

1 AARON D. FORD
Attorney General
2 CRAIG A. NEWBY (Bar No. 8591)
Deputy Solicitor General
3 State of Nevada
Office of the Attorney General
4 555 E. Washington Ave., Ste 3900
Las Vegas, Nevada 89101
5 (702) 486-3420 (phone)
(702) 486-3768 (fax)
6 CNewby@ag.nv.gov

7 *Attorneys for the Nevada Department of*
Taxation and the Nevada Department of
8 *Motor Vehicles*

9 FIRST JUDICIAL DISTRICT COURT OF NEVADA
10 CARSON CITY

11 THE HONORABLE JAMES
SETTELMEYER, et al.,

12 Plaintiffs,

13 vs.

14
15 STATE OF NEVADA, *ex rel.*, THE
16 HONORABLE NICOLE CANNIZZARO, et
al.,

17 Defendants.

Case No. 19 OC 00127-1B

Dept. No. I

18 NOTICE OF APPEAL

19 Notice is hereby given that Defendants Nevada Department of Taxation and Nevada
20 Department of Motor Vehicles hereby appeal to the Supreme Court of Nevada from the

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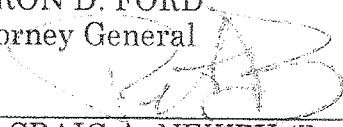
28 ///

Electronically Filed
Oct 13 2020 09:02 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

1 "Order after Hearing on September 21, 2020, and Final Judgment," entered on October 7,
2 2020 and notice of entry of which was served on October 8, 2020.

3 DATED this 9th day of October, 2020.

4 AARON D. FORD
5 Attorney General

6 By:  1110
7 CRAIG A. NEWBY (Bar No. 8591)
8 Deputy Solicitor General
9 State of Nevada
10 Office of the Attorney General
11 555 E. Washington Avenue, Suite 3900
12 Las Vegas, NV 89101
13 cnewby@ag.nv.gov
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1 AFFIRMATION

2 Pursuant to NRS 239B.030(4), the undersigned does hereby affirm that the
3 preceding document does not contain the Social Security number of any person.

4 DATED this 9th day of October, 2020.

5 AARON D. FORD
6 Attorney General

7
8 By:  *for*

9 CRAIG A. NEWBY (Bar No. 8591)
10 Deputy Solicitor General
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CERTIFICATE OF SERVICE

I hereby certify that I mailed by United States, First Class, the foregoing **NOTICE OF APPEAL** on the 9th day of October, 2020, including service upon the following counsel of record:


Karen A. Peterson, Esq.
Justin M. Townsend, Esq.
ALLISON MacKENZIE, LTD.
402 North Division Street
Carson City, Nevada 89703

Attorneys for Plaintiffs

Kevin C. Powers, Esq., General Counsel
Legislative Counsel Bureau, Legal Division
410 South Carson Street
Carson City, Nevada 89701

*Attorneys for The Legislature of
the State of Nevada*

By:


Caitie Collins, Employee of the Office
of the Attorney General

Judge: RUSSELL, JUDGE JAMES
TODD

Case No. 19 OC 00127 1B

Ticket No.
CTN:

SETTELMEYER, JAMES et al

By:

CANNIZZARO, NICOLE

DRSPND

-vs-

By: POWERS, KEVIN C
401 S CARSON STREET
CARSON CITY, NV 89701

Dob:
Lic:
CLIFT, CLAIRE J

Sex:
Sid:
DRSPND

By: POWERS, KEVIN C
401 S CARSON STREET
CARSON CITY, NV 89701

Dob:
Lic:
MARSHALL, KATE

Sex:
Sid:
DRSPND

By: ATTORNEY GENERAL OFFICE
HEROE'S MEMORIAL BLDG.
CAPITOL COMPLEX
CARSON CITY, NV 89710

Dob:
Lic:
NEVADA DEPARTMENT OF
MOTOR VEHICLES

Sex:
Sid:
DRSPND

By: ATTORNEY GENERAL OFFICE
HEROE'S MEMORIAL BLDG.
CAPITOL COMPLEX
CARSON CITY, NV 89710

Dob:
Lic:
NEVADA DEPARTMENT OF
TAXATION

Sex:
Sid:
DRSPND

By: ATTORNEY GENERAL OFFICE
HEROE'S MEMORIAL BLDG.
CAPITOL COMPLEX
CARSON CITY, NV 89710

Dob:
Lic:
SISOLAK, STEVE

Sex:
Sid:
DRSPND

By: ATTORNEY GENERAL OFFICE
HEROE'S MEMORIAL BLDG.
CAPITOL COMPLEX
CARSON CITY, NV 89710

Dob:
Lic:
STATE OF NEVADA

Sex:
Sid:
DRSPND

By: ATTORNEY GENERAL OFFICE
HEROE'S MEMORIAL BLDG.
CAPITOL COMPLEX
CARSON CITY, NV 89710

Dob:
Lic:

Sex:
Sid:

Plate#:

Make:

Year:

Type:

Venue:

Location:

Accident:

Bond:

Type:

Set:

Posted:

GANSERT, HEIDI PLNTPET
GOICOECHEA, PETE PLNTPET
GOODFELLOW CORPORATION PLNTPET
GREAT BASIN ENGINEERING
CONTRACTORS, LLC PLNTPET
HAMMOND, SCOTT PLNTPET
HANSEN, IRA PLNTPET
HARDY, JOE PLNTPET
KEYSTONE CORP. PLNTPET
KIECHHEFER, BEN PLNTPET
KIMMIE CANDY COMPANY PLNTPET
NATIONAL FEDERATION OF
INDEPENDENT BUSINESS PLNTPET
NEVADA FRANCHISED AUTO
DEALERS ASSOCIATION PLNTPET
NEVADA TRUCKING
ASSOCIATION, INC. PLNTPET
PICKARD, KEITH PLNTPET
RETAIL ASSOCIATION OF
NEVADA PLNTPET
SETTELMEYER, JAMES PLNTPET
THE LEGISLATURE OF THE
STATE OF NEVADA IVNR

Charges:

Ct.

Offense Dt:

Cvr:

Arrest Dt:

Comments:

Ct.

Offense Dt:

Cvr:

Arrest Dt:

Comments:

Ct.	Offense Dt:	Cvr:
	Arrest Dt:	
	Comments:	

Ct.	Offense Dt:	Cvr:
	Arrest Dt:	
	Comments:	

Ct.	Offense Dt:	Cvr:
	Arrest Dt:	
	Comments:	

Ct.	Offense Dt:	Cvr:
	Arrest Dt:	
	Comments:	

Ct.	Offense Dt:	Cvr:
	Arrest Dt:	
	Comments:	

Sentencing:

No.	Filed	Action	Operator	Fine/Cost	Due
1	10/09/20	NEVADA LEGISLATURES CASE APPEAL STATEMENT	1BCCOOPER	0.00	0.00
2	10/09/20	NEVADA LEGISLATURES NOTICE OF APPEAL	1BCCOOPER	0.00	0.00
3	10/09/20	CASE APPEAL STATEMENT FOR THE NEVADA DEPARTMENT OF TAXATION AND THE NEVADA DEPARTMENT OF MOTOR VEHICLES	1BCCOOPER	0.00	0.00
4	10/09/20	NOTICE OF APPEAL	1BCCOOPER	0.00	0.00
5	10/06/20	ORIGINAL OF JAVS TRANSCRIPT OF PROCEEDINGS - ORAL ARGUMENT	1BPETERSON	0.00	0.00
6	09/21/20	HEARING HELD: The following event: MOTION HEARING - CIVIL scheduled for 09/21/2020 at 1:30 pm has been resulted as follows: Result: HEARING HELD Judge: RUSSELL, JUDGE JAMES TODD Location: DEPT I	1BJHIGGINS	0.00	0.00
7	09/15/20	DEFENDANTS STATE OF NEVADA EX REL. SENATE MAJORITY LEADER NICOLE CANNIZZARO AND SECRETARY OF THE SENATE CLAIRE CLIFT'S AND DEFENDANT-INTERVENOR NEVADA LEGISLATURE'S REPLY IN SUPPORT OF COUNTER-MOTION FOR SUMMARY JUDGMENT	1BPETERSON	0.00	0.00
8	09/14/20	DEFENDANTS STATE OF NEVADA EX REL. SENATE MAJORITY LEADER NICOLE CANNIZZARO AND SECRETARY OF THE SENATE CLAIRE CLIFT'S AND DEFENDANT-INTERVENOR NEVADA LEGISLATURE'S REPLY IN SUPPORT OF COUNTER-MOTION FOR SUMMARY JUDGMENT	1BPETERSON	0.00	0.00
9	09/08/20	PLAINTIFFS SUPPLEMENT TO REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT; AND OPPOSITION TO LEGISLATIVE DEFENDANTS AND LEGISLATURES COUNTER MOTION FOR SUMMARY JUDGMENT	1BCCOOPER	0.00	0.00
10	09/04/20	AFFIDAVIT OF JENNIFER MCMENOMY	1BCCOOPER	0.00	0.00
11	09/04/20	AFFIDAVIT OF SENATOR JAMES SETTLEMEYER	1BCCOOPER	0.00	0.00

No.	Filed	Action	Operator	Fine/Cost	Due
12	09/04/20	EXHIBITS 1-12 TO THE PLAINTIFFS REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT; AND OPPOSITION TO LEGISLATIVE DEFENDANTS AND LEGISLATIVURES COUNTER MOTION FOR SUMMARY JUDGMENT	1BCCOOPER	0.00	0.00
13	09/04/20	PLAINTIFFS REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT; AND OPPOSITION TO LEGISLATIVE DEFENDANTS AND LEGISLATURES COUNTER MOTION FOR SUMMARY JUDGMENT	1BCCOOPER	0.00	0.00
14	08/21/20	JOINDER TO THE LEGISLATIVE DEFENDANTS COUNTER MOTION FOR SUMMARY JUDGMENT	1BCCOOPER	0.00	0.00
15	08/19/20	DEFENDANTS STATE OF NEVADA EX. REL. SENATE MAJORITY LEADER NICOLE CANNIZZARO AND SECRETARY OF THE SENATE CLAIRE CLIFTS AND DEFENDANT INTERVENTOR NEVADA LEGISLATURES OPPOSITION TO PLAINTIFFS MTION FOR SUMMARY JUDGMENT AND COUNTER MOTION FOR SUMMARY JUDGMENT	1BCCOOPER	0.00	0.00
16	08/18/20	DEFENDANTS STATE OF NEVADA EX. REL. SENATE MAJORITY LEADER NICOLE CANNIZZARO AND SECRETARY OF THE SENATE CLAIRE CLIFTS AND DEFENDANT INTERVENTOR NEVADA LEGISLATURES OPPOSITION TO PLAINTIFFS MTION FOR SUMMARY JUDGMENT AND COUNTER MOTION FOR SUMMARY JUDGMENT	1BCCOOPER	0.00	0.00
17	08/18/20	APPENDIX TO DEFENDANTS' SUPPLEMENTAL AUTHORITY BATES STAMPED PAGES 26-125 VOLUME II	1BSBARAJAS	0.00	0.00
18	08/18/20	APPENDIX TO DEFENDANTS' SUPPLEMENTAL AUTHORITY BATES STAMPED PAGES 01-25 VOLUME 1	1BSBARAJAS	0.00	0.00
19	08/18/20	REPLY SUPPORTING EXECUTIVE DEFENDANTS' MOTION TO DISMISS AND OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT	1BSBARAJAS	0.00	0.00
20	08/13/20	FILE RETURNED AFTER SUBMISSION - ORDER ENTERED	1BSBARAJAS	0.00	0.00
21	08/13/20	STIPULATION REGARDING BRIEFING SCHEDULE AND ORDER	1BSBARAJAS	0.00	0.00
22	08/13/20	REQUEST FOR SUBMISSION STIPULATION REGARDING BRIEFING SCHEDULE AND ORDER	1BSBARAJAS	0.00	0.00
23	07/23/20	NOTICE IN LIEU OF REMITTITUR	1BCCOOPER	0.00	0.00
24	07/09/20	ORDER VACATING ORDER DISQUALIFYING LCB LEGAL	1BSBARAJAS	0.00	0.00
25	01/13/20	ORDER DIRECTING ANSWER GRANTING STAY AND SCHEDULING ORAL ARGUMENT	1BCCOOPER	0.00	0.00
26	12/26/19	NEVADA LEGISLATURE'S ANSWER TO PLAINTIFFS' FIRST AMENDED COMPLAINT	1BSBARAJAS	0.00	0.00
27	12/19/19	AMENDED NOTICE OF ENTRY OF ORDER GRANTING NEVADA LEGISLATURE'S MOTION TO INTERVENE AS DEFENDANT-INTERVENOR AND DENYING PLAINTIFF SENATORS' MOTION TO DISQUALIFY LCB LEGAL AS COUNSEL FOR NEVADA LEGISLATURE	1BPOKEEFE	0.00	0.00

