

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE LEGISLATURE OF THE
STATE OF NEVADA; THE STATE
OF NEVADA DEPARTMENT OF
TAXATION; and THE STATE OF
NEVADA DEPARTMENT OF
MOTOR VEHICLES,

Appellants,

vs.

THE HONORABLE JAMES A.
SETTELMAYER; THE HONORABLE
JOE HARDY; THE HONORABLE
HEIDI SEEVERS GANSERT; THE
HONORABLE SCOTT T. HAMMOND;
THE HONORABLE PETE
GOICOECHEA; THE HONORABLE
BEN KIECKHEFER; THE
HONORABLE IRA D. HANSEN; THE
HONORABLE KEITH F. 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

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Elizabeth A. Brown
Clerk of Supreme Court

Case No. 81924

Appeal from First Judicial District
Court, Carson City, Nevada,
Case No. 19 OC 00127 1B

**APPELLANTS' JOINT
DOCKETING STATEMENT**

nonprofit corporation; NEVADA
TRUCKING ASSOCIATION, INC., a
Nevada nonprofit corporation; and
RETAIL ASSOCIATION OF NEVADA,
a Nevada nonprofit corporation,

Respondents.

APPELLANTS' JOINT DOCKETING STATEMENT

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Nevada Department of Taxation
and State of Nevada Department
of Motor Vehicles*

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. *See KDI Sylvan Pools v. Workman*, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

DOCKETING STATEMENT

1. Judicial District First Department I

County Carson City Judge James Todd Russell

District Ct. Case No. 19-OC-00127-1B

2. Attorney filing this joint docketing statement:

Attorney **Kevin C. Powers** Telephone (775) 684-6830
General Counsel
Nevada Bar No. 6781

Firm Legislative Counsel Bureau, Legal Division
401 S. Carson St.
Carson City, NV 89701

Client The Legislature of the State of Nevada

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients accompanied by a certification that they concur in the filing of this statement.

Attorney **Aaron D. Ford** Telephone (702) 486-3420
Attorney General
Craig A. Newby
Deputy Solicitor General
Nevada Bar No. 8591

Firm Office of the Attorney General
555 E. Washington Ave., Ste. 3900
Las Vegas, NV 89101

Clients State of Nevada Department of Taxation
State of Nevada Department of Motor Vehicles

Certification I, **Kevin C. Powers**, General Counsel, Legislative Counsel Bureau, Legal Division, certify that **Craig A. Newby**, Deputy Solicitor General, Office of the Attorney General, concurs in the filing of this Joint Docketing Statement.

3. Attorneys representing respondents:

Attorney **Karen A. Peterson** Telephone (775) 687-0202

Nevada Bar No. 366

Justin Townsend

Nevada Bar No. 12293

Firm Allison MacKenzie, Ltd.

402 N. Division St.

Carson City, NV 89703

Clients The Honorable James A. Settlemeyer; The Honorable Joe Hardy; The Honorable Heidi Seevers Gansert; The Honorable Scott T. Hammond; The Honorable Pete Goicoechea; The Honorable Ben Kieckhefer; The Honorable Ira D. Hansen; The Honorable Keith F. 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.

4. Nature of disposition below (check all that apply):

- ☐ Judgment after bench trial
- ☐ Judgment after jury verdict
- √ Summary judgment
- ☐ Default judgment
- ☐ Grant/Denial of NRCP 60(b) relief
- √ Grant/Denial of injunction
- √ Grant/Denial of declaratory relief
- ☐ Review of agency determination

√ Dismissal:

- ☐ Lack of jurisdiction
- ☐ Failure to state a claim
- ☐ Failure to prosecute

√ Other (specify): Defendants Senate Majority Leader Nicole Cannizzaro, Secretary of the Senate Claire Clift, Governor Steve Sisolak and Lieutenant Governor Kate Marshall, who are being sued in their official capacities, argued that they are not necessary and proper party-defendants and are entitled to absolute legislative immunity as a matter of law in this action. In its order and final judgment, the district court ordered those Defendants dismissed from this action.

- ☐ Divorce Decree:
 - ☐ Original ☐ Modification
- ☐ Other disposition (specify):

5. Does this appeal raise issues concerning any of the following? No

- ☐ Child custody
- ☐ Venue
- ☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

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

(b) On October 23, 2020, all Plaintiffs jointly filed a notice of cross-appeal in the district court, and this Court docketed the cross-appeal on November 2, 2020, with the same docket number (**81924**) as this appeal.

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

The underlying case in the district court from which this appeal is taken is *Settelmeyer v. State ex rel. Cannizzaro*, No. 19-OC-00127-1B, First Judicial District Court, County of Carson City. On October 7, 2020, the district court entered an order and final judgment adjudicating all the claims of all the parties and granting final judgment in favor of Plaintiffs on their claims for declaratory and injunctive relief.

8. Nature of the action. Briefly describe the nature of the action and the result below:

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

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

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

In its order and final judgment granting Plaintiffs' claims for declaratory relief, the district court declared that SB 542 and SB 551 were bills which create, generate, or increase any public revenue in any form and were subject to the two-thirds supermajority 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 of SB 551 are unconstitutional and invalid. However, the district court declared that, under the severance doctrine, the remaining provisions of SB 551 are severed and remain in effect.

