8:30 a.m.

Place of Meeting: Grant Sawyer State Office Building, Room 4401
555 East Washington Avenue
Las Vegas, Nevada

Note: Some members of the Commission may be attending the meeting and other persons may observe the meeting and provide testimony through a simultaneous videoconference conducted at the following location:

Legislative Building, Room 4100
401 South Carson Street
Carson City, Nevada

If you cannot attend the meeting, you can listen or view it live over the Internet. The address for the Nevada Legislature website is http://www.leg.state.nv.us. Click on the link "Calendar of Meetings/View."

Note: Minutes of this meeting will be produced in summary format. Please provide the secretary with electronic or written copies of testimony and visual presentations if you wish to have complete versions included as exhibits with the minutes.

Note: **Items on this agenda may be taken in a different order than listed. Two or more agenda items may be combined for consideration. An item may be removed from this agenda or discussion relating to an item on this agenda may be delayed at any time.**

I. ROLL CALL

II. PUBLIC COMMENT
(Because of time considerations, speakers are urged to avoid repetition of comments made by previous speakers. A person may also have comments added to the minutes of the meeting by submitting them in writing either in addition to testifying or in lieu of testifying. Written comments may be submitted in person or by e-mail, facsimile, or mail before, during, or after the meeting.)

III. APPROVAL OF MINUTES OF THE FEBRUARY 27, 2018, MEETING – Assemblyman Jason Frierson, Chair

For Possible Action

IV. LEGISLATIVE AUDITOR

For Possible Action

A. Summary of Audit Reports Presented to Legislative Commission's Audit Subcommittee (NRS 218G.240) – Rocky Cooper, Legislative Auditor

For Possible Action

B. Summary of Six-Month Status Reports on the Implementation of the Audit Recommendations by the Legislative Auditor as Submitted to the Audit Subcommittee (NRS 218G.270) – Rocky Cooper, Legislative Auditor

V. PROGRESS REPORT – Litigation Currently in Progress-Kevin Powers, Chief Litigation Counsel

VI. LEGISLATIVE COMMISSION POLICY

For Possible Action

A. Review of Administrative Regulations Submitted Pursuant to NRS 233B.067 and NRS 233B.0675- Brenda Erdoes, Legislative Counsel
Please see attached list of regulations to be considered or access list electronically at:
http://www.leg.state.nv.us/Register/IndexesRegsReviewed/LCMtg_List_2018_May16.pdf

For Possible Action

B. Early review of proposed permanent regulation of the Division of Public and Behavioral Health of the Department of Health and Human Services by the Legislative Commission Pursuant to NRS 233B.0681
R042-18: Implements provisions of Senate Bill No. 539 (2017) regarding prescription drugs
Access text of regulation electronically at:
http://www.leg.state.nv.us/Register/IndexesRegsReviewed/LCMtg_List_2018_May16_R042-18.pdf

For Possible Action

C. Requests for Certain Committees to Meet Later Than August 31, 2018, and for an Extension of the September 1, 2018, Deadline for Those Committees to Submit Bill Draft Requests:
1. Legislative Committee on Energy (NRS 218E.805) – Senator Kelvin Atkinson, Chair, Legislative Committee on Energy
2. Legislative Committee on Public Lands (NRS 218E.510) – Assemblywoman Heidi Swank, Chair, Legislative Committee on Public Lands

For Possible Action

D. Selection of Design and Location for the Memorial To Nevada Firefighters on the Capitol Complex Pursuant to SB 540 of the 2017 Legislative Session – Angelo Aragon, President, Professional Firefighters of Nevada

For Possible Action

E. Approval of Early Session Hires for the 2019 Legislative Session – Rick Combs, Director

For Possible Action

VII. APPOINTMENTS AND NOMINATIONS OF MEMBERS TO NONLEGISLATIVE COMMITTEES AND OTHER ENTITIES – Rick Combs, Director

A. Nominations for the Commission on Nuclear Projects (NRS 459.0091)
B. Appointments to the Nevada Commission on Minority Affairs (NRS 237.852)
C. Appointments to the Advisory Council on Mortgage Investments and Mortgage Lending (NRS 645B.860)
D. Appointments to the Commission on Ethics (NRS 281A.200)

VIII. INFORMATIONAL ITEMS

A. Summary of Quarterly Reports on Disciplinary Action from the Licensing Boards and State Agencies
B. Miscellaneous Reports or Correspondence from State Agencies and Others:
1. Department of Taxation's Tourism Improvement District (TID) Semi-Annual Report for July 2017 through December 2017 Pursuant to NRS 271A.105

2. Department of Health and Human Services, Division of Public and Behavioral Health, Bureau of Health Care Quality and Compliance, Ambulatory Surgical Centers and Outpatient Facilities Inspection Report, July 1, 2016 to June 30, 2017
3. Nevada Advisory Council on Federal Assistance's 2017 Annual Report Pursuant to NRS 358.030
4. Nevada Museums and History's Annual Report on Revenue and Expenditures Related to the Special Nevada Sesquicentennial License Plate
5. Department of Administration, Enterprise Information Technology Services Division, Confidential Document List Pursuant to NRS 242.105
6. Department of Business and Industry, Housing Division, Annual Housing Progress Report Pursuant to NRS 278.235

IX. PUBLIC COMMENT

(Because of time considerations, speakers are urged to avoid repetition of comments made by previous speakers. A person may also have comments added to the minutes of the meeting by submitting them in writing either in addition to testifying or in lieu of testifying. Written comments may be submitted in person or by e-mail, facsimile, or mail before, during, or after the meeting.)

X. ADJOURNMENT

Note: We are pleased to make reasonable accommodations for members of the public who are disabled and wish to attend the meeting. If special arrangements for the meeting are necessary, please notify the Director's Office of the Legislative Counsel Bureau, in writing, at the Legislative Building, 401 South Carson Street, Carson City, Nevada 89701-4747, or call the Director's Office at (775) 684-6800 as soon as possible.

Notice of this meeting was posted in the following Carson City and Las Vegas, Nevada, locations: Blasdel Building, 209 East Musser Street; City Hall, 201 North Carson Street; Legislative Building, 401 South Carson Street; and Legislative Counsel Bureau, Las Vegas Office, Grant Sawyer State Office Building, 555 East Washington Avenue. Notice of this meeting was faxed, e-mailed, or hand delivered for posting to the following Carson City and Las Vegas, Nevada, locations: Capitol Press Corps, Basement, Capitol Building, 101 North Carson Street; Clark County Government Center, Administrative Services, 500 South Grand Central Parkway; and Capitol Police, Grant Sawyer State Office Building, 555 East Washington Avenue. Notice of this meeting was posted on the Internet through the Nevada Legislature's website at www.leg.state.nv.us.
Supporting public material provided to Commission members for this meeting may be requested from Sylvia Wiese, Commission Secretary, Director's Office of the Legislative Counsel Bureau at (775) 684-6775 and is/will be available at the following locations: Meeting locations and the Nevada Legislature's website at www.leg.state.nv.us.