No.	Filed	Action	Operator	Fine/Cost	Due
28	12/19/19	NOTICE OF ENTRY OF ORDER GRANTING PLAINTIFF SENATORS' MOTION TO DISQUALIFY LCB LEGAL AS COUNSEL FOR LEGISLATURE DEFENDANTS SENATOR CANNIZZARO AND AND SECRETARY OF THE SENATE CLIFT; ORDER DENYING STAY; ORDER SETTING PROCEDURAL SCHEDULE	1BPOKEEFE	0.00	0.00
29	12/19/19	NOTICE OF ENTRY OF ORDER GRANTING NEVADA LEGISLATURE'S MOTION TO INTERVENE AS DEFENDANT- INTERVENOR AND DENYING PLAINTIFF SENATORS' MOTION TO DISQUALIFY LCB LEGAL AS COUNSEL FOR NEVADA LEGISLATURE	1BPOKEEFE	0.00	0.00
30	12/19/19	ORDER GRANTING PLAINTIFF SENATORS' MOTION TO DISQUALIFY LCB LEGAL AS COUNSEL FOR LEGISLATIVE DEFENDANTS SENATOR CANNIZZARO AND SECRETARY OF THE SENATE CLIFT; ORDER DENYING STAY; ORDER SETTING PROCEDURAL SCHEDULE	1BPOKEEFE	0.00	0.00
31	12/19/19	ORDER GRANTING NEVADA LEGISLATURE'S MOTION TO INTERVENE AS DEFENDANT- INTERVENOR AND DENYING PLAINTIFF SENATORS' MOTION TO DISQUALIFY LCB LEGAL AS COUNSEL FOR NEVADA LEGISLATURE	1BPOKEEFE	0.00	0.00
32	12/18/19	CERTIFIED COPY OF TRANSCRIPT OF PROCEEDINGS-ORAL ARGUMENT	1BPOKEEFE	0.00	0.00
33	11/26/19	JAVS TRANSCRIPT OF PROCEEDINGS ORAL ARGUMENT 11/19/2019	1BPOKEEFE	0.00	0.00
34	11/25/19	EVENT RESCHEDULED The following event: DECLARATORY RELIEF HEARING scheduled for 04/01/2020 at 9:00 am has been resulted as follows: Result: RESCHEDULED Judge: RUSSELL, JUDGE JAMES TODD Location: DEPT I	1BPOKEEFE	0.00	0.00
35	11/22/19	TRIAL DATE MEMO	1BPOKEEFE	0.00	0.00
36	11/19/19	HEARING HELD: The following event: MOTION HEARING - CIVIL scheduled for 11/19/2019 at 3:30 pm has been resulted as follows: Result: HEARING HELD Judge: RUSSELL, JUDGE JAMES TODD Location: DEPT I	1BJHIGGINS	0.00	0.00
37	11/18/19	PLAINTIFFS' QUALIFIED OPPOSITION TO MOTION TO INTERVENE AND PLAINTIFF SENATORS MOTION TO DISQUALIFY	1BPOKEEFE	0.00	0.00
38	11/13/19	REQUEST TO SUBMIT DOCUMENTS FOR ORAL ARGUMENT	1BPOKEEFE	0.00	0.00
39	11/12/19	AFFIDAVIT OF SENATOR JAMES SETTELMAYER	1BPOKEEFE	0.00	0.00
40	11/12/19	AFFIDAVIT OF KAREN PETERSON	1BPOKEEFE	0.00	0.00
41	11/12/19	REPLY IN SUPPORT OF MOTION TO DISQUALIFY	1BPOKEEFE	0.00	0.00
42	11/06/19	AFFIRMATION PURSUANT TO NRS 239.030	1BVANESSA	0.00	0.00

No.	Filed	Action	Operator	Fine/Cost	Due
43	11/06/19	NEVADA LEGISLATURE'S MOTION TO INTERVENE AS DEFENDANT	1BVANESSA	0.00	0.00
44	11/04/19	OPPOSITION TO PLAINTIFF SENATORS' MOTION TO DISQUALIFY LCB LEGAL AS COUNSEL FOR DEFENDANTS STATE OF NEVADA EX REL. SENATE MAJORITY LEADER NICOLE CANNIZZARO AND SECRETARY OF THE SENATE CLAIRE CLIFT	1BPOKEEFE	0.00	0.00
45	10/29/19	STIPULATION AND ORDER REGARDING STAY OF PROCEEDINGS PENDING RESOLUTION OF PLAINITFF SENATORS' MOTION TO DISQUALIFY COUNSEL FOR DEFENDNATNS SENATE MAJORITY LEADER NICOLE CANNIZZARO AND SECRETARY OF THE SENATE CLAIRE CLIFT	1BJULIEH	0.00	0.00
46	10/28/19	TRIAL DATE MEMO	1BCCOOPER	0.00	0.00
47	10/28/19	REQUEST TO SUBMIT STIPULATION AND ORDER	1BCCOOPER	0.00	0.00
48	10/24/19	PLAINTIFF SENATORS MOTION TO DISQUALIFY	1BCCOOPER	0.00	0.00
49	10/10/19	FILE RETURNED AFTER SUBMISSION - ORDER ENTERED	1BVANESSA	0.00	0.00
50	10/10/19	STIPULATION REGARDING BRIEFING SCHEDULE FOR DISPOSITIVE MOTIONS, HEARING DATE FOR ORAL ARGUMENT AND RELATED PROCEDURAL MATTERS AND ORDER	1BVANESSA	0.00	0.00
51	10/09/19	REQUEST TO SUBMIT STIPULATION AND ORDER	1BVANESSA	0.00	0.00
52	09/30/19	PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO DISMISS OR, IN THE ALTERNATIVE, PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT	1BJHIGGINS	0.00	0.00
53	09/16/19	MOTION TO DISMISS	1BCCOOPER	0.00	0.00
54	09/16/19	INITIAL APPEARANCE BY DEFENDANT STATE OF NEVADA EX REL. SENATE MAJORITY LEADER NICOLE CANNIZZARO AND SECRETARY OF THE SENATE CLAIRE CLIFT	1BCTORRES	0.00	0.00
55	09/16/19	ANSWER TO PLAINTIFFS' FIRST AMENDED COMPLAINT BY DEFENDANTS STATE OF NEVADA EX REL. SENATE MAJORITY LEADER NICOLE CANNIZZARO AND SECRETARY OF THE SENATE CLAIRE CLIFT	1BCTORRES	218.00	0.00
56	08/05/19	ACKNOWLEDGMENT OF RECEIPT OF DOCUMENTS - (3)	1BVANESSA	0.00	0.00
57	08/05/19	DECLARATION OF SERVICE - (7)	1BVANESSA	0.00	0.00
58	07/30/19	ISSUING SUMMONS AND ADD'L SUMMONS (5) FOR FIRST AMENDED COMPLAINT	1BVANESSA	0.00	0.00
59	07/30/19	ADDITIONAL PLAINTIFF Receipt: 61366 Date: 07/30/2019	1BVANESSA	30.00	0.00
60	07/30/19	ADDITIONAL PLAINTIFF Receipt: 61366 Date: 07/30/2019	1BVANESSA	30.00	0.00

No.	Filed	Action	Operator	Fine/Cost	Due
61	07/30/19	ADDITIONAL PLAINTIFF Receipt: 61366 Date: 07/30/2019	1BVANESSA	30.00	0.00
62	07/30/19	ADDITIONAL PLAINTIFF Receipt: 61366 Date: 07/30/2019	1BVANESSA	30.00	0.00
63	07/30/19	ADDITIONAL PLAINTIFF Receipt: 61366 Date: 07/30/2019	1BVANESSA	30.00	0.00
64	07/30/19	FIRST AMENDED COMPLAINT	1BVANESSA	0.00	0.00
65	07/24/19	RECEIPT	DATA2	0.00	0.00
66	07/24/19	NOTICE OF ASSIGNMENT BY CLERK	1BJHIGGINS	0.00	0.00
67	07/22/19	PEREMPTORY CHALLENGE OF JUDGE	1BCCOOPER	0.00	0.00
68	07/22/19	FILE RETURNED AFTER SUBMISSION - ORDER ENTERED	1BCCOOPER	0.00	0.00
69	07/22/19	ORDER DENYING TEMPORARY RESTRAINING ORDER WITHOUT PREJUDICE	1BCCOOPER	0.00	0.00
70	07/19/19	ISSUING SUMMONS & ADD'L SUMMONS - (6)	1BVANESSA	0.00	0.00
71	07/19/19	AFFIRMATION PURSUANT TO NRS 239.030	1BVANESSA	0.00	0.00
72	07/19/19	ADDITIONAL PLAINTIFF Receipt: 61230 Date: 07/19/2019	1BVANESSA	30.00	0.00
73	07/19/19	ADDITIONAL PLAINTIFF Receipt: 61230 Date: 07/19/2019	1BVANESSA	30.00	0.00
74	07/19/19	ADDITIONAL PLAINTIFF Receipt: 61230 Date: 07/19/2019	1BVANESSA	30.00	0.00
75	07/19/19	ADDITIONAL PLAINTIFF Receipt: 61230 Date: 07/19/2019	1BVANESSA	30.00	0.00
76	07/19/19	ADDITIONAL PLAINTIFF Receipt: 61230 Date: 07/19/2019	1BVANESSA	30.00	0.00
77	07/19/19	ADDITIONAL PLAINTIFF Receipt: 61230 Date: 07/19/2019	1BVANESSA	30.00	0.00
78	07/19/19	ADDITIONAL PLAINTIFF Receipt: 61230 Date: 07/19/2019	1BVANESSA	30.00	0.00
79	07/19/19	ADDITIONAL PLAINTIFF Receipt: 61230 Date: 07/19/2019	1BVANESSA	30.00	0.00
80	07/19/19	ADDITIONAL PLAINTIFF Receipt: 61230 Date: 07/19/2019	1BVANESSA	30.00	0.00
81	07/19/19	ADDITIONAL PLAINTIFF Receipt: 61230 Date: 07/19/2019	1BVANESSA	30.00	0.00
82	07/19/19	COMPLAINT Receipt: 61230 Date: 07/19/2019	1BVANESSA	265.00	0.00
Total:				933.00	0.00
Totals By: COST				933.00	0.00
INFORMATION				0.00	0.00
*** End of Report ***					

CIVIL COVER SHEET
 Carson City, Nevada
 Case No. 190C 00197 1B
(Assigned by Clerk's Office)

RECD & FILED

I. Party Information

Plaintiff(s) (name/address/phone):

PLEASE SEE ATTACHED

Attorney (name/address/phone):

KAREN A. PETERSON, Esq. and JUSTIN M. TOWNSEND, Esq.
 ALLISON MacKENZIE, LTD.
 402 NORTH DIVISION STREET
 CARSON CITY, NV 89703 (775) 687-0202

Defendant(s) (name/address/phone):

PLEASE SEE ATTACHED 2019 JUL 19 PM 2:36

Attorney (name/address/phone):

Unknown

II. Nature of Controversy (Please check applicable bold category and applicable subcategory, if appropriate) ☐ **Arbitration Requested**

Civil Cases

Real Property	Torts	
<input type="checkbox"/> Landlord/Tenant - LT <input type="checkbox"/> Unlawful Detainer - UD <input type="checkbox"/> Title to Property <input type="checkbox"/> Foreclosure - FC <input type="checkbox"/> Liens - LE <input type="checkbox"/> Quiet Title - QT <input type="checkbox"/> Specific Performance - SP <input type="checkbox"/> Condemnation/Eminent Domain - CD <input type="checkbox"/> Other Real Property - RO <input type="checkbox"/> Partition - PT <input type="checkbox"/> Planning/Zoning - PZ	<div style="text-align: center;">Negligence</div> <div style="display: flex; justify-content: space-between;"> <div style="width: 48%;"> <input type="checkbox"/> Negligence - Auto - VP <input type="checkbox"/> Negligence - Medical/Dental - MD <input type="checkbox"/> Negligence - Premises Liability - SF (Slip/Fall) <input type="checkbox"/> Negligence - Other - NO </div> <div style="width: 48%;"> <input type="checkbox"/> Product Liability <input type="checkbox"/> Product Liability/Motor Vehicle - VII <input type="checkbox"/> Other Torts/Product Liability - PL <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Torts/Defamation (Libel/Slander) - DF <input type="checkbox"/> Interfere with Contract Rights - IR <input type="checkbox"/> Employment Torts (Wrongful term) - WT <input type="checkbox"/> Other Torts - TO <input type="checkbox"/> Anti-trust - AT <input type="checkbox"/> Fraud/Misrepresentation - FM <input type="checkbox"/> Insurance - IN <input type="checkbox"/> Legal Tort - LG <input type="checkbox"/> Unfair competition - UC </div> </div>	
Probate	Other Civil Filing Types	
<input type="checkbox"/> Summary Administration - SU <input type="checkbox"/> General Administration - FA <input type="checkbox"/> Special Administration - SL <input type="checkbox"/> Set Aside Estates - SE <input type="checkbox"/> Trust/Conservatorships <input type="checkbox"/> Individual Trustee - TR <input type="checkbox"/> Corporate Trustee - TM <input type="checkbox"/> Other Probate - OP	<div style="display: flex; justify-content: space-between;"> <div style="width: 48%;"> <input type="checkbox"/> Construction Defect - CF <input type="checkbox"/> Chapter 40 <input type="checkbox"/> General <input type="checkbox"/> Breach of Contract <input type="checkbox"/> Building & Construction - BC <input type="checkbox"/> Insurance Carrier - BF <input type="checkbox"/> Commercial Instrument - CI <input type="checkbox"/> Other Contracts/Acct/Judgment - CO <input type="checkbox"/> Collection of Actions - CT <input type="checkbox"/> Employment Contract - EC <input type="checkbox"/> Guarantee - GU <input type="checkbox"/> Sale Contract - SC <input type="checkbox"/> Uniform Commercial Code - UN <input type="checkbox"/> Civil Petition for Judicial Review <input type="checkbox"/> Other Administrative Law - AO <input type="checkbox"/> Department of Motor Vehicles - DM <input type="checkbox"/> Worker's Compensation Appeal - SI </div> <div style="width: 48%;"> <input type="checkbox"/> Appeal from Lower Court <i>(also check applicable civil case box)</i> <input type="checkbox"/> Transfer from Justice Court - TJ <input type="checkbox"/> Justice Court Civil Appeal - CA <input type="checkbox"/> Civil Writ <input type="checkbox"/> Other Special Proceeding - SS <input type="checkbox"/> Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim - CM <input type="checkbox"/> Conversion of Property - CN <input type="checkbox"/> Damage to Property - DG <input type="checkbox"/> Employment Security - ES <input type="checkbox"/> Enforcement of Judgment - EJ <input type="checkbox"/> Foreign Judgment - Civil - FJ <input type="checkbox"/> Other Personal Property - PO <input type="checkbox"/> Recovery of Property - RE <input type="checkbox"/> Stockholder Suit - ST <input checked="" type="checkbox"/> Other Civil Matters - GC <input type="checkbox"/> Confession of Judgment - CJ <input type="checkbox"/> Petition to Seal Criminal Records - PS </div> </div>	

III. Business Court Requested (If you check a box below, you must check an additional box above to determine case type)

- | | | |
|---|--|---|
| <input type="checkbox"/> NRS Chapters 78-88 | <input type="checkbox"/> Investments (NRS 104 Art. 8) | <input type="checkbox"/> Enhanced Case Mgmt/Business |
| <input type="checkbox"/> Commodities (NRS 90) | <input type="checkbox"/> Deceptive Trade Practices (NRS 598) | <input type="checkbox"/> Other Business Court Matters |
| <input type="checkbox"/> Securities (NRS 90) | <input type="checkbox"/> Trademarks (NRS 600A) | |

July 19, 2019

Date

Signature of initiating party or representative

See other side for family-related case filings.