In its order and final judgment granting Plaintiffs' claims for injunctive relief, the district court enjoined Defendant Nevada Department of Motor Vehicles and Defendant Nevada Department of Taxation from collecting and enforcing the unconstitutional fees and taxes enacted by SB 542 and Sections 2, 3, 37, and 39 of SB 551, respectively, and ordered that all fee payers and taxpayers from whom such fees and taxes have already been collected are entitled to an immediate refund thereof with interest at the legal rate of interest from the date collected.

Additionally, in its order and final judgment, the district court concluded that Plaintiffs are not entitled to recover attorney's fees as special damages for bringing their claims for declaratory and injunctive relief because there was not bad faith in regard to this matter. Therefore, the district court granted final judgment in favor of Defendants on any claims to recover attorney's fees as special damages.

Finally, Defendants Senate Majority Leader Nicole Cannizzaro, Secretary of the Senate Claire Clift, Governor Steve Sisolak and Lieutenant Governor Kate Marshall, who are being sued in their official capacities, argued that they are not necessary and proper party-defendants and are entitled to absolute legislative immunity as a matter of law in this action. In its order and final judgment, the district court ordered those Defendants dismissed from this action.

9. Issues on appeal. State concisely the principal issues in this appeal.

On appeal, the principal issue of state constitutional law is whether SB 542 and SB 551 were bills which create, generate, or increase any public revenue in any form and were subject to the two-thirds supermajority requirement under Article 4, Section 18(2) of the Nevada Constitution.

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raise the same or similar issues raised in this appeal, list the case names and docket numbers and identify the same or similar issues raised:

Morency v. State ex rel. Department of Education, Docket No. 81281.

The issues on appeal in *Morency* involve the constitutionality of Assembly Bill No. 458 (AB 458) of the 2019 legislative session. 2019 Nev. Stat., ch. 366, at 2295-99.

The principal issue of state constitutional law is whether AB 458 was a bill which creates, generates, or increases any public revenue in any form and was subject to the two-thirds supermajority requirement under Article 4, Section 18(2) of the Nevada Constitution.

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A (The state and its agencies are parties to this appeal)

☐ Yes

☐ No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☒ An issue arising under the United States and/or Nevada Constitutions

☒ A substantial issue of first impression

☒ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain:

This appeal involves an issue arising under the Nevada Constitution because the principal issue of state constitutional law is whether SB 542 and SB 551 were bills which create, generate, or increase any public revenue in any form and were subject to the two-thirds supermajority requirement under Article 4, Section 18(2) of the Nevada Constitution.

This appeal involves a substantial issue of first impression because, to date, there are no reported cases from the Supreme Court determining whether particular bills are subject to the two-thirds supermajority requirement under Article 4, Section 18(2) of the Nevada Constitution.

This appeal involves an issue of public policy because the principal issue of state constitutional law involves an examination of history, reason and public policy to ascertain the intent of the drafters and the voters and to adopt an interpretation that best captures their objective in framing and ratifying the two-thirds supermajority requirement under Article 4, Section 18(2) of the Nevada Constitution.

13. Assignment to the Court of Appeals or retention in the Supreme Court. Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

This appeal is presumptively retained by the Supreme Court because: (1) under NRAP 17(a)(11), this appeal raises as a principal issue a question of first impression involving the Nevada Constitution; and (2) under NRAP 17(a)(12), this appeal raises as a principal issue a question of statewide public importance.

In particular, the principal issue of state constitutional law—which is an issue of statewide public importance—is whether SB 542 and SB 551 were bills which create, generate, or increase any public revenue in any form and were subject to the two-thirds supermajority requirement under Article 4, Section 18(2) of the Nevada Constitution. To date, there are no reported cases from the Supreme Court determining whether particular bills are subject to the two-thirds supermajority requirement under Article 4, Section 18(2) of the Nevada Constitution.

14. Trial. If this action proceeded to trial, how many days did the trial last?

This action was resolved on dispositive motions and counter-motions for summary judgment and did not proceed to trial.

Was it a bench or jury trial? Not applicable

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? No

If so, which Justice? Not applicable

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from:

October 7, 2020

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review: Not applicable

17. Date written notice of entry of judgment or order was served:

October 8, 2020

Was service by:

☐ Delivery

☒ Mail/electronic/fax

18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59): Not applicable

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

- ☐ NRCP 50(b) Date of filing _____
☐ NRCP 52(b) Date of filing _____
☐ NRCP 59 Date of filing _____

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. *See AA Primo Builders v. Washington*, 126 Nev. 578, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion _____

(c) Date written notice of entry of order resolving tolling motion was served

Was service by:

- ☐ Delivery
☐ Mail

19. Date notice of appeal filed.

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

October 9, 2020: The Legislature of the State of Nevada

October 9, 2020: State of Nevada Department of Taxation and State of Nevada Department of Motor Vehicles

October 23, 2020: All Plaintiffs jointly filed a notice of cross-appeal in the district court, and this Court docketed the cross-appeal on November 2, 2020, with the same docket number (81924) as this appeal.