PLAINTIFFS:

THE HONORABLE JAMES SETTELMAYER,
THE HONORABLE JOE HARDY,
THE HONORABLE HEIDI GANSERT,
THE HONORABLE SCOTT HAMMOND,
THE HONORABLE PETE GOICOECHEA,
THE HONORABLE BEN KIECKHEFER,
THE HONORABLE IRA HANSEN, and
THE HONORABLE KEITH PICKARD,
in their official capacities as members of the
Senate of the State of Nevada and individually;
GREAT BASIN ENGINEERING
CONTRACTORS, LLC, a Nevada limited
liability company; GOODFELLOW
CORPORATION, a Utah corporation qualified
to do business in the State of Nevada; and
KIMMIE CANDY COMPANY, a Nevada
corporation

DEFENDANTS:

STATE OF NEVADA *ex rel.* THE
HONORABLE NICOLE CANNIZZARO,
in her official capacity as Senate Majority
Leader; THE HONORABLE KATE
MARSHALL, in her official capacity as
President of the Senate; CLAIRE J. CLIFT,
in her official capacity as Secretary of
the Senate; THE HONORABLE STEVE
SISOLAK, in his official capacity as
Governor of the State of Nevada; NEVADA
DEPARTMENT OF TAXATION;
NEVADA DEPARTMENT OF MOTOR
VEHICLES; and DOES I-X, inclusive

REC'D
1967-10-10
1967-10-10

FIRST JUDICIAL DISTRICT COURT OF NEVADA
CARSON CITY

Case No. 19 OC 00127-1B

Dept. No. 1

vs.

STATE OF NEVADA, *ex rel.*, THE
HONORABLE NICOLE CANNIZZARO, et
al.,

Defendants.

**CASE APPEAL STATEMENT FOR THE NEVADA DEPARTMENT OF TAXATION
AND THE NEVADA DEPARTMENT OF MOTOR VEHICLES**

Defendants Nevada Department of Taxation and Nevada Department of Motor Vehicles hereby file their Case Appeal Statement pursuant to Nevada Rule of Appellate Procedure 3(f).

1. Name of appellant filing this case appeal statement:

Nevada Department of Taxation and Nevada Department of Motor Vehicles.

2. Identify the judge issuing the decision, judgment, or order appealed from:

Honorable James Todd Russell.

///

1 3. Identify each appellant and the name and address of counsel for each
2 appellant:

3 (a) Name of appellant

4 Nevada Department of Taxation and Nevada Department of Motor Vehicles.

5 (b) Name and Address of Appellate Counsel

6 Craig A. Newby, Esq.
7 Nevada Bar No. 8591
8 Deputy Solicitor General
9 Nevada Office of the Attorney General
10 555 E. Washington Ave., Ste. 3900
11 Las Vegas, NV 89101
12 (702) 486-3420 (phone)
13 (702) 486-3768 (facsimile)
14 cnewby@ag.nv.gov

11 4. Identify each respondent and the name and address of appellate counsel, if
12 known, for each respondent (if the name of a respondent's appellate
13 counsel is unknown, indicate as much and provide the name and address
14 of that respondent's trial counsel):

14 (a) Name of Respondents

15 (1) Honorable James Settelmeyer, Honorable Joe Hardy, Honorable Heidi
16 Gansert, Honorable Scott Hammond, Honorable Pete Goicoechea, Honorable
17 Ben Kieckhefer, Honorable Ira Hansen, and Honorable Keith Pickard, in their
18 official capacities as members of the Senate of the State of Nevada and
19 individually;

20 (2) Great Basin Engineering Contractors, LLC, a Nevada limited liability
21 company;

22 (3) Goodfellow Corporation, a Utah corporation qualified to do business in
23 the State of Nevada;

24 (4) Kimmie Candy Company, a Nevada corporation;

25 (5) Keystone Corp., a Nevada nonprofit corporation;

26 (6) National Federation of Independent Business, a California nonprofit
27 corporation qualified to do business in the State of Nevada;

28 ///

1 (7) Nevada Franchised Auto Dealers Association, a Nevada nonprofit
2 corporation;

3 (8) Nevada Trucking Association, Inc., a Nevada nonprofit corporation;

4 (9) Retail Association Of Nevada, a Nevada nonprofit corporation.

5 **(b) Name and Address of Trial Counsel**

6 Respondents' appellate counsel is not known. All respondents were
7 represented by the following trial counsel:

8 Karen A. Peterson, Esq.
9 Nevada State Bar No. 366
10 Justin Townsend, Esq.
11 Nevada State Bar No. 12293
12 Allison MacKenzie, Ltd.
13 402 N. Division St.
Carson City, NV 89703
Tel: (775) 687-0202
kpcterson@allisonmackenzie.com
jtownsend@allisonmackenzie.com

14 5. **Indicate whether any attorney identified above in response to question 3**
15 **or 4 is not licensed to practice law in Nevada and, if so, whether the district**
16 **court granted that attorney permission to appear under SCR 42 (attach a**
copy of any district court order granting such permission):

17 All attorneys identified above in response to questions 3 and 4 are licensed to
18 practice law in Nevada.

19 6. **Indicate whether appellant was represented by appointed or retained**
20 **counsel in the district court:**

21 Appellants Nevada Department of Taxation and Nevada Department of Motor
22 Vehicles is represented by retained counsel before the district court.

23 7. **Indicate whether appellant is represented by appointed or retained**
24 **counsel on appeal:**

25 Appellants Nevada Department of Taxation and Nevada Department of Motor
26 Vehicles is represented by retained counsel on appeal.

27 ///

28 ///

1 8. **Indicate whether appellant was granted leave to proceed in forma**
2 **pauperis, and the date of entry of the district court order granting such**
3 **leave:**

4 None of these appellants sought or were granted leave to proceed in forma pauperis.

5 9. **Indicate the date the proceedings commenced in the district court (e.g.,**
6 **date complaint, indictment, information, or petition was filed):**

7 On July 19, 2019, the complaint was filed in the district court.

8 10. **Provide a brief description of the nature of the action and result in the**
9 **district court, including the type of judgment or order being appealed and**
10 **the relief granted by the district court:**

11 Plaintiffs brought this action as a constitutional challenge to certain provisions of
12 Senate Bill No. 542 (SB 542) and Senate Bill No. 551 (SB 551) of the 2019 legislative
13 session. SB 542, 2019 Nev. Stat., ch. 400, § 1, at 2501-02; SB 551, 2019 Nev. Stat., ch. 537,
14 §§ 2, 3, 37, 39, at 3273, 3275, 3294.

15 The principal constitutional challenge is whether the challenged provisions of the
16 bills are unconstitutional because the Senate did not pass the bills by a two-thirds
17 supermajority vote under Article 4, Section 18(2) of the Nevada Constitution. That
18 constitutional provision requires a supermajority vote of two-thirds of the members elected
19 to each House of the Legislature to pass a bill which “creates, generates, or increases any
20 public revenue in any form, including but not limited to taxes, fees, assessments and rates,
21 or changes in the computation bases for taxes, fees, assessments and rates.”

22 On October 7, 2020, the district court entered an order and final judgment
23 adjudicating all claims of all parties, granting final judgment in favor of Plaintiffs on their
24 claims for declaratory and injunctive relief.

25 In its order and final judgment granting Plaintiffs’ claims for declaratory relief, the
26 district court declared that SB 542 and SB 551 were bills which create, generate, or
27 increase any public revenue in any form and were subject to the two-thirds supermajority
28 requirement under Article 4, Section 18(2) of the Nevada Constitution. Because the Senate
did not pass the bills by a two-thirds supermajority under Article 4, Section 18(2) of the
Nevada Constitution, the district court declared that SB 542 and Sections 2, 3, 37, and 39

1 Division, in its official capacity as the legal agency of the
2 Legislative Department of the State of Nevada; Brenda J.
3 Erdoes, Esq., in her official capacity as Legislative Counsel and
4 Chief of the Legislative Counsel Bureau, Legal Division, and in
5 her professional capacity as an attorney and licensed member of
6 the State Bar of Nevada; and Kevin C. Powers, Esq., in his
7 official capacity as Chief Litigation Counsel of the Legislative
8 Counsel Bureau, Legal Division, and in his professional capacity
9 as an attorney and licensed member of the State Bar of Nevada,
10 Petitioners,

11 v.

12 The First Judicial District Court of the State of Nevada, in
13 and for the County of Carson City; and the Honorable James Todd
14 Russell, District Judge, Respondents.

15 and

16 James A. Settelmeyer, Joseph P. Hardy, Heidi Seckers
17 Gansert, Scott T. Hammond, Pete Goicoechea, Ben Kieckhefer,
18 Ira D. Hansen, and Keith F. Pickard, in their official capacities as
19 members of the Senate of the State of Nevada and individually,
20 Real Parties in Interest.

21 **(b) Supreme Court docket number**

22 Docket No. 80313.

23 The original writ proceeding in Docket No. 80313 resulted in a published disposition.
24 *State ex rel. Cannizzaro v. First Jud. Dist. Ct.*, 136 Nev. Adv. Op. 34, 466 P.3d 529 (2020).

25 **12. Indicate whether this appeal involves child custody or visitation:**

26 This appeal does not involve child custody or visitation.

27 **13. If this is a civil case, indicate whether this appeal involves the possibility
28 of settlement:**

This appeal does not involve the possibility of settlement.

DATED this 9th day of October, 2020.

AARON D. FORD
Attorney General

By: 


CRAIG A. NEWBY (Bar No. 8591)
Deputy Solicitor General
State of Nevada
Office of the Attorney General
555 E. Washington Avenue, Suite 3900
Las Vegas, NV 89101
cnewby@ag.nv.gov

AFFIRMATION

Pursuant to NRS 239B.030(4), the undersigned does hereby affirm that the preceding document does not contain the Social Security number of any person.

DATED this 9th day of October, 2020.

AARON D. FORD
Attorney General

By:  1110 for
CRAIG A. NEWBY (Bar No. 8591)
Deputy Solicitor General

CERTIFICATE OF SERVICE

I hereby certify that I mailed by United States, First Class, the foregoing **CASE APPEAL STATEMENT** on the 9th day of October, 2020, including service upon the following counsel of record:

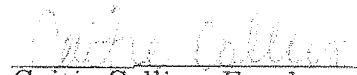
Karen A. Peterson, Esq.
Justin M. Townsend, Esq.
ALLISON MacKENZIE, LTD.
402 North Division Street
Carson City, Nevada 89703

Attorneys for Plaintiffs

Kevin C. Powers, Esq., General Counsel
Legislative Counsel Bureau, Legal Division
410 South Carson Street
Carson City, Nevada 89701

*Attorneys for The Legislature of
the State of Nevada*

By:


Caitie Collins, Employee of the Office
of the Attorney General

REC'D & FILED

2020 OCT -7 PM 3:06

AUGUST 10, 2020

BY DEPUTY

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR CARSON CITY

THE HONORABLE JAMES SETTELMAYER,
THE HONORABLE JOE HARDY,
THE HONORABLE HEIDI GANSERT,
THE HONORABLE SCOTT HAMMOND,
THE HONORABLE PETE GOICOECHEA,
THE HONORABLE BEN KIECKHEFER,
THE HONORABLE IRA HANSEN, and
THE HONORABLE KEITH PICKARD,
in their official capacities as members of the
Senate of the State of Nevada and individually;
GREAT BASIN ENGINEERING
CONTRACTORS, LLC, a Nevada limited
liability company; GOODFELLOW
CORPORATION, a Utah corporation qualified
to do business in the State of Nevada;
KIMMIE CANDY COMPANY, a Nevada
corporation; KEYSTONE CORP., a Nevada
nonprofit corporation; NATIONAL FEDERATION
OF INDEPENDENT BUSINESS, a California
nonprofit corporation qualified to do business
in the State of Nevada; NEVADA FRANCHISED
AUTO DEALERS ASSOCIATION, a Nevada
nonprofit corporation; NEVADA TRUCKING
ASSOCIATION, INC., a Nevada nonprofit
corporation; and RETAIL ASSOCIATION
OF NEVADA, a Nevada nonprofit corporation,

Plaintiffs,

vs.

STATE OF NEVADA *ex rel.* THE
HONORABLE NICOLE CANNIZZARO,
in her official capacity as Senate Majority
Leader; THE HONORABLE KATE
MARSHALL, in her official capacity as
President of the Senate; CLAIRE J. CLIFT,
in her official capacity as Secretary of
the Senate; THE HONORABLE STEVE

Case No: 19 OC 00127 1B

Dept. No: 1

**ORDER AFTER HEARING
ON SEPTEMBER 21, 2020,
AND FINAL JUDGMENT**

1 SISOLAK, in his official capacity as
2 Governor of the State of Nevada; NEVADA
3 DEPARTMENT OF TAXATION;
4 NEVADA DEPARTMENT OF MOTOR
5 VEHICLES; and DOES I-X, inclusive.

6 Defendants.

7 and

8 THE LEGISLATURE OF THE
9 STATE OF NEVADA.

10 Defendant-Intervenor.

11 **ORDER AFTER HEARING ON SEPTEMBER 21, 2020, AND FINAL JUDGMENT**

12 This matter is before the Court on the following dispositive motions: (1) Executive Defendants'
13 Motion to Dismiss; (2) Motion for Summary Judgment filed by Plaintiffs; (3) Counter-Motion for
14 Summary Judgment filed by Legislative Defendants and Defendant-Intervenor Legislature; and (4)
15 Executive Defendants' Joinder to Legislative Defendants' Counter-Motion for Summary Judgment.

16 The Court, having read the papers and pleadings on file herein, having heard oral argument on
17 September 21, 2020, and good cause appearing therefore, finds and orders as follows:

18 **Relevant Procedural History**

19 Plaintiffs, a group of Republican State Senators ("Plaintiff Senators"), in their official capacity
20 and individually, and various business interests, filed a First Amended Complaint herein on July 30,
21 2019, challenging the constitutionality of Senate Bill No. 542 (SB 542) and Senate Bill No. 551 (SB
22 551) of the 80th (2019) Session of the Nevada Legislature as well as the constitutionality of the manner
23 in which each bill was passed into law. Plaintiffs allege four claims for relief, including that SB 542
24 and SB 551 were each subject to the two-thirds majority requirement in Article 4, Section 18(2) of the
25 Nevada Constitution and that SB 542 and SB 551 are unconstitutional because the Senate passed each
26 bill by a majority of all the members elected to the Senate under Article 4, Section 18(1) of the Nevada
27 Constitution, instead of a two-thirds majority of all the members elected to the Senate under Article 4,
28 Section 18(2) of the Nevada Constitution. Plaintiffs ask for, among other relief, a declaration that SB

1 542 and SB 551 are unconstitutional in violation of Article 4, Section 18(2), and Plaintiffs also ask for
2 an injunction against enforcement of SB 542 and SB 551.

3 Plaintiffs named state officers and agencies of the executive branch and legislative branch as
4 defendants in the First Amended Complaint. The executive branch defendants are: (1) the Honorable
5 Kate Marshall, in her official capacity as Lieutenant Governor of the State of Nevada and President of
6 the Senate; (2) the Honorable Steve Sisolak, in his official capacity as Governor of the State of Nevada;
7 (3) the Nevada Department of Taxation; and (4) the Nevada Department of Motor Vehicles
8 (collectively the "Executive Defendants"). The Executive Defendants are represented by the Office of
9 the Attorney General.

10 The legislative branch defendants are the Honorable Nicole Cannizzaro, in her official capacity
11 as Senate Majority Leader, and Claire Clift, in her official capacity as the Secretary of the Senate
12 (collectively the "Legislative Defendants"). The Legislative Defendants are represented by the
13 Legislative Counsel Bureau, Legal Division ("LCB Legal"), under NRS 218F.720. The Legislature
14 of the State of Nevada ("Legislature") intervened as a Defendant-Intervenor and is represented by
15 LCB Legal under NRS 218F.720.

16 On September 16, 2019, Executive Defendants filed a Motion to Dismiss Plaintiffs' First
17 Amended Complaint, and Legislative Defendants filed an Answer to Plaintiffs' First Amended
18 Complaint. On September 30, 2019, Plaintiffs filed their Opposition to Executive Defendants' Motion
19 to Dismiss or, in the Alternative, Plaintiffs' Motion for Summary Judgment.

20 On October 24, 2019, Plaintiff Senators James Settelmeier, Joe Hardy, Heidi Gansert, Scott
21 Hammond, Pete Goicoechea, Ben Kieckhefer, Ira Hansen and Keith Pickard (collectively "Plaintiff
22 Senators") filed a Motion to Disqualify LCB Legal as counsel for Defendants Senator Cannizzaro and
23 Secretary Clift. Defendants Senator Cannizzaro and Secretary Clift filed an Opposition to the Motion
24 to Disqualify.

25 Because the Court's resolution of the Motion to Disqualify could have affected whether LCB
26 Legal could continue to provide legal representation to Defendants Senator Cannizzaro and Secretary
27 Clift against the claims of Plaintiff Senators in this action, including providing such legal
28 representation regarding the parties' dispositive motions, the parties entered into a Stipulation and

1 Order to stay proceedings regarding the parties' dispositive motions pending the Court's resolution of
2 the Motion to Disqualify.

3 On November 2, 2019, the Legislature, also represented by LCB Legal, filed a motion to
4 intervene as a defendant-intervenor under NRCp 24 and NRS 218F.720 to protect the official interests
5 of the Legislature and defend the constitutionality of SB 542 and SB 551.

6 On December 19, 2019, the Court entered an order which granted the Plaintiff Senators'
7 motion to disqualify LCB Legal from representing the Legislative Defendants in their official capacity
8 as their statutorily authorized counsel under NRS 218F.720. The Court's order also denied a stay of
9 the district court proceedings requested by LCB Legal to address the consequences of the order
10 requiring the Legislative Defendants to obtain separate outside counsel to represent them in their
11 official capacity in this litigation.

12 Also, on December 19, 2019, the Court entered a separate order which granted the
13 Legislature's motion to intervene as a defendant-intervenor. In that order, the Court also denied the
14 Plaintiff Senators' motion to disqualify LCB Legal from representing the Legislature as its statutorily
15 authorized counsel under NRS 218F.720. On December 26, 2019, the Legislature filed an Answer to
16 Plaintiffs' First Amended Complaint.

17 On January 10, 2020, the Nevada Supreme Court issued an Order staying the District Court's
18 proceedings in this matter pending resolution of the Legislative Defendants' Petition for Writ of
19 Mandamus seeking the Supreme Court's review of the District Court's Order disqualifying LCB Legal
20 as counsel for the Legislative Defendants. *State ex rel. Cannizzaro v. First Jud. Dist. Ct.*, No. 80313
21 (Nev. Jan. 10, 2020) (Order Directing Answer, Granting Stay, and Scheduling Oral Argument). The
22 Supreme Court's stay was granted while the parties were in the process of briefing dispositive motions
23 on the merits of the constitutional claims. Additionally, as a result of the stay, the District Court
24 vacated the hearing set in this matter for March 9, 2020, on the parties' dispositive motions on the
25 merits of the constitutional claims.

26 On June 26, 2020, the Supreme Court issued an Opinion and Writ of Mandamus directing the
27 District Court to vacate its Order disqualifying LCB Legal as counsel for the Legislative Defendants.
28

1 *State ex rel. Cannizzaro v. First Jud. Dist. Ct.*, 136 Nev. Adv. Op. 34, 466 P.3d 529 (2020). The
2 Supreme Court also lifted its stay of the District Court's proceedings in this matter. *Id.*

3 On July 7, 2020, LCB Legal served the District Court, by regular U.S. Mail, with the Supreme
4 Court's Opinion and Writ of Mandamus. An Order Vacating Order Disqualifying LCB Legal was
5 entered by the Court on July 9, 2020.

6 On August 13, 2020, the parties entered into a Stipulation and Order regarding a briefing
7 schedule to complete briefing on their dispositive motions. On August 18, 2020, Legislative
8 Defendants and Defendant-Intervenor Legislature filed an Opposition to Plaintiffs' Motion for
9 Summary Judgment and a Counter-Motion for Summary Judgment. On August 21, 2020, Executive
10 Defendants filed a Joinder to Legislative Defendants' Counter-Motion for Summary Judgment. On
11 September 4, 2020, Plaintiffs filed a Reply in Support of their Motion for Summary Judgment and an
12 Opposition to the Counter-Motion for Summary Judgment. On September 14, 2020, Legislative
13 Defendants and Defendant-Intervenor Legislature filed a Reply in Support of their Counter-Motion
14 for Summary Judgment. Finally, on September 21, 2020, the Court held a hearing to receive oral
15 arguments from the parties on their dispositive motions.

16 **Factual Background**

17 The parties agreed at the hearing herein there are no material disputes of fact regarding the
18 passage of SB 542 and SB 551. The Court agrees and finds, with respect to the passage of SB 542
19 and SB 551, the following facts.

20 Article 4, Section 18(2) of the Nevada Constitution is the result of a ballot initiative approved
21 by Nevada voters during the 1994 and 1996 general elections and provides, in pertinent part:

22 ...an affirmative vote of not fewer than two-thirds of the members elected
23 to each House is necessary to pass a bill or joint resolution which creates,
24 generates, or increases any public revenue in any form, including but not
limited to taxes, fees, assessments and rates, or changes in the computation
bases for taxes, fees, assessments and rates.

25 During the 2015 Legislative Session, the Legislature enacted two revenue-generating
26 measures, SB 483 and SB 502. SB 483 amended NRS 360.203 to provide a computation mechanism
27 by which the Department of Taxation would compute the payroll tax rate for the Modified Business
28 Tax (MBT) under NRS Chapter 363A and NRS Chapter 363B based upon the combined revenue from

1 the taxes imposed by the commerce tax and the MBT. SB 483 required a reduction in the payroll tax
2 rate for the MBT if the calculation required by NRS 360.203 yielded certain results. The payroll tax
3 rate computation codified in NRS 360.203 became effective and operative on July 1, 2015. SB 502
4 added a \$1 technology fee to every transaction for which the Department of Motor Vehicles (DMV)
5 charged fees. SB 502 provided the DMV technology fee was effective and operative July 1, 2015 and
6 expired on June 30, 2020. Both SB 483 and SB 502 were subject to the two-thirds supermajority
7 provision of the Nevada Constitution and were approved by more than two-thirds of both Houses of
8 the Legislature in 2015.

9 SB 542 proposed, during the 2019 Legislative Session, to extend the expiration date of the
10 DMV technology fee to June 30, 2022 and would allow the DMV to collect approximately \$6.9 million
11 per year during the extended period. The Legislature determined that SB 542 was not subject to the
12 two-thirds majority requirement, and the Senate passed the measure by a majority of all the members
13 elected to the Senate under Article 4, Section 18(1) of the Nevada Constitution, with 13 Senators
14 voting for the bill and 8 Senators voting against the bill. On June 5, 2019, the Governor approved SB
15 542.

16 During the 2019 Legislative Session, Defendant Senate Majority Leader Nicole Cannizzaro
17 sponsored numerous amendments to SB 551, which amendments would repeal NRS 360.203 in its
18 entirety, allowing the Department of Taxation to collect approximately \$98.2 million during the
19 subsequent biennium. Sections 2 and 3 of the amendments to SB 551 eliminated the tax rate
20 calculation provided by NRS 360.203 to the provisions of NRS 363A.130 and NRS 363B.110,
21 respectively. Sections 37(2)(a)(1) and (2) of SB 551 superseded, abrogated and nullified the
22 determinations, decisions or actions made by the Department of Taxation under the computation base
23 provided in NRS 360.203 and provided any such calculations under NRS 360.203 shall have no legal
24 force or effect. Section 37(2)(b) further provided the Department shall not under any circumstances
25 apply or use those determinations, decisions or actions as a basis, cause or reason to reduce the rates
26 of the taxes imposed pursuant to NRS 363A.130 and NRS 363B.110 for any fiscal year beginning on
27 or after July 1, 2015. Section 39 of SB 551 repealed NRS 360.203, which contained the tax rate
28 computation for the MBT. Three of the proposed amendments to SB 551 sponsored by Senate

1 Majority Leader Cannizzaro stated that Sections 2, 3, 37 and 39 of the amendment to SB 551 would
2 require a two-thirds majority vote to pass. When SB 551 was first put to a vote in the Senate on June
3 3, 2019, it failed to garner the support of two-thirds of the members of the Senate, with 13 Senators
4 voting in favor and 8 voting against. SB 551, having failed to receive a two-thirds majority, was
5 declared lost by the Senate President. Senate Majority Leader Cannizzaro called a brief recess and
6 fifteen minutes later introduced a new amendment to SB 551, containing the same Sections 2, 3, 37,
7 and 39, but the printed amendment left off the two-thirds majority vote requirement and a new vote
8 was taken. The vote remained the same – 13 Senators for and 8 Senators against – but the Senate
9 President declared SB 551 passed, as amended, by a majority of all the members elected to the Senate
10 under Article 4, Section 18(1) of the Nevada Constitution. On June 12, 2019, the Governor approved
11 SB 551.

12 During the 2019 Legislative Session, members of the Legislative Leadership requested the
13 Legislative Counsel's opinion on whether the Constitutional two-thirds supermajority requirement
14 applies to a bill which extends until a later date – or revises or eliminates – a future decrease in or
15 future expiration of existing state taxes when that future decrease or expiration is not legally operative
16 and binding yet. On May 8, 2019, the Legislative Counsel provided the requested opinion to the
17 Legislative Leadership. The Legislative Counsel's opinion stated that "[i]t is the opinion of this office
18 that Nevada's two-thirds majority requirement does not apply to a bill which extends until a later
19 date—or revises or eliminates—a future decrease in or future expiration of existing state taxes when
20 that future decrease or expiration is not legally operative and binding yet, because such a bill does not
21 change—but maintains—the existing computation bases currently in effect for the existing state
22 taxes."

23 Conclusions of Law

24 1. SB 542 and SB 551 are unconstitutional.

25 This case is not about a political issue but is about a constitutional issue that affects all members
26 of the Legislature. Additionally, the issues before the Court are not whether funds for education or
27 technology fees for the DMV are appropriate or worthy causes. The Court's task is not to rule upon
28

1 the merits or worthiness of SB 542 and SB 551. This case is about Article 4, Section 18(2) of the
2 Nevada Constitution and whether it applies to SB 542 and SB 551.

3 Article 4, Section 18(2) of the Constitution was adopted by the citizens of the State of Nevada
4 by initiative and for a very specific reason – to make revenue-generating measures more difficult to
5 enact. The people’s intent and the language of the Constitutional provision are clear. The
6 Constitutional provision provides, in pertinent part:

7 an affirmative vote of not fewer than two-thirds of the members elected to
8 each House is necessary to pass a bill or joint resolution which creates,
9 generates, or increases any public revenue in any form, including but not
limited to taxes, fees, assessments and rates, or changes in the computation
bases for taxes, fees, assessments and rates.