20. Specify the statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other:

NRAP 4(a)

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting the Supreme Court jurisdiction to review the judgment or order appealed from:

(a) Statute or other authority:

- | | |
|---|---------------------------------------|
| <input checked="" type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205 |
| <input type="checkbox"/> NRAP 3A(b)(2) | <input type="checkbox"/> NRS 233B.150 |
| <input checked="" type="checkbox"/> NRAP 3A(b)(3) | <input type="checkbox"/> NRS 703.376 |
| <input type="checkbox"/> Other (specify) _____ | |

(b) Explain how each authority provides a basis for appeal from the judgment or order:

Under NRAP 3A(b)(1), the Supreme Court has jurisdiction to review a final judgment entered in an action or proceeding commenced in the court in which the judgment is rendered. On October 7, 2020, the district court entered an order and final judgment adjudicating all the claims of all the parties and granting final judgment in favor of Plaintiffs on their claims for declaratory and injunctive relief.

Under NRAP 3A(b)(3), the Supreme Court has jurisdiction to review an order granting or refusing to grant an injunction or dissolving or refusing to dissolve an injunction. On October 7, 2020, in its order and final judgment granting Plaintiffs' claims for injunctive relief, the district court enjoined Defendant Nevada Department of Motor Vehicles and Defendant Nevada Department of Taxation from collecting and enforcing the fees and taxes enacted by SB 542 and Sections 2, 3, 37, and 39 of SB 551, respectively, and ordered that all fee payers and taxpayers from whom such fees and taxes have already been collected are entitled to an immediate refund thereof with interest at the legal rate of interest from the date collected.

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

(1) Plaintiffs: The Honorable James A. Settelmeyer; The Honorable Joe Hardy; The Honorable Heidi Seevers Gansert; The Honorable Scott T. Hammond; The Honorable Pete Goicoechea; The Honorable Ben Kieckhefer; The Honorable Ira D. Hansen; The Honorable Keith F. 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.

(2) 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; and Nevada Department of Motor Vehicles.

(3) Defendant-Intervenor: The Legislature of the State of Nevada.

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, e.g., formally dismissed, not served, or other:

The following parties in the district court are not parties to this appeal: Defendants Senate Majority Leader Nicole Cannizzaro, Secretary of the Senate Claire Clift, Governor Steve Sisolak and Lieutenant Governor Kate Marshall, who are being sued in their official capacities, argued that they are not necessary and proper party-defendants and are entitled to absolute legislative immunity as a matter of law in this action. On October 7, 2020, in its order and final judgment, the district court ordered those Defendants dismissed from this action.

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

(1) Plaintiffs' claims for declaratory relief: On October 7, 2020, in its order and final judgment granting Plaintiffs' claims for declaratory relief, the district court declared that SB 542 and SB 551 were bills which create, generate, or increase any public revenue in any form and were subject to the two-thirds supermajority 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 of SB 551 are unconstitutional and invalid. However, the district court declared that, under the severance doctrine, the remaining provisions of SB 551 are severed and remain in effect.

(2) Plaintiffs' claims for injunctive relief: On October 7, 2020, in its order and final judgment granting Plaintiffs' claims for injunctive relief, the district court enjoined Defendant Nevada Department of Motor Vehicles and Defendant Nevada Department of Taxation from collecting and enforcing the fees and taxes enacted by SB 542 and Sections 2, 3, 37, and 39 of SB 551, respectively, and ordered that all fee payers and taxpayers from whom such fees and taxes have already been collected are entitled to an immediate refund thereof with interest at the legal rate of interest from the date collected.

(3) Plaintiffs' claims for attorney's fees as special damages for bringing their claims for declaratory and injunctive relief: On October 7, 2020, in its order and final judgment, the district court concluded that Plaintiffs are not entitled to recover attorney's fees as special damages for bringing their claims for declaratory and injunctive relief because there was not bad faith in regard to this matter. Therefore, the district court granted final judgment in favor of Defendants on any claims to recover attorney's fees as special damages.

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☒ Yes

☐ No

25. If you answered “No” to question 24, complete the following:

- (a) Specify the claims remaining pending below:
- (b) Specify the parties remaining below:
- (c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?
 - ☐ Yes
 - ☐ No
- (d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?
 - ☐ Yes
 - ☐ No

26. If you answered “No” to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims.
- Any tolling motion(s) and order(s) resolving tolling motion(s).
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, crossclaims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal.
- Any other order challenged on appeal.
- Notices of entry for each attached order.

VERIFICATION

I declare under penalty of perjury that I have read this joint docketing statement, that the information provided in this joint docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this joint docketing statement.

The Legislature of the State of Nevada
Name of appellant

Kevin C. Powers
Name of counsel of record

November 3, 2020
Date

/s/ Kevin C. Powers
Signature of counsel of record

Carson City, Nevada
State and county where signed

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Nevada Legislative Counsel Bureau, Legal Division, and that on the 3rd day of November, 2020, pursuant to NRAP 25 and NEFCR 9, I filed and served a true and correct copy of Appellants' Joint Docketing Statement, by means of the Nevada Supreme Court's electronic filing system, directed to:

KAREN A. PETERSON, ESQ.
JUSTIN TOWNSEND, ESQ.
ALLISON MACKENZIE, LTD.
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kpeterson@allisonmackenzie.com
jtownsend@allisonmackenzie.com
Attorneys for Respondents

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

Case No. 81924

APPELLANTS' JOINT DOCKETING STATEMENT

TAB 1

Latest-Filed Complaint

First Amended Complaint

Filed July 30, 2019

ALLISON MacKENZIE, LTD.
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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 THE HONORABLE JAMES SETTELMAYER,
12 THE HONORABLE JOE HARDY,
13 THE HONORABLE HEIDI GANSERT,
14 THE HONORABLE SCOTT HAMMOND,
15 THE HONORABLE PETE GOICOECHEA,
16 THE HONORABLE BEN KIECKHEFER,
17 THE HONORABLE IRA HANSEN, and
18 THE HONORABLE KEITH PICKARD,
19 in their official capacities as members of the
20 Senate of the State of Nevada and individually;
21 GREAT BASIN ENGINEERING
22 CONTRACTORS, LLC, a Nevada limited
23 liability company; GOODFELLOW
24 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,

25 Plaintiffs,

26 vs.