10 All the language of the Constitutional provision must be given effect and the Court finds the
11 language to be clear and unambiguous. To determine a constitutional provision’s meaning, a court turns
12 to the language and gives that language its plain effect. *Miller v. Burk*, 124 Nev. 579, 590-91, 188 P.3d
13 1112, 1119-20 (2008). A court must give words their plain meaning unless doing so would violate the
14 spirit of the provision. *McKay v. Bd. of Supervisors*, 102 Nev. 644, 648, 730 P.2d 438, 442 (1986).

15 The plain meaning of the term “generates,” as set forth in multiple dictionaries consulted by the
16 Court, is to “cause to exist” or “produce.” The Court’s emphasis in analyzing the Constitutional
17 provision was focused upon the plain meaning of the term “generates” and the phrase “any public
18 revenue in any form.”

19 With respect to SB 542, regarding the DMV technology fee, the bill extended the imposition
20 of this fee from June 30, 2020 to June 30, 2022. The Court finds the purpose of SB 542 was to generate
21 public revenue for two more years at an estimated \$6.9 million per year. It is clear to the Court that
22 SB 542 was intended to generate public revenue to the State in the form of fees to be collected by the
23 DMV. But for the passage of SB 542, those funds would not have been produced; they just would not
24 exist. The public revenue would not otherwise exist without the passage of SB 542 and, therefore, SB
25 542 generates public revenue in any form and should have been subject to a two-thirds majority vote.
26 SB 542, therefore, was passed unconstitutionally and is void and stricken from the law.

27 As to SB 551, NRS 360.203, passed by more than two-thirds of the 2015 Legislature, provided
28 a mechanism whereby the Department of Taxation would calculate the payroll tax rate for the MBT.

1 The calculated tax rate, based on NRS 360.203, was to go into effect on July 1, 2019 and was a
2 reduction in the payroll tax rate. Sections 2, 3 and 39 of SB 551 repealed NRS 360.203 and related
3 provisions in NRS 363A.130 and 363B.110 concerning the computation of the MBT and, therefore,
4 deleted the computation mechanism for the affected taxes. The deletion of this computation base was
5 estimated to generate an additional \$98.2 million in revenue for the State of Nevada in the coming
6 biennium. But for the repeal of NRS 360.203 and the related provisions, that public revenue would
7 not exist. Section 37 of SB 551 changed the computation base for the MBT by repealing the payroll
8 tax rate computation made by the Department of Taxation. Therefore, SB 551 generates public
9 revenue in any form by a change in computation base for a tax and should have been subject to a two-
10 thirds majority vote. As a result, SB 551 was passed unconstitutionally.

11 Because Sections 2, 3, 37, and 39 of SB 551 are the sections that generate public revenue,
12 Legislative Defendants and Defendant-Intervenor Legislature asked the Court to invalidate and strike
13 only those sections and sever the remaining provisions of SB 551 and, at the hearing, Plaintiffs did not
14 oppose that request. The Court finds that the remaining provisions of SB 551 can be severed and shall
15 remain in effect. *See* NRS 0.020; *Flamingo Paradise Gaming v. Chanos*, 125 Nev. 502, 515, 217 P.3d
16 546, 555 (2009) (“Under the severance doctrine, it is ‘the obligation of the judiciary to uphold the
17 constitutionality of legislative enactments where it is possible to strike only the unconstitutional
18 portions.’”) (quoting *Rogers v. Heller*, 117 Nev. 169, 177, 18 P.3d 1034, 1039 (2001))). Therefore,
19 Sections 2, 3, 37, and 39 of SB 551 are void and are stricken from the law, but the remaining provisions
20 of SB 551 can be severed and shall remain in effect.

21 While there is a concept of legislative deference, that deference does not exist to violate the
22 clear meaning of the Constitution of the State of Nevada. The Court’s primary task is to ascertain the
23 intent of those who enacted the Constitutional provision and adopt an interpretation that best captures
24 that objective. *Nevada Mining Ass’n v. Erdoes*, 117 Nev. 531, 538 n. 14, 26 P.3d 753, 757 n. 14 (2001)
25 citing *McKay v. Bd. of Supervisors*, 102 Nev. 644, 648, 730 P.2d 438, 441 (1986). The Nevada
26 Supreme Court clearly stated: “A simple majority is necessary to approve the budget and determine
27 the need for raising revenue. A two-thirds supermajority is needed to determine what specific changes
28

1 would be made to the existing tax structure to increase revenue.” *See Guinn v. Leg. of Nevada*, 119
2 Nev. 460, 472, 76 P.3d 22, 30 (2003).

3 The Court does not put much weight in or credence to the operative versus effective date
4 argument of the Defendants. That argument became moot when SB 542 and SB 551 went into effect
5 and generated public revenue that came into existence from the fees or taxes or changes in the
6 computation bases for the fees or taxes.

7 Consequently, the Court concludes that SB 542 and Sections 2, 3, 37, and 39 of SB 551 are
8 unconstitutional in violation of Article 4, Section 18(2) of the Nevada Constitution, but the remaining
9 provisions of SB 551 can be severed and shall remain in effect.

10 **2. Plaintiffs are not entitled to recover attorney’s fees as special damages.**

11 As a general rule, “Nevada adheres to the American Rule that attorney[’s] fees may only be
12 awarded when authorized by statute, rule, or agreement.” *Pardee Homes of Nev. v. Wolfram*, 135 Nev.
13 173, 177, 444 P.3d 423, 426 (2019). But the Nevada Supreme Court has “recognized exceptions to
14 this general rule; one such exception is for attorney[’s] fees as special damages.” *Id.*

15 In actions for declaratory or injunctive relief, a party may plead and recover attorney’s fees as
16 special damages “when the actions were necessitated by the opposing party’s bad faith conduct.”
17 *Sandy Valley Assocs. v. Sky Ranch Estates Owners Ass’n*, 117 Nev. 948, 958, 35 P.3d 964, 970 (2001),
18 *disapproved on other grounds by Horgan v. Felton*, 123 Nev. 577, 170 P.3d 982 (2007), and *Pardee*
19 *Homes of Nev. v. Wolfram*, 135 Nev. 173, 444 P.3d 423 (2019).

20 The Court concludes that Plaintiffs are not entitled to recover attorney’s fees as special
21 damages because there was not bad faith in regard to this matter. The Court further concludes that as
22 to an award of attorney’s fees and costs, the individual Executive and Legislative Defendants should
23 be dismissed, and Defendant-Intervenor Legislature cannot be assessed attorney’s fees and costs
24 pursuant to NRS 218F.720, notwithstanding Plaintiffs’ claim that NRS 218F.720 presents an
25 unconstitutional infringement upon the judiciary. The Court also concludes that attorney’s fees are
26 not appropriate under NRS 18.010(2)(b) because there was not bad faith in regard to this matter.

27 However, the Court is bothered by the fact the Plaintiff Senators had to bring this action in
28 order to bring this matter to the Court’s attention and to enforce the Constitutional provision binding

1 on every member of the Legislature. Therefore, Plaintiffs may take appropriate actions to request an
2 award of postjudgment attorney's fees and costs, if they desire, and the parties, in that event, may brief
3 the Court further on the issue of whether the Court can grant to Plaintiffs an award of postjudgment
4 attorney's fees and costs, payable by the Nevada Department of Motor Vehicles and/or the Nevada
5 Department of Taxation.

6 **Order and Final Judgment**

7 Good cause appearing therefor.

8 **1. IT IS HEREBY ORDERED THAT** summary judgment is granted in favor of the
9 Plaintiffs' on their claims for declaratory and injunctive relief and violation of the taxpayers'
10 constitutional rights. The Court declares that: (1) SB 542 and SB 551 are bills that create, generate or
11 increase public revenue by fees or taxes or changes in the computation bases for fees or taxes; (2)
12 Article 4, Section 18(2) of the Nevada Constitution required that two-thirds of the Senate vote to pass
13 both SB 542 and SB 551; (3) the votes of the eight Plaintiff Senators should be given effect; and (4)
14 SB 542 and Sections 2, 3, 37, and 39 of SB 551 must be invalidated and are void and stricken for lack
15 of supporting votes of two-thirds of the members of the Senate in the 80th (2019) Legislative Session,
16 but the remaining provisions of SB 551 can be severed and shall remain in effect.

17 **2. IT IS HEREBY FURTHER ORDERED THAT** Defendant Nevada Department of Motor
18 Vehicles and Defendant Nevada Department of Taxation are immediately enjoined and restrained
19 from collecting and enforcing the unconstitutional fees and taxes enacted by SB 542 and Sections 2,
20 3, 37, and 39 of SB 551, respectively, and that all fee payers and taxpayers from whom such fees and
21 taxes have already been collected are entitled to an immediate refund thereof with interest at the legal
22 rate of interest from the date collected.

23 **3. IT IS HEREBY FURTHER ORDERED THAT** Plaintiffs are not entitled to recover
24 attorney's fees as special damages for bringing their claims for declaratory and injunctive relief and
25 summary judgment is granted in favor of Defendants on any claims to recover attorney's fees as special
26 damages.
27
28

ALLISON MacKENZIE, LTD.
402 North Division Street, P.O. Box 646, Carson City, NV 89702
Telephone: (775) 687-0202 Fax: (775) 882-7918
E-Mail Address: law@allisonmackenzie.com

1 **4. IT IS HEREBY FURTHER ORDERED THAT** the individual Executive and Legislative
2 Defendants, the Honorable Nicole Cannizzaro, the Honorable Kate Marshall, the Honorable Claire J.
3 Clift, and the Honorable Steve Sisolak, are dismissed from this action.

4 **5. IT IS HEREBY FURTHER ORDERED THAT**, except as otherwise provided in
5 paragraphs 3 and 4 of this Order, the Counter-Motion for Summary Judgment of the Legislative
6 Defendants and Defendant-Intervenor Legislature, and the Executive Defendants' Joinder thereto, are
7 denied.

8 **6. IT IS HEREBY FURTHER ORDERED THAT** the Executive Defendants' Motion to
9 Dismiss is denied.


10 **7. IT IS HEREBY FURTHER ORDERED THAT** a final judgment is entered in this action
11 adjudicating all the claims of all the parties as set forth in this Order.

12 **8. IT IS HEREBY FURTHER ORDERED THAT** Plaintiffs may take appropriate actions
13 to request an award of postjudgment attorney's fees and costs, if they desire, and the parties, in that
14 event, may brief the Court further on the issue of whether the Court can grant to Plaintiffs an award
15 of postjudgment attorney's fees and costs, payable by the Nevada Department of Motor Vehicles
16 and/or the Nevada Department of Taxation.

17 **9. IT IS HEREBY FURTHER ORDERED THAT** Plaintiff's attorneys, Allison MacKenzie,
18 Ltd., will serve a notice of entry of this Order on all other parties and file proof of such service within
19 7 days after the Court sends this Order to said attorneys.

20 **IT IS SO ORDERED.**

21 DATED this 7th day of October, 2020.

22
23
24 
25 DISTRICT COURT JUDGE

26 Submitted by:

27 **ALLISON MacKENZIE, LTD.**
28 402 North Division Street
Carson City, NV 89703

ALLISON MacKENZIE, LTD.
402 North Division Street, P.O. Box 646, Carson City, NV 89702
Telephone: (775) 687-0202 Fax: (775) 882-7918
E-Mail Address: law@allisonmackenzie.com

1 Telephone: (775) 687-0202
2 Email: kpeterston@allisonmackenzie.com
3 Email: jtowndsend@allisonmackenzie.com

4 By: /s/ Karen A. Peterson
5 KAREN A. PETERSON, ESQ.
6 Nevada State Bar No. 366
7 JUSTIN TOWNSEND, ESQ.
8 Nevada State Bar No. 12293

9 Attorneys for Plaintiffs
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Kimberly M. Carrubba
Kimberly M. Carrubba, J.D.
Law Clerk, Dept. 1

ALLISON MacKENZIE, LTD.
402 North Division Street, P.O. Box 646, Carson City, NV 89702
Telephone: (775) 687-0202 Fax: (775) 882-7918
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Nevada State Bar No. 366
JUSTIN TOWNSEND, ESQ.
Nevada State Bar No. 12293
ALLISON MacKENZIE, LTD.
402 North Division Street
Carson City, NV 89703
Telephone: (775) 687-0202
Email: kpeterson@allisonmackenzie.com
Email: jtownsend@allisonmackenzie.com

Attorneys for Plaintiffs

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR CARSON CITY

THE HONORABLE JAMES SETTELMEYER,
THE HONORABLE JOE HARDY,
THE HONORABLE HEIDI GANSERT,
THE HONORABLE SCOTT HAMMOND,
THE HONORABLE PETE GOICOECHEA,
THE HONORABLE BEN KIECKHEFER,
THE HONORABLE IRA HANSEN, and
THE HONORABLE KEITH PICKARD,
in their official capacities as members of the
Senate of the State of Nevada and individually;
GREAT BASIN ENGINEERING
CONTRACTORS, LLC, a Nevada limited
liability company; GOODFELLOW
CORPORATION, a Utah corporation qualified
to do business in the State of Nevada;
KIMMIE CANDY COMPANY, a Nevada
corporation; KEYSTONE CORP., a Nevada
nonprofit corporation; NATIONAL FEDERATION
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in the State of Nevada; NEVADA FRANCHISED
AUTO DEALERS ASSOCIATION, a Nevada
nonprofit corporation; NEVADA TRUCKING
ASSOCIATION, INC., a Nevada nonprofit
corporation; and RETAIL ASSOCIATION
OF NEVADA, a Nevada nonprofit corporation.

Plaintiffs,

vs.

STATE OF NEVADA *ex rel.* THE
HONORABLE NICOLE CANNIZZARO.

REC'D & FILED
2020 OCT -8 PM 1:10

APPLY RELEVANT
CLERK
BY *[Signature]*

Case No: 19 OC 00127 1B

Dept. No: I

NOTICE OF ENTRY OF ORDER
AFTER HEARING ON
SEPTEMBER 21, 2020, AND
FINAL JUDGMENT

ALLISON MacKENZIE, LTD.
402 North Division Street, P.O. Box 646, Carson City, NV 89702
Telephone: (775) 687-0202 Fax: (775) 882-7918
E-Mail Address: law@allisonmackenzie.com

1 in her official capacity as Senate Majority
2 Leader; THE HONORABLE KATE
3 MARSHALL, in her official capacity as
4 President of the Senate; CLAIRE J. CLIFT,
5 in her official capacity as Secretary of
6 the Senate; THE HONORABLE STEVE
7 SISOLAK, in his official capacity as
8 Governor of the State of Nevada; NEVADA
9 DEPARTMENT OF TAXATION;
10 NEVADA DEPARTMENT OF MOTOR
11 VEHICLES; and DOES I-X, inclusive.

12 Defendants.

13 and

14 THE LEGISLATURE OF THE
15 STATE OF NEVADA.

16 Defendant-Intervenor.

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**NOTICE OF ENTRY OF ORDER AFTER HEARING ON
SEPTEMBER 21, 2020, AND FINAL JUDGMENT**

NOTICE IS HEREBY given that on the 7th day of October, 2020, the Court duly entered its
ORDER AFTER HEARING ON SEPTEMBER 21, 2020, AND FINAL JUDGMENT in the
above-entitled matter. A copy of said Order is attached hereto as **Exhibit "1"**.

AFFIRMATION

The undersigned does hereby affirm that the preceding document DOES NOT contain the
social security number of any person.

DATED this 8th day of October, 2020.

ALLISON MacKENZIE, LTD.
402 North Division Street
Carson City, NV 89703
Telephone: (775) 687-0202

By: _____

KAREN A. PETERSON, ESQ.
Nevada State Bar No. 366
JUSTIN M. TOWNSEND, ESQ.
Nevada State Bar No. 12293
Email: kpeterson@allisonmackenzie.com
Email: jtownsend@allisonmackenzie.com
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

Pursuant to NRCP Rule 5(b), I hereby certify that I am an employee of ALLISON, MacKENZIE, LTD., Attorneys at Law, and that on this date, I caused the foregoing document to be served on all parties to this action by:

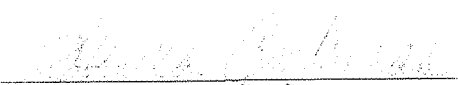
- _____ Placing a true copy thereof in a sealed postage prepaid envelope in the United States Mail in Carson City, Nevada [NRCP 5(b)(2)(B)]
- _____ Hand-delivery - via Reno/Carson Messenger Service [NRCP 5(b)(2)(A)]
- ☒ _____ Electronic Transmission
- _____ Federal Express, UPS, or other overnight delivery
- _____ E-filing pursuant to Section IV of District of Nevada Electronic Filing Procedures [NRCP 5(b)(2)(D)]

fully addressed as follows:

Kevin C. Powers, Esq.
Legislative Counsel Bureau, Legal Division
kpowers@lcb.state.nv.us

Aaron D. Ford, Esq.
Craig A. Newby, Esq.
Office of the Attorney General
CNewby@ag.nv.gov

DATED this 8th day of October, 2020.


SHEILA CONTRERAS

INDEX OF EXHIBITS

<u>Exhibit No.</u>	<u>Description</u>	<u>Number of Pages</u>
"1"	Order After Hearing on September 21, 2020 and Final Judgment	13

4852-0549-6270, v. 1

ALLISON MacKENZIE, LTD.
402 North Division Street, P.O. Box 646, Carson City, NV 89702
Telephone: (775) 687-0202 Fax: (775) 882-7918
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1 KAREN A. PETERSON, ESQ.
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402 North Division Street
4 Carson City, NV 89703
Telephone: (775) 687-0202
5 Email: kpeterson@allisonmackenzie.com
Email: jtownsend@allisonmackenzie.com

6 Attorneys for Plaintiffs
7
8

9 IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
10 IN AND FOR CARSON CITY
11

12 THE HONORABLE JAMES SETTELMAYER,
THE HONORABLE JOE HARDY,
13 THE HONORABLE HEIDI GANSERT,
THE HONORABLE SCOTT HAMMOND,
14 THE HONORABLE PETE GOICOECHEA,
THE HONORABLE BEN KIECKHEFER,
15 THE HONORABLE IRA HANSEN, and
THE HONORABLE KEITH PICKARD,
16 in their official capacities as members of the
Senate of the State of Nevada and individually:
17 GREAT BASIN ENGINEERING
CONTRACTORS, LLC, a Nevada limited
18 liability company; GOODFELLOW
CORPORATION, a Utah corporation qualified
19 to do business in the State of Nevada;
KIMMIE CANDY COMPANY, a Nevada
20 corporation; KEYSTONE CORP., a Nevada
nonprofit corporation; NATIONAL FEDERATION
21 OF INDEPENDENT BUSINESS, a California
nonprofit corporation qualified to do business
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AUTO DEALERS ASSOCIATION, a Nevada
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ASSOCIATION, INC., a Nevada nonprofit
24 corporation; and RETAIL ASSOCIATION
OF NEVADA, a Nevada nonprofit corporation,
25

26 Plaintiffs.

27 vs.

28 STATE OF NEVADA *ex rel.* THE
HONORABLE NICOLE CANNIZZARO,

Case No: **19 OC 00127 1B**

Dept. No: **1**

**NOTICE OF ENTRY OF ORDER
AFTER HEARING ON
SEPTEMBER 21, 2020, AND
FINAL JUDGMENT**

1 in her official capacity as Senate Majority
2 Leader; THE HONORABLE KATE
3 MARSHALL, in her official capacity as
4 President of the Senate; CLAIRE J. CLIFT,
5 in her official capacity as Secretary of
6 the Senate; THE HONORABLE STEVE
7 SISOLAK, in his official capacity as
8 Governor of the State of Nevada; NEVADA
9 DEPARTMENT OF TAXATION;
10 NEVADA DEPARTMENT OF MOTOR
11 VEHICLES; and DOES I-X, inclusive.

12 Defendants.

13 and

14 THE LEGISLATURE OF THE
15 STATE OF NEVADA,

16 Defendant-Intervenor.

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**NOTICE OF ENTRY OF ORDER AFTER HEARING ON
SEPTEMBER 21, 2020, AND FINAL JUDGMENT**

NOTICE IS HEREBY given that on the 7th day of October, 2020, the Court duly entered the
ORDER AFTER HEARING ON SEPTEMBER 21, 2020, AND FINAL JUDGMENT in the
above-entitled matter. A copy of said Order is attached hereto as **Exhibit "1"**.

AFFIRMATION

The undersigned does hereby affirm that the preceding document DOES NOT contain the
social security number of any person.

DATED this 8th day of October, 2020.

ALLISON MacKENZIE, LTD.
402 North Division Street
Carson City, NV 89703
Telephone: (775) 687-0202

By: _____

KAREN A. PETERSON, ESQ.
Nevada State Bar No. 366
JUSTIN M. TOWNSEND, ESQ.
Nevada State Bar No. 12293
Email: kpeterson@allisonmackenzie.com
Email: jtownsend@allisonmackenzie.com
Attorneys for Plaintiffs

1 CERTIFICATE OF SERVICE

2 Pursuant to NRCP Rule 5(b), I hereby certify that I am an employee of ALLISON,
3 MacKENZIE, LTD., Attorneys at Law, and that on this date, I caused the foregoing document to be
4 served on all parties to this action by:

- 5 _____ Placing a true copy thereof in a sealed postage prepaid envelope in the United States
6 Mail in Carson City, Nevada [NRCP 5(b)(2)(B)]
- 7 _____ Hand-delivery - via Reno/Carson Messenger Service [NRCP 5(b)(2)(A)]
- 8 X _____ Electronic Transmission
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- 10 _____ E-filing pursuant to Section IV of District of Nevada Electronic Filing Procedures
[NRCP 5(b)(2)(D)]

11 fully addressed as follows:

12 Kevin C. Powers, Esq.
13 Legislative Counsel Bureau, Legal Division
kpowers@lcb.state.nv.us

14 Aaron D. Ford, Esq.
15 Craig A. Newby, Esq.
16 Office of the Attorney General
CNewby@ag.nv.gov

17 DATED this 8th day of October, 2020.

18
19
20 SHEILA CONTRERAS
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INDEX OF EXHIBITS

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4852-0549-6270, v. 1

REC'D & FILED

2020 OCT -7 PM 3:08

AUBREY ROWLANDT

BY

DEPUTY

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR CARSON CITY

Case No: 19 OC 00127 1B

Dept. No: I

**ORDER AFTER HEARING
ON SEPTEMBER 21, 2020,
AND FINAL JUDGMENT**

THE HONORABLE JAMES SETTELMAYER,
THE HONORABLE JOE HARDY,
THE HONORABLE HEIDI GANSERT,
THE HONORABLE SCOTT HAMMOND,
THE HONORABLE PETE GOICOECHEA,
THE HONORABLE BEN KIECKHEFER,
THE HONORABLE IRA HANSEN, and
THE HONORABLE KEITH PICKARD,
in their official capacities as members of the
Senate of the State of Nevada and individually;
GREAT BASIN ENGINEERING
CONTRACTORS, LLC, a Nevada limited
liability company; GOODFELLOW
CORPORATION, a Utah corporation qualified
to do business in the State of Nevada;
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ASSOCIATION, INC., a Nevada nonprofit
corporation; and RETAIL ASSOCIATION
OF NEVADA, a Nevada nonprofit corporation,

Plaintiffs,

vs.

STATE OF NEVADA *ex rel.* THE
HONORABLE NICOLE CANNIZZARO,
in her official capacity as Senate Majority
Leader; THE HONORABLE KATE
MARSHALL, in her official capacity as
President of the Senate; CLAIRE J. CLIFT,
in her official capacity as Secretary of
the Senate; THE HONORABLE STEVE

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402 North Division Street, P.O. Box 646, Carson City, NV 89702
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1 SISOLAK, in his official capacity as
2 Governor of the State of Nevada; NEVADA
3 DEPARTMENT OF TAXATION;
4 NEVADA DEPARTMENT OF MOTOR
5 VEHICLES; and DOES I-X, inclusive,
6
7 Defendants.

8 and

9 THE LEGISLATURE OF THE
10 STATE OF NEVADA,

11 Defendant-Intervenor.

12 **ORDER AFTER HEARING ON SEPTEMBER 21, 2020, AND FINAL JUDGMENT**

13 This matter is before the Court on the following dispositive motions: (1) Executive Defendants'
14 Motion to Dismiss; (2) Motion for Summary Judgment filed by Plaintiffs; (3) Counter-Motion for
15 Summary Judgment filed by Legislative Defendants and Defendant-Intervenor Legislature; and (4)
16 Executive Defendants' Joinder to Legislative Defendants' Counter-Motion for Summary Judgment.

17 The Court, having read the papers and pleadings on file herein, having heard oral argument on
18 September 21, 2020, and good cause appearing therefore, finds and orders as follows:

19 **Relevant Procedural History**

20 Plaintiffs, a group of Republican State Senators ("Plaintiff Senators"), in their official capacity
21 and individually, and various business interests, filed a First Amended Complaint herein on July 30,
22 2019, challenging the constitutionality of Senate Bill No. 542 (SB 542) and Senate Bill No. 551 (SB
23 551) of the 80th (2019) Session of the Nevada Legislature as well as the constitutionality of the manner
24 in which each bill was passed into law. Plaintiffs allege four claims for relief, including that SB 542
25 and SB 551 were each subject to the two-thirds majority requirement in Article 4, Section 18(2) of the
26 Nevada Constitution and that SB 542 and SB 551 are unconstitutional because the Senate passed each
27 bill by a majority of all the members elected to the Senate under Article 4, Section 18(1) of the Nevada
28 Constitution, instead of a two-thirds majority of all the members elected to the Senate under Article 4,
Section 18(2) of the Nevada Constitution. Plaintiffs ask for, among other relief, a declaration that SB

1 542 and SB 551 are unconstitutional in violation of Article 4, Section 18(2), and Plaintiffs also ask for
2 an injunction against enforcement of SB 542 and SB 551.

3 Plaintiffs named state officers and agencies of the executive branch and legislative branch as
4 defendants in the First Amended Complaint. The executive branch defendants are: (1) the Honorable
5 Kate Marshall, in her official capacity as Lieutenant Governor of the State of Nevada and President of
6 the Senate; (2) the Honorable Steve Sisolak, in his official capacity as Governor of the State of Nevada;
7 (3) the Nevada Department of Taxation; and (4) the Nevada Department of Motor Vehicles
8 (collectively the "Executive Defendants"). The Executive Defendants are represented by the Office of
9 the Attorney General.

10 The legislative branch defendants are the Honorable Nicole Cannizzaro, in her official capacity
11 as Senate Majority Leader, and Claire Clift, in her official capacity as the Secretary of the Senate
12 (collectively the "Legislative Defendants"). The Legislative Defendants are represented by the
13 Legislative Counsel Bureau, Legal Division ("LCB Legal"), under NRS 218F.720. The Legislature
14 of the State of Nevada ("Legislature") intervened as a Defendant-Intervenor and is represented by
15 LCB Legal under NRS 218F.720.

16 On September 16, 2019, Executive Defendants filed a Motion to Dismiss Plaintiffs' First
17 Amended Complaint, and Legislative Defendants filed an Answer to Plaintiffs' First Amended
18 Complaint. On September 30, 2019, Plaintiffs filed their Opposition to Executive Defendants' Motion
19 to Dismiss or, in the Alternative, Plaintiffs' Motion for Summary Judgment.

20 On October 24, 2019, Plaintiff Senators James Settelmeyer, Joe Hardy, Heidi Gansert, Scott
21 Hammond, Pete Goicoechea, Ben Kieckhefer, Ira Hansen and Keith Pickard (collectively "Plaintiff
22 Senators") filed a Motion to Disqualify LCB Legal as counsel for Defendants Senator Cannizzaro and
23 Secretary Clift. Defendants Senator Cannizzaro and Secretary Clift filed an Opposition to the Motion
24 to Disqualify.