27 ///

28 ///

REC'D & FILED

2019 JUL 30 PM 1:59

AUBREY ROWLATT
CLERK

BY V. Alegria DEPUTY

Case No: 19 OC 00127 1B

Dept. No: I

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

14 Defendants.

15 **FIRST AMENDED COMPLAINT**

16 (Arbitration Exemption: Declaratory and Injunctive Relief Sought)

17 Plaintiffs, by and through their attorneys, ALLISON MacKENZIE, LTD., allege and complain
18 against the above-named Defendants as follows:

19 **PARTIES, JURISDICTION AND VENUE**

20 1. Plaintiffs, Senators JAMES SETTELMAYER, JOE HARDY, HEIDI GANSERT,
21 SCOTT HAMMOND, PETE GOICOËCHEA, BEN KIECKHEFER, IRA HANSEN, and KEITH
22 PICKARD are and were at all times relevant hereto duly elected members of the Senate of the 80th
23 (2019) Session of the Nevada Legislature performing their duties in accordance with Article 4 of the
24 Nevada Constitution, including Article 4, Section 1 and Article 4, Section 18(2) of the Nevada
25 Constitution.

26 2. In the 80th (2019) Session of the Nevada Legislature, each of the Plaintiff Senators
27 voted against Senate Bill 542 ("SB 542") and voted against Senate Bill 551 ("SB 551") and all
28 amendments thereto.

Each of the Plaintiff Senators identified in Paragraph 1 above is a member of the
NEVADA SENATE REPUBLICAN CAUCUS. Collectively, Plaintiff Senators constitute the entire
membership of the NEVADA SENATE REPUBLICAN CAUCUS and at all times relevant hereto
held enough votes to defeat SB 542 and SB 551 which required a two-thirds vote of the members
elected to the Senate to pass pursuant to Article 4, Section 18(2) of the Nevada Constitution.

1 4. As a result of the actions alleged in this First Amended Complaint, Plaintiff Senators
2 and each of them have been injured in fact because the Defendants (except Defendants, NEVADA
3 DEPARTMENT OF TAXATION and NEVADA DEPARTMENT OF MOTOR VEHICLES) acted
4 improperly to nullify Plaintiff Senators' votes against SB 542 and SB 551 and infringe upon and
5 deprive Plaintiff Senators of their power to act. Plaintiff Senators' votes have been adversely affected
6 by said Defendants' actions which directly and materially altered how the votes of individual Senators
7 in the 80th Session of the Nevada Legislature effectively determined legislative action.

8 5. Plaintiff, GREAT BASIN ENGINEERING CONTRACTORS, LLC, is a Nevada
9 limited liability company, duly formed under and qualified to do business pursuant to the laws of the
10 State of Nevada and does conduct its business within the State of Nevada such that it is subject to and
11 does, in fact, pay the Modified Business Tax ("MBT" or "payroll tax"), which is imposed and collected
12 by Defendant NEVADA DEPARTMENT OF TAXATION pursuant to NRS Chapter 363B. Plaintiff
13 GREAT BASIN ENGINEERING CONTRACTORS, LLC is a construction contractor of primarily
14 civil projects.

15 6. Plaintiff, GOODFELLOW CORPORATION, is a Utah corporation duly qualified and
16 authorized to do business in the State of Nevada and does conduct its business within the State of
17 Nevada such that it is subject to and does, in fact, pay the Modified Business Tax ("MBT" or "payroll
18 tax"), which is imposed and collected by Defendant NEVADA DEPARTMENT OF TAXATION
19 pursuant to NRS Chapter 363B. Plaintiff GOODFELLOW CORPORATION distributes and sells
20 rock crushing, construction and mining machinery and related equipment throughout the world and
21 provides all in-house industry services including custom work, fabrication, parts and electrical
22 services.

23 7. Plaintiff, KIMMIE CANDY COMPANY, is a Nevada corporation, duly formed under
24 and qualified to do business pursuant to the laws of the State of Nevada and does conduct its business
25 within the State of Nevada such that it is subject to and does, in fact, pay the Modified Business Tax
26 ("MBT" or "payroll tax"), which is imposed and collected by Defendant NEVADA DEPARTMENT
27 OF TAXATION pursuant to NRS Chapter 363B. Plaintiff KIMMIE CANDY COMPANY is a state-
28 of-the-art candy making manufacturer located in Reno, Nevada.

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1 8. All individually named Plaintiffs are citizens, residents and taxpayers of the State of
2 Nevada and are subject to and do pay the technology fee that is imposed and collected by Defendant
3 NEVADA DEPARTMENT OF MOTOR VEHICLES pursuant to NRS 481.064.