25 Because the Court's resolution of the Motion to Disqualify could have affected whether LCB
26 Legal could continue to provide legal representation to Defendants Senator Cannizzaro and Secretary
27 Clift against the claims of Plaintiff Senators in this action, including providing such legal
28 representation regarding the parties' dispositive motions, the parties entered into a Stipulation and

1 Order to stay proceedings regarding the parties' dispositive motions pending the Court's resolution of
2 the Motion to Disqualify.

3 On November 2, 2019, the Legislature, also represented by LCB Legal, filed a motion to
4 intervene as a defendant-intervenor under NRCP 24 and NRS 218F.720 to protect the official interests
5 of the Legislature and defend the constitutionality of SB 542 and SB 551.

6 On December 19, 2019, the Court entered an order which granted the Plaintiff Senators'
7 motion to disqualify LCB Legal from representing the Legislative Defendants in their official capacity
8 as their statutorily authorized counsel under NRS 218F.720. The Court's order also denied a stay of
9 the district court proceedings requested by LCB Legal to address the consequences of the order
10 requiring the Legislative Defendants to obtain separate outside counsel to represent them in their
11 official capacity in this litigation.

12 Also, on December 19, 2019, the Court entered a separate order which granted the
13 Legislature's motion to intervene as a defendant-intervenor. In that order, the Court also denied the
14 Plaintiff Senators' motion to disqualify LCB Legal from representing the Legislature as its statutorily
15 authorized counsel under NRS 218F.720. On December 26, 2019, the Legislature filed an Answer to
16 Plaintiffs' First Amended Complaint.

17 On January 10, 2020, the Nevada Supreme Court issued an Order staying the District Court's
18 proceedings in this matter pending resolution of the Legislative Defendants' Petition for Writ of
19 Mandamus seeking the Supreme Court's review of the District Court's Order disqualifying LCB Legal
20 as counsel for the Legislative Defendants. *State ex rel. Cannizzaro v. First Jud. Dist. Ct.*, No. 80313
21 (Nev. Jan. 10, 2020) (Order Directing Answer, Granting Stay, and Scheduling Oral Argument). The
22 Supreme Court's stay was granted while the parties were in the process of briefing dispositive motions
23 on the merits of the constitutional claims. Additionally, as a result of the stay, the District Court
24 vacated the hearing set in this matter for March 9, 2020, on the parties' dispositive motions on the
25 merits of the constitutional claims.

26 On June 26, 2020, the Supreme Court issued an Opinion and Writ of Mandamus directing the
27 District Court to vacate its Order disqualifying LCB Legal as counsel for the Legislative Defendants.
28

1 *State ex rel. Cannizzaro v. First Jud. Dist. Ct.*, 136 Nev. Adv. Op. 34, 466 P.3d 529 (2020). The
2 Supreme Court also lifted its stay of the District Court's proceedings in this matter. Id.

3 On July 7, 2020, LCB Legal served the District Court, by regular U.S. Mail, with the Supreme
4 Court's Opinion and Writ of Mandamus. An Order Vacating Order Disqualifying LCB Legal was
5 entered by the Court on July 9, 2020.

6 On August 13, 2020, the parties entered into a Stipulation and Order regarding a briefing
7 schedule to complete briefing on their dispositive motions. On August 18, 2020, Legislative
8 Defendants and Defendant-Intervenor Legislature filed an Opposition to Plaintiffs' Motion for
9 Summary Judgment and a Counter-Motion for Summary Judgment. On August 21, 2020, Executive
10 Defendants filed a Joinder to Legislative Defendants' Counter-Motion for Summary Judgment. On
11 September 4, 2020, Plaintiffs filed a Reply in Support of their Motion for Summary Judgment and an
12 Opposition to the Counter-Motion for Summary Judgment. On September 14, 2020, Legislative
13 Defendants and Defendant-Intervenor Legislature filed a Reply in Support of their Counter-Motion
14 for Summary Judgment. Finally, on September 21, 2020, the Court held a hearing to receive oral
15 arguments from the parties on their dispositive motions.

16 **Factual Background**

17 The parties agreed at the hearing herein there are no material disputes of fact regarding the
18 passage of SB 542 and SB 551. The Court agrees and finds, with respect to the passage of SB 542
19 and SB 551, the following facts.

20 Article 4, Section 18(2) of the Nevada Constitution is the result of a ballot initiative approved
21 by Nevada voters during the 1994 and 1996 general elections and provides, in pertinent part:

22 ...an affirmative vote of not fewer than two-thirds of the members elected
23 to each House is necessary to pass a bill or joint resolution which creates,
24 generates, or increases any public revenue in any form, including but not
limited to taxes, fees, assessments and rates, or changes in the computation
bases for taxes, fees, assessments and rates.

25 During the 2015 Legislative Session, the Legislature enacted two revenue-generating
26 measures, SB 483 and SB 502. SB 483 amended NRS 360.203 to provide a computation mechanism
27 by which the Department of Taxation would compute the payroll tax rate for the Modified Business
28 Tax (MBT) under NRS Chapter 363A and NRS Chapter 363B based upon the combined revenue from

1 the taxes imposed by the commerce tax and the MBT. SB 483 required a reduction in the payroll tax
2 rate for the MBT if the calculation required by NRS 360.203 yielded certain results. The payroll tax
3 rate computation codified in NRS 360.203 became effective and operative on July 1, 2015. SB 502
4 added a \$1 technology fee to every transaction for which the Department of Motor Vehicles (DMV)
5 charged fees. SB 502 provided the DMV technology fee was effective and operative July 1, 2015 and
6 expired on June 30, 2020. Both SB 483 and SB 502 were subject to the two-thirds supermajority
7 provision of the Nevada Constitution and were approved by more than two-thirds of both Houses of
8 the Legislature in 2015.

9 SB 542 proposed, during the 2019 Legislative Session, to extend the expiration date of the
10 DMV technology fee to June 30, 2022 and would allow the DMV to collect approximately \$6.9 million
11 per year during the extended period. The Legislature determined that SB 542 was not subject to the
12 two-thirds majority requirement, and the Senate passed the measure by a majority of all the members
13 elected to the Senate under Article 4, Section 18(1) of the Nevada Constitution, with 13 Senators
14 voting for the bill and 8 Senators voting against the bill. On June 5, 2019, the Governor approved SB
15 542.

16 During the 2019 Legislative Session, Defendant Senate Majority Leader Nicole Cannizzaro
17 sponsored numerous amendments to SB 551, which amendments would repeal NRS 360.203 in its
18 entirety, allowing the Department of Taxation to collect approximately \$98.2 million during the
19 subsequent biennium. Sections 2 and 3 of the amendments to SB 551 eliminated the tax rate
20 calculation provided by NRS 360.203 to the provisions of NRS 363A.130 and NRS 363B.110,
21 respectively. Sections 37(2)(a)(1) and (2) of SB 551 superseded, abrogated and nullified the
22 determinations, decisions or actions made by the Department of Taxation under the computation base
23 provided in NRS 360.203 and provided any such calculations under NRS 360.203 shall have no legal
24 force or effect. Section 37(2)(b) further provided the Department shall not under any circumstances
25 apply or use those determinations, decisions or actions as a basis, cause or reason to reduce the rates
26 of the taxes imposed pursuant to NRS 363A.130 and NRS 363B.110 for any fiscal year beginning on
27 or after July 1, 2015. Section 39 of SB 551 repealed NRS 360.203, which contained the tax rate
28 computation for the MBT. Three of the proposed amendments to SB 551 sponsored by Senate

1 Majority Leader Cannizzaro stated that Sections 2, 3, 37 and 39 of the amendment to SB 551 would
2 require a two-thirds majority vote to pass. When SB 551 was first put to a vote in the Senate on June
3 3, 2019, it failed to garner the support of two-thirds of the members of the Senate, with 13 Senators
4 voting in favor and 8 voting against. SB 551, having failed to receive a two-thirds majority, was
5 declared lost by the Senate President. Senate Majority Leader Cannizzaro called a brief recess and
6 fifteen minutes later introduced a new amendment to SB 551, containing the same Sections 2, 3, 37,
7 and 39, but the printed amendment left off the two-thirds majority vote requirement and a new vote
8 was taken. The vote remained the same – 13 Senators for and 8 Senators against – but the Senate
9 President declared SB 551 passed, as amended, by a majority of all the members elected to the Senate
10 under Article 4, Section 18(1) of the Nevada Constitution. On June 12, 2019, the Governor approved
11 SB 551.

12 During the 2019 Legislative Session, members of the Legislative Leadership requested the
13 Legislative Counsel's opinion on whether the Constitutional two-thirds supermajority requirement
14 applies to a bill which extends until a later date – or revises or eliminates – a future decrease in or
15 future expiration of existing state taxes when that future decrease or expiration is not legally operative
16 and binding yet. On May 8, 2019, the Legislative Counsel provided the requested opinion to the
17 Legislative Leadership. The Legislative Counsel's opinion stated that "[i]t is the opinion of this office
18 that Nevada's two-thirds majority requirement does not apply to a bill which extends until a later
19 date—or revises or eliminates—a future decrease in or future expiration of existing state taxes when
20 that future decrease or expiration is not legally operative and binding yet, because such a bill does not
21 change—but maintains—the existing computation bases currently in effect for the existing state
22 taxes."

23 Conclusions of Law

24 1. SB 542 and SB 551 are unconstitutional.

25 This case is not about a political issue but is about a constitutional issue that affects all members
26 of the Legislature. Additionally, the issues before the Court are not whether funds for education or
27 technology fees for the DMV are appropriate or worthy causes. The Court's task is not to rule upon
28

1 the merits or worthiness of SB 542 and SB 551. This case is about Article 4, Section 18(2) of the
2 Nevada Constitution and whether it applies to SB 542 and SB 551.

3 Article 4, Section 18(2) of the Constitution was adopted by the citizens of the State of Nevada
4 by initiative and for a very specific reason – to make revenue-generating measures more difficult to
5 enact. The people’s intent and the language of the Constitutional provision are clear. The
6 Constitutional provision provides, in pertinent part:

7 an affirmative vote of not fewer than two-thirds of the members elected to
8 each House is necessary to pass a bill or joint resolution which creates,
9 generates, or increases any public revenue in any form, including but not
limited to taxes, fees, assessments and rates, or changes in the computation
bases for taxes, fees, assessments and rates.

10 All the language of the Constitutional provision must be given effect and the Court finds the
11 language to be clear and unambiguous. To determine a constitutional provision’s meaning, a court turns
12 to the language and gives that language its plain effect. *Miller v. Burk*, 124 Nev. 579, 590-91, 188 P.3d
13 1112, 1119-20 (2008). A court must give words their plain meaning unless doing so would violate the
14 spirit of the provision. *McKay v. Bd. of Supervisors*, 102 Nev. 644, 648, 730 P.2d 438, 442 (1986).

15 The plain meaning of the term “generates,” as set forth in multiple dictionaries consulted by the
16 Court, is to “cause to exist” or “produce.” The Court’s emphasis in analyzing the Constitutional
17 provision was focused upon the plain meaning of the term “generates” and the phrase “any public
18 revenue in any form.”

19 With respect to SB 542, regarding the DMV technology fee, the bill extended the imposition
20 of this fee from June 30, 2020 to June 30, 2022. The Court finds the purpose of SB 542 was to generate
21 public revenue for two more years at an estimated \$6.9 million per year. It is clear to the Court that
22 SB 542 was intended to generate public revenue to the State in the form of fees to be collected by the
23 DMV. But for the passage of SB 542, those funds would not have been produced; they just would not
24 exist. The public revenue would not otherwise exist without the passage of SB 542 and, therefore, SB
25 542 generates public revenue in any form and should have been subject to a two-thirds majority vote.
26 SB 542, therefore, was passed unconstitutionally and is void and stricken from the law.

27 As to SB 551, NRS 360.203, passed by more than two-thirds of the 2015 Legislature, provided
28 a mechanism whereby the Department of Taxation would calculate the payroll tax rate for the MBT.

1 The calculated tax rate, based on NRS 360.203, was to go into effect on July 1, 2019 and was a
2 reduction in the payroll tax rate. Sections 2, 3 and 39 of SB 551 repealed NRS 360.203 and related
3 provisions in NRS 363A.130 and 363B.110 concerning the computation of the MBT and, therefore,
4 deleted the computation mechanism for the affected taxes. The deletion of this computation base was
5 estimated to generate an additional \$98.2 million in revenue for the State of Nevada in the coming
6 biennium. But for the repeal of NRS 360.203 and the related provisions, that public revenue would
7 not exist. Section 37 of SB 551 changed the computation base for the MBT by repealing the payroll
8 tax rate computation made by the Department of Taxation. Therefore, SB 551 generates public
9 revenue in any form by a change in computation base for a tax and should have been subject to a two-
10 thirds majority vote. As a result, SB 551 was passed unconstitutionally.

11 Because Sections 2, 3, 37, and 39 of SB 551 are the sections that generate public revenue,
12 Legislative Defendants and Defendant-Intervenor Legislature asked the Court to invalidate and strike
13 only those sections and sever the remaining provisions of SB 551 and, at the hearing, Plaintiffs did not
14 oppose that request. The Court finds that the remaining provisions of SB 551 can be severed and shall
15 remain in effect. See NRS 0.020; *Flamingo Paradise Gaming v. Chanos*, 125 Nev. 502, 515, 217 P.3d
16 546, 555 (2009) ("Under the severance doctrine, it is 'the obligation of the judiciary to uphold the
17 constitutionality of legislative enactments where it is possible to strike only the unconstitutional
18 portions.'") (quoting *Rogers v. Heller*, 117 Nev. 169, 177, 18 P.3d 1034, 1039 (2001))). Therefore,
19 Sections 2, 3, 37, and 39 of SB 551 are void and are stricken from the law, but the remaining provisions
20 of SB 551 can be severed and shall remain in effect.

21 While there is a concept of legislative deference, that deference does not exist to violate the
22 clear meaning of the Constitution of the State of Nevada. The Court's primary task is to ascertain the
23 intent of those who enacted the Constitutional provision and adopt an interpretation that best captures
24 that objective. *Nevada Mining Ass'n v. Erdoes*, 117 Nev. 531, 538 n. 14, 26 P.3d 753, 757 n. 14 (2001)
25 citing *McKay v. Bd. of Supervisors*, 102 Nev. 644, 648, 730 P.2d 438, 441 (1986). The Nevada
26 Supreme Court clearly stated: "A simple majority is necessary to approve the budget and determine
27 the need for raising revenue. A two-thirds supermajority is needed to determine what specific changes
28

1 would be made to the existing tax structure to increase revenue.” See *Guinn v. Leg. of Nevada*, 119
2 Nev. 460, 472, 76 P.3d 22, 30 (2003).

3 The Court does not put much weight in or credence to the operative versus effective date
4 argument of the Defendants. That argument became moot when SB 542 and SB 551 went into effect
5 and generated public revenue that came into existence from the fees or taxes or changes in the
6 computation bases for the fees or taxes.

7 Consequently, the Court concludes that SB 542 and Sections 2, 3, 37, and 39 of SB 551 are
8 unconstitutional in violation of Article 4, Section 18(2) of the Nevada Constitution, but the remaining
9 provisions of SB 551 can be severed and shall remain in effect.

10 **2. Plaintiffs are not entitled to recover attorney’s fees as special damages.**

11 As a general rule, “Nevada adheres to the American Rule that attorney[’s] fees may only be
12 awarded when authorized by statute, rule, or agreement.” *Pardee Homes of Nev. v. Wolfram*, 135 Nev.
13 173, 177, 444 P.3d 423, 426 (2019). But the Nevada Supreme Court has “recognized exceptions to
14 this general rule; one such exception is for attorney[’s] fees as special damages.” *Id.*

15 In actions for declaratory or injunctive relief, a party may plead and recover attorney’s fees as
16 special damages “when the actions were necessitated by the opposing party’s bad faith conduct.”
17 *Sandy Valley Assocs. v. Sky Ranch Estates Owners Ass’n*, 117 Nev. 948, 958, 35 P.3d 964, 970 (2001).
18 *disapproved on other grounds by Horgan v. Felton*, 123 Nev. 577, 170 P.3d 982 (2007), and *Pardee*
19 *Homes of Nev. v. Wolfram*, 135 Nev. 173, 444 P.3d 423 (2019).

20 The Court concludes that Plaintiffs are not entitled to recover attorney’s fees as special
21 damages because there was not bad faith in regard to this matter. The Court further concludes that as
22 to an award of attorney’s fees and costs, the individual Executive and Legislative Defendants should
23 be dismissed, and Defendant-Intervenor Legislature cannot be assessed attorney’s fees and costs
24 pursuant to NRS 218F.720, notwithstanding Plaintiffs’ claim that NRS 218F.720 presents an
25 unconstitutional infringement upon the judiciary. The Court also concludes that attorney’s fees are
26 not appropriate under NRS 18.010(2)(b) because there was not bad faith in regard to this matter.

27 However, the Court is bothered by the fact the Plaintiff Senators had to bring this action in
28 order to bring this matter to the Court’s attention and to enforce the Constitutional provision binding

1 on every member of the Legislature. Therefore, Plaintiffs may take appropriate actions to request an
2 award of postjudgment attorney's fees and costs, if they desire, and the parties, in that event, may brief
3 the Court further on the issue of whether the Court can grant to Plaintiffs an award of postjudgment
4 attorney's fees and costs, payable by the Nevada Department of Motor Vehicles and/or the Nevada
5 Department of Taxation.

6 **Order and Final Judgment**

7 Good cause appearing therefor,

8 **1. IT IS HEREBY ORDERED THAT** summary judgment is granted in favor of the
9 Plaintiffs' on their claims for declaratory and injunctive relief and violation of the taxpayers'
10 constitutional rights. The Court declares that: (1) SB 542 and SB 551 are bills that create, generate or
11 increase public revenue by fees or taxes or changes in the computation bases for fees or taxes; (2)
12 Article 4, Section 18(2) of the Nevada Constitution required that two-thirds of the Senate vote to pass
13 both SB 542 and SB 551; (3) the votes of the eight Plaintiff Senators should be given effect; and (4)
14 SB 542 and Sections 2, 3, 37, and 39 of SB 551 must be invalidated and are void and stricken for lack
15 of supporting votes of two-thirds of the members of the Senate in the 80th (2019) Legislative Session,
16 but the remaining provisions of SB 551 can be severed and shall remain in effect.

17 **2. IT IS HEREBY FURTHER ORDERED THAT** Defendant Nevada Department of Motor
18 Vehicles and Defendant Nevada Department of Taxation are immediately enjoined and restrained
19 from collecting and enforcing the unconstitutional fees and taxes enacted by SB 542 and Sections 2,
20 3, 37, and 39 of SB 551, respectively, and that all fee payers and taxpayers from whom such fees and
21 taxes have already been collected are entitled to an immediate refund thereof with interest at the legal
22 rate of interest from the date collected.

23 **3. IT IS HEREBY FURTHER ORDERED THAT** Plaintiffs are not entitled to recover
24 attorney's fees as special damages for bringing their claims for declaratory and injunctive relief and
25 summary judgment is granted in favor of Defendants on any claims to recover attorney's fees as special
26 damages.
27
28

ALLISON MacKENZIE, LTD.
402 North Division Street, P.O. Box 646, Carson City, NV 89702
Telephone: (775) 687-0202 Fax: (775) 882-7918
E-Mail Address: law@allisonmackenzie.com

1 **4. IT IS HEREBY FURTHER ORDERED THAT** the individual Executive and Legislative
2 Defendants, the Honorable Nicole Cannizzaro, the Honorable Kate Marshall, the Honorable Claire J.
3 Clift, and the Honorable Steve Sisolak, are dismissed from this action.

4 **5. IT IS HEREBY FURTHER ORDERED THAT**, except as otherwise provided in
5 paragraphs 3 and 4 of this Order, the Counter-Motion for Summary Judgment of the Legislative
6 Defendants and Defendant-Intervenor Legislature, and the Executive Defendants' Joinder thereto, are
7 denied.

8 **6. IT IS HEREBY FURTHER ORDERED THAT** the Executive Defendants' Motion to
9 Dismiss is denied.

10 **7. IT IS HEREBY FURTHER ORDERED THAT** a final judgment is entered in this action
11 adjudicating all the claims of all the parties as set forth in this Order.

12 **8. IT IS HEREBY FURTHER ORDERED THAT** Plaintiffs may take appropriate actions
13 to request an award of postjudgment attorney's fees and costs, if they desire, and the parties, in that
14 event, may brief the Court further on the issue of whether the Court can grant to Plaintiffs an award
15 of postjudgment attorney's fees and costs, payable by the Nevada Department of Motor Vehicles
16 and/or the Nevada Department of Taxation.

17 **9. IT IS HEREBY FURTHER ORDERED THAT** Plaintiff's attorneys, Allison MacKenzie,
18 Ltd., will serve a notice of entry of this Order on all other parties and file proof of such service within
19 7 days after the Court sends this Order to said attorneys.

20 **IT IS SO ORDERED.**

21 DATED this 7th day of October, 2020.

22
23
24 
DISTRICT COURT JUDGE

25
26 Submitted by:

27 **ALLISON MacKENZIE, LTD.**
28 402 North Division Street
Carson City, NV 89703

ALLISON MACKENZIE, LTD.
402 North Division Street, P.O. Box 646, Carson City, NV 89702
Telephone: (775) 687-0202 Fax: (775) 882-7918
E-Mail Address: law@allisonmackenzie.com

1 Telephone: (775) 687-0202
2 Email: kpeterston@allisonmackenzie.com
3 Email: jtownsend@allisonmackenzie.com

4 By: /s/ Karen A. Peterson
5 KAREN A. PETERSON, ESQ.
6 Nevada State Bar No. 366
7 JUSTIN TOWNSEND, ESQ.
8 Nevada State Bar No. 12293

9 Attorneys for Plaintiffs
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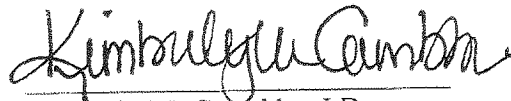
CERTIFICATE OF MAILING

Pursuant to NRCF 5(b), I certify that I am an employee of the First Judicial District Court, and that on this 8th day of October, 2020, I deposited for mailing, postage paid, at Carson City, Nevada, and emailed a true and correct copy of the foregoing Order addressed as follows:

Karen A. Peterson, Esq.
Allison Mackenzie, Ltd.
402 N. Division St.
Carson City, NV 89701

Kevin C. Powers, Esq.
General Counsel
Nevada Legislative Counsel Bureau, Legal Division
401 S. Carson St.
Carson City, NV 89701

Craig Newby, Esq.
Deputy Solicitor General
Office of the Attorney General
555 E. Washington Ave., Ste. 3900
Las Vegas, NV 89101



Kimberly M. Carrubba, J.D.
Law Clerk, Dept. 1

FIRST JUDICIAL DISTRICT COURT MINUTES

CASE NO. 19 OC 00127 1B

TITLE: THE HONORABLE JAMES
SETTELMAYER ET AL. VS STATE OF
NEVADA ex rel. ET AL.

09/21/20 – DEPT. I – HONORABLE JAMES T. RUSSELL
J. Higgins, Clerk – Not Reported

MOTION FOR SUMMARY JUDGMENT

Present: Hon. James Settelmeyer with counsel Karen Peterson and Justin Townsend; Craig Newby, Deputy A.G.; Kevin Powers, LCB, counsel for Respondents Cannizzaro and Clift.

Statements were made by Court and Newby regarding Mo/Dismiss.
Court inquired counsel if they stipulate there are no factual issues in dispute and that we are concerned with legal issues. Peterson and Powers in response and agreed.
Statements were made by Court.

Peterson presented argument.

Peterson requested Exhibits 1 through 13 in their Reply and Exhibits 1 through 8 in their original Motion be admitted. Upon inquiry by Court, Powers stipulated to their admission.

COURT ORDERED: They will all be admitted.

Powers and Newby presented arguments.

Court stated its findings of fact and conclusions of law.

COURT ORDERED: Summary judgment is granted for the Plaintiffs. Injunctive Relief is granted as to the payment of the unconstitutional fees and taxes. Taxpayers are entitled to a refund with interest for the overpayment of fees and taxes.

Statements were made by Court.

COURT ORDERED: It is going to allow the individual Defendants to be dismissed.

Statements were made by Court regarding the attorney's fees and costs.

COURT ORDERED: It allows the parties to brief that being, the State of Nevada and the Plaintiff, in respect to whether or not it can award any attorney's fees in respect to the Department of Taxation and whether it can award any in respect to the Nevada Department of Motor Vehicles.

COURT ORDERED: As to the Motion to Dismiss, it's denied.

Statements were made by Court.

Peterson to prepare Order.

The Court minutes as stated above are a summary of the proceeding and are not a verbatim record. The hearing held on the above date was recorded on the Court's recording system.

FIRST JUDICIAL DISTRICT COURT MINUTES

CASE NO. 19 OC 00127 1B

TITLE: THE HONORABLE JAMES
SETTELMAYER ET AL. VS STATE OF
NEVADA ex rel. ET AL.

11/19/19 – DEPT. I – HONORABLE JAMES T. RUSSELL
J. Higgins, Clerk – Not Reported

MOTION TO DISQUALIFY THE LEGISLATIVE COUNSEL BUREAU AND MOTION TO INTERVENE

Present: Hon. James Settelmeyer with counsel Karen Peterson and Justin Townsend; Craig Newby, Deputy A.G.; Kevin Powers, LCB, counsel for Respondents Cannizzaro and Clift.

Statements were made by Court.

Peterson presented argument.

Statements were made by Court and Newby.

Powers presented argument.

Statements were made by Townsend, Court and Powers.

Court stated its findings of fact and conclusions of law.

COURT ORDERED: It grants the Motion with the understanding that LCB can stay in this particular action under the Motion to Intervene, it is granting the Motion to Intervene.

Statements were made by Court.

Powers inquired about the Motion to Disqualify LCB Legal as Counsel for the Legislature.

COURT ORDERED: It is denying that portion. It is allowing LCB to stay in.

Further statements were made by Court.

Peterson and Court discussed dismissing certain Defendants or allowing them to stay in with separate counsel by Pltfs. choice.

Peterson inquired if the Legislature caption could be Defendant/Intervenor.

COURT ORDERED: They can be Defendant/Intervenors. If LCB is going to stay in the action stay in as Defendant/Intervenor.

Statements were made by Newby, Powers and Court regarding new briefing schedule and staying action.

COURT ORDERED: It is not staying anything.

Further statements were made by Court, Powers and Peterson regarding schedule.

COURT ORDERED: It is going to establish a schedule and the reason it is going to establish a schedule is because it is always subject to change. If it can't be done within the time period, and things happen, somebody can file a motion.

Peterson to prepare Order on the denial of Second Motion to Disqualify.

Powers to prepare the Order in regards to the Motion to Intervene.

CASE NO. 19 OC 00127 1B

TITLE: SETTELMAYER VS STATE

11/19/19 – Cont.'d

Statements were made by Court, Powers and Peterson.

COURT ORDERED: It sets the hearing for April 1, 2020 at 9:00 a.m. for half a day. All briefs filed no later than February 28, 2020, and then any reply briefs or anything else that needs to be done filed by March 20, 2020.

Further discussion by Court, Peterson and Powers on schedule. Court, Newby and Peterson discussed when taxes go into effect and potential refunds.

Court indicated that if the briefs are filed earlier it can set the hearing sooner. Statements by Powers.

CONTINUED TO: 4/1/20 – 9:00 A.M. – Declaratory and Injunctive Relief

The Court minutes as stated above are a summary of the proceeding and are not a verbatim record. The hearing held on the above date was recorded on the Court's recording system.