4 9. Plaintiff, KEYSTONE CORP., is a Nevada nonprofit corporation, duly formed under
5 and qualified to do business pursuant to the laws of the State of Nevada. Plaintiff KEYSTONE CORP.
6 is a political advocacy group whose members conduct business in the State of Nevada and many of its
7 members are subject to and do, in fact, pay the Modified Business Tax ("MBT" or "payroll tax"),
8 which is imposed and collected by the Defendant NEVADA DEPARTMENT OF TAXATION
9 pursuant to NRS Chapter 363B. Plaintiff KEYSTONE CORP., on behalf of its members, seeks to
10 minimize taxation and regulation of business in the State of Nevada and opposes any form of business
11 taxes that discourage capital investment and job creation in Nevada.

12 10. Plaintiff, NATIONAL FEDERATION OF INDEPENDENT BUSINESS ("NFIB"), is
13 a California nonprofit mutual benefit corporation, duly qualified and authorized to do business in the
14 State of Nevada. NFIB is the nation's leading small business advocacy association, representing
15 members in Washington, D.C., and all 50 States (including approximately 1,800 in Nevada). Founded
16 in 1943 as a nonprofit, nonpartisan organization, NFIB's mission is to promote and protect the rights
17 of its members to own, operate and grow their businesses. The majority of the approximately 1,800
18 NFIB members in Nevada conduct business within the State of Nevada such that they are subject to
19 and do, in fact, pay the Modified Business Tax ("MBT" or "payroll tax"), which is imposed and
20 collected by Defendant NEVADA DEPARTMENT OF TAXATION pursuant to NRS Chapter 363B.
21 Moreover, NFIB's members in Nevada employ thousands of employees in the state and enter into
22 thousands of transactions performed by the Defendant NEVADA DEPARTMENT OF MOTOR
23 VEHICLES for which the technology fee is charged.

24 11. Plaintiff, NEVADA FRANCHISED AUTO DEALERS ASSOCIATION, is a Nevada
25 nonprofit corporation, duly formed under and qualified to do business pursuant to the laws of the State
26 of Nevada. Its members conduct business in the State of Nevada and are subject to and do, in fact,
27 pay the Modified Business Tax ("MBT" or "payroll tax"), which is imposed and collected by the
28 Defendant NEVADA DEPARTMENT OF TAXATION pursuant to NRS Chapter 363B and its

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1 members pay the technology fee imposed and collected by Defendant NEVADA DEPARTMENT OF
2 MOTOR VEHICLES. Plaintiff NEVADA FRANCHISED AUTO DEALERS ASSOCIATION is a
3 membership endorsed trade association promoting legislation beneficial to the motor vehicle industry
4 and opposing discriminating legislation relating to the industry. Plaintiff NEVADA FRANCHISED
5 AUTO DEALERS ASSOCIATION has over 110 new franchised automobile and truck dealer
6 members, who employ thousands of employees in Nevada and enter into thousands of transactions
7 performed by Defendant NEVADA DEPARTMENT OF MOTOR VEHICLES for which the
8 technology fee is charged. Plaintiff NEVADA FRANCHISED AUTO DEALERS ASSOCIATION
9 is supportive of the efforts of Defendant NEVADA DEPARTMENT OF MOTOR VEHICLES to
10 improve and modernize its systems which are used daily by members of NEVADA FRANCHISED
11 AUTO DEALERS ASSOCIATION and the citizens of Nevada; its opposition to the technology fee
12 is based on the lack of a two-thirds majority vote required by the Nevada Constitution.

13 12. Plaintiff, NEVADA TRUCKING ASSOCIATION, INC., is a Nevada nonprofit
14 corporation, duly formed under and qualified to do business pursuant to the laws of the State of
15 Nevada. Established in 1932, Plaintiff NEVADA TRUCKING ASSOCIATION, INC. is a member
16 driven organization dedicated to representing the trucking industry, advocating for laws and
17 regulations that enhance the safety and profitability of the trucking industry in Nevada. Plaintiff,
18 NEVADA TRUCKING ASSOCIATION, INC. represents over 500 member companies, operating in
19 both intrastate and interstate commerce, employing thousands of Nevadans. Its members conduct
20 business in the State of Nevada and are subject to and do, in fact, pay the Modified Business Tax
21 ("MBT" or "payroll tax"), which is imposed and collected by Defendant NEVADA DEPARTMENT
22 OF TAXATION pursuant to NRS Chapter 363B and its members pay the technology fee imposed and
23 collected by Defendant NEVADA DEPARTMENT OF MOTOR VEHICLES. Plaintiff NEVADA
24 TRUCKING ASSOCIATION, INC.'s members enter into thousands of transactions performed by
25 Defendant NEVADA DEPARTMENT OF MOTOR VEHICLES for which the technology fee is
26 charged. Plaintiff NEVADA TRUCKING ASSOCIATION, INC. supports the DMV's modernization
27 efforts and the application of the technology fee to improve services to its member companies; its
28

1 opposition to the technology fee is solely based on the lack of a two-thirds majority vote required by
2 the Nevada Constitution.

3 13. Plaintiff, RETAIL ASSOCIATION OF NEVADA, is a Nevada nonprofit corporation,
4 duly formed under and qualified to do business pursuant to the laws of the State of Nevada.
5 Established in 1969, the RETAIL ASSOCIATION OF NEVADA is a trade association that represents
6 over 2500 members in the retail industry in Nevada, an industry that contributes more than 1 billion
7 dollars in annual tax revenue and accounts for more than 400,000 jobs in Nevada. The RETAIL
8 ASSOCIATION OF NEVADA advocates for a strong business environment for Nevada retailers
9 before the legislative, executive and judicial branches of state and local government throughout
10 Nevada. Its members conduct business in the State of Nevada and are subject to and do in fact, pay
11 the MBT which is imposed and collected by Defendant NEVADA DEPARTMENT OF TAXATION
12 pursuant to NRS Chapter 363B. Moreover, many of its members are subject to and do in fact, pay the
13 technology fee imposed and collected by Defendant NEVADA DEPARTMENT OF MOTOR
14 VEHICLES.

15 14. The interests each Plaintiff organization seeks to protect are germane to each
16 organization's purpose and the claims asserted and the relief requested in this First Amended
17 Complaint do not require the participation of individual members of said Plaintiff organizations.

18 15. Each Plaintiff organization is authorized to sue pursuant to the laws of the State of
19 Nevada.

20 16. Defendant, NICOLE CANNIZZARO, is named herein in her official capacity and is
21 and was at all times relevant hereto a duly elected member of the Senate of the 80th (2019) Session of
22 the Nevada Legislature and the Senate Majority Leader during the 80th Session of the Nevada
23 Legislature. Defendant, NICOLE CANNIZZARO, was the sponsor of SB 551, and allowed a vote of
24 less than two-thirds of the Senate to approve both SB 542 and SB 551 in violation of the Nevada
25 Constitution.

26 17. Defendant, KATE MARSHALL, is named in her official capacity and is and was at all
27 time relevant hereto the duly elected Lieutenant Governor of the State of Nevada acting as President
28 of the Senate during the 80th Session of the Nevada Legislature whose official duties include signing

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1 bills that have been passed by the Senate in conformity with the Nevada Constitution. Defendant,
2 KATE MARSHALL, deemed SB 542 and SB 551 constitutionally passed with less than a vote of two-
3 thirds of the Senate necessary to approve both SB 542 and SB 551 under the Nevada Constitution.

4 18. Defendant, CLAIRE J. CLIFT, is named in her official capacity and is and was at all
5 times relevant hereto the Secretary of the Senate during the 80th Session of the Nevada Legislature
6 whose official responsibilities include transmitting to the Legal Division for enrollment bills passed
7 by the Senate in conformity with the Nevada Constitution. Defendant, CLAIRE J. CLIFT, deemed
8 SB 542 and SB 551 constitutionally passed with less than a vote of two-thirds of the Senate necessary
9 to approve both SB 542 and SB 551 under the Nevada Constitution.

10 19. Defendant, STEVE SISOLAK, is named in his official capacity and is and was at all
11 times relevant hereto the duly elected Governor of the State of Nevada whose official responsibilities
12 include approving and signing bills passed by the Legislature in conformity with the Nevada
13 Constitution and to see that the laws of the State of Nevada are faithfully executed. Defendant, STEVE
14 SISOLAK, approved and signed SB 542 and SB 551 into law with a vote of less than two-thirds of
15 the Senate in violation of the Nevada Constitution.

16 20. Defendant, NEVADA DEPARTMENT OF TAXATION, administers the duly enacted
17 tax statutes of the State of Nevada and collects the payroll tax.

18 21. Defendant, NEVADA DEPARTMENT OF MOTOR VEHICLES, administers the duly
19 enacted statutes involving the technology fee and collects the technology fee.

20 22. Defendants DOES I-X, inclusive, are not known at this time and are therefore identified
21 by the fictitious designation of DOES I-X. Once the true identities and capacities, whether individual,
22 corporate, associate or otherwise, of Defendants named herein as DOES I-X, inclusive, are known,
23 Plaintiffs will seek leave of this Court to amend this First Amended Complaint to insert the true names
24 and capacities of DOES I-X and join said Defendants in this action. Plaintiffs are informed and
25 believe, and thereon allege, that each of the Defendants designated herein as DOE is responsible in
26 some manner for the events and happenings referred to herein.

27 23. This is an action to challenge the constitutionality of SB 542 and SB 551 as well as the
28 constitutionality of the manner in which each such bill was passed into law.

1 24. This action involves an issue of significant public and statewide importance as it seeks
2 to uphold and protect the constitutional amendment proposed by citizen ballot initiative adopted and
3 overwhelmingly approved by Nevada voters in 1994 and 1996. As provided in Article 1, Section 2 of
4 the Nevada Constitution, political power is inherent in the people. Government only has power from
5 the consent of the governed, and the residents and citizens of the State of Nevada twice voted strongly
6 in favor of amending the Nevada Constitution to add the two-thirds requirement, and the two-thirds
7 requirement has, at least prior to 2019, been applied consistently to legislative bills extending sunsets
8 by the Nevada Legislature.

9 25. Each of the Plaintiff Senators are the appropriate parties to bring this action as there is
10 no one else in a better position or who can bring an action to vindicate their votes individually and
11 collectively against SB 542 and SB 551, which votes were sufficient in number to defeat said bills.
12 The Plaintiff Senators are capable of fully advocating their position in Court.

13 26. The Plaintiff business taxpayers paying the payroll tax, the individual Plaintiff citizens,
14 residents and taxpayers paying the technology fee and the Plaintiff organizations are appropriate
15 parties to litigate this action. Said Plaintiff businesses, citizens, residents, taxpayers, fee payers and
16 organizations may have no other means of redress to raise the constitutional challenges to SB 542 and
17 SB 551, said constitutional challenges may not be otherwise raised without their claims for relief set
18 forth in this First Amended Complaint, the potential economic impact from SB 551 alone is
19 approximately \$98.2 million over the biennium and the economic impact from SB 542 is
20 approximately \$7 million per year, and said Plaintiffs can assist the Court in developing and reviewing
21 all relevant legal and factual questions.

22 27. The Court has subject matter jurisdiction pursuant to Article 6 of the Nevada
23 Constitution which vests the judicial power of the State in a court system including the district courts
24 of the State of Nevada.

25 28. The Court has personal jurisdiction over Defendants pursuant to Nev. Rev. Stat.
26 ("NRS") 14.065 because Defendants are residents of the State of Nevada.
27
28

1 29. SB 542 and SB 551 were presented, debated, voted on, signed, and enrolled in Carson
2 City, Nevada. The payroll taxes enacted by SB 551 are collected and remitted to Carson City, Nevada
3 and the technology fees enacted by SB 542 are collected and remitted to Carson City, Nevada.

4 30. The Governor, Lieutenant Governor, members of the Nevada Senate, Secretary of the
5 Senate, Nevada Department of Taxation and Nevada Department of Motor Vehicles have offices in
6 Carson City, Nevada.

7 31. Venue for this action is proper in the First Judicial District Court of the State of Nevada
8 in and for Carson City, Nevada pursuant to NRS 13.020. The present cause of action arises in Carson
9 City and Defendants are public officers or departments whose respective offices are required to be
10 kept in Carson City, Nevada.

11 GENERAL ALLEGATIONS

12 32. Plaintiffs repeat and incorporate each of the foregoing paragraphs as though fully set
13 forth herein.

14 33. The Nevada Constitution, at Article 4, Section 18(2) provides, in pertinent part:

15 [A]n affirmative vote of not fewer than two-thirds of the members elected
16 to each House is necessary to pass a bill or joint resolution which creates,
17 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.

18 34. During the 80th Session of the Nevada Legislature there were seated 21 Senators.

19 35. In order to pass during the 80th Session of the Nevada Legislature, any bill that creates,
20 generates, or increases any public revenue in any form, or changes in the computation bases for taxes,
21 fees, assessments and rates, the vote of at least fourteen Senators was required.

22 36. SB 542 is a bill to extend the imposition of a technology fee on certain transactions by
23 the NEVADA DEPARTMENT OF MOTOR VEHICLES set to expire on June 30, 2020.

24 37. SB 542 was introduced in the Senate on May 10, 2019.

25 38. The Senate voted on SB 542 on May 27, 2019 and the vote was 13 in favor and 8
26 opposed. SB 542 became effective upon passage and approval.

27 39. Less than two-thirds of the Senate voted to pass SB 542.
28

1 40. SB 542 specifically extended the expiration, or sunset, of NRS 481.064 from June 30,
2 2020 to June 30, 2022.

3 41. NRS 481.064 provides Defendant NEVADA DEPARTMENT OF MOTOR
4 VEHICLES "shall add a nonrefundable technology fee of \$1 to the existing fee for any transaction
5 performed by the Department for which a fee is charged."

6 42. The effect of SB 542, therefore, is to create, generate, and increase public revenue from
7 July 1, 2020 through June 30, 2022.

8 43. SB 551 is a bill to eliminate the procedure used by Defendant NEVADA
9 DEPARTMENT OF TAXATION to reduce the rate of payroll taxes and to extend indefinitely the
10 then current rates of said taxes.

11 44. SB 551 was introduced in the Senate by Defendant, NICOLE CANNIZZARO, as an
12 Emergency Request on May 27, 2019.

13 45. The Senate voted on SB 551 on June 3, 2019 and the vote was 13 in favor and 8
14 opposed. Sections 2, 3, 37 and 39 of SB 551 were effective immediately upon passage and approval.

15 46. Less than two-thirds of the Senate voted to pass SB 551.

16 47. SB 551 specifically impacted the provisions of NRS 363A.110, NRS 363B.130, and
17 NRS 360.203 in that it eliminated the computation bases for reducing the payroll tax rates set forth
18 therein and extended indefinitely the then current payroll tax rates.

19 48. NRS 360.203, prior to passage and enrollment of SB 551, provided that Defendant
20 NEVADA DEPARTMENT OF TAXATION should, before September 30 of each even-numbered
21 year, perform a computation, the result of which would dictate whether the rates set forth in NRS
22 363A.110 and NRS 363B.130 should be reduced.

23 49. Prior to September 30, 2018, Defendant NEVADA DEPARTMENT OF TAXATION
24 performed the computation required by NRS 360.203 and determined that the rates set forth in NRS
25 363A.110 and NRS 363B.130 would be reduced.

26 50. On October 11, 2018, Defendant NEVADA DEPARTMENT OF TAXATION
27 announced that rates under NRS 363A.110 and NRS 363B.130 would be reduced effective July 1,
28 2019.

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- 1 51. SB 551 repealed NRS 360.203 and permanently fixed the rates set forth in NRS
- 2 363A.110 and NRS 363B.130. SB 551 retroactively nullified the payroll tax rate reduction computed
- 3 by Defendant NEVADA DEPARTMENT OF TAXATION required by NRS 360.203 for any fiscal
- 4 year beginning on or after July 1, 2015.
- 5 52. The effect of SB 551, therefore, is to create, generate, and increase public revenue as a
- 6 result of the elimination of scheduled reductions in payroll tax rates and the elimination of the
- 7 computation bases for future reductions thereof.
- 8 53. Because of Defendant NEVADA DEPARTMENT OF TAXATION's determination
- 9 and announcement that payroll tax rates would be reduced effective July 1, 2019, SB 551's permanent
- 10 fixing of the rates at higher rates is a change in the computation base of the MBT.
- 11 54. Where NRS 360.203, prior to adoption of SB 551, allowed for reductions in the rate of
- 12 payroll tax under the MBT, the repeal thereof constitutes a change in the computation base of said
- 13 payroll tax.
- 14 55. Notwithstanding an opinion from the Legislative Counsel Bureau ("LCB") on or about
- 15 May 8, 2019, at various stages of the Senate's consideration of SB 551 and amendments thereto after
- 16 May 8, 2019, LCB's bill documentation showed that two-thirds of the Senate, or 14 Senators, would
- 17 have to vote to approve the bill, and at other stages of the Senate's consideration of SB 551, the two-
- 18 thirds requirement was removed from LCB's bill documentation for SB 551.
- 19 56. Defendant, NICOLE CANNIZZARO's actions on the Senate floor on June 3, 2019
- 20 show that if SB 551 did not have support from two-thirds of the Senate, the majority party, of which
- 21 she was leader, would pass the bill by simple majority.
- 22 57. Neither House by majority referred the SB 542 or SB 551 measures to the people of
- 23 the State at the next general election per Article 4, Section 18(3) of the Nevada Constitution.
- 24 58. In previous legislative sessions, the Nevada Legislature, including the Senate, has
- 25 required a vote of not fewer than two-thirds of the members elected to the Legislature, including the
- 26 Senate, to extend the prospective expiration of certain taxes and fees.
- 27
- 28

1 59. At all times relevant hereto, the 80th (2019) Session of the Nevada Legislature had
2 enough money to fund the State's budget without the public revenues created, generated or increased
3 as a result of the changes to the payroll tax adopted by SB 551.

4 60. The payroll tax rate extended by SB 551 commenced to be imposed by the NEVADA
5 DEPARTMENT OF TAXATION on Nevada taxpayer employers on July 1, 2019. Nevada taxpayer
6 employers will start filing returns and paying the extended payroll tax rate on or before the last day of
7 the month immediately following each calendar quarter. The first calendar quarter for which the
8 payroll tax rate extended by SB 551 will be imposed ends on September 30, 2019 and Nevada taxpayer
9 employers will commence to file returns and remit the payroll taxes due to the NEVADA
10 DEPARTMENT OF TAXATION based on the extended payroll tax rate on or after October 1, 2019.

11 61. The technology fee extended by SB 542 will be unlawfully collected by the NEVADA
12 DEPARTMENT OF MOTOR VEHICLES commencing July 1, 2020.

13 **FIRST CLAIM FOR RELIEF**

14 62. Plaintiffs repeat and incorporate each of the foregoing paragraphs as though fully set
15 forth herein.

16 63. Pursuant to Article 4, Section 18(2) of the Nevada Constitution, an affirmative vote of
17 not fewer than two-thirds of the members elected to each House is necessary to pass every bill which
18 creates, generates, or increases any public revenue in any form, including but not limited to taxes, fees,
19 assessments and rates, or in changes in the computation bases for taxes, fees, assessments and rates.

20 64. The Defendants failed to require a two-thirds majority vote for passage of SB 542 and
21 SB 551 as required by the Nevada Constitution. Such failure to require the passage of these bills
22 without the required constitutional majority has resulted in the dilution of each of the Plaintiff
23 Senator's votes and the nullification of each of their votes.

24 65. Plaintiff Senators have been denied their rights to cast an effective vote on SB 542 and
25 SB 551.

26 66. The dilution and nullification of each Plaintiff Senator's vote and the denial of their
27 rights to cast an effective vote violate each Plaintiff Senator's equal protection and due process rights
28

1 under the Fourteenth Amendment of the United States Constitution and Article 4 of the Nevada
2 Constitution.

3 67. Plaintiffs have been required to engage the services of counsel to pursue their rights
4 and are entitled to reasonable attorneys' fees and costs of suit.

5 **SECOND CLAIM FOR RELIEF**

6 68. Plaintiffs repeat and incorporate each of the foregoing paragraphs as though fully set
7 forth herein.

8 69. Plaintiff business taxpayers and members of Plaintiff organizations will not receive the
9 reduction of payroll tax rates as was previously properly enacted by the constitutional two-thirds
10 majority required by Article 4, Section 18(2) of the Nevada Constitution. Revenue of approximately
11 \$98.2 million over the biennium in additional payroll taxes will be generated as a result of the
12 extension of the payroll taxes and change in the computation bases enacted by SB 551 commencing
13 July 1, 2019. The tax as it is imposed upon Plaintiff business taxpayers and members of Plaintiff
14 organizations will deprive Plaintiff business taxpayers and members of Plaintiff organizations of their
15 property without due process of law in violation of the Fourteenth Amendment of the United States
16 Constitution and Article 1, Section 8(5) of the Nevada Constitution.

17 70. SB 542 eliminated the sunset provision in NRS 461.064 effective July 1, 2020 and
18 individual Plaintiff taxpayers and fee payers and members of Plaintiff organizations will continue to
19 be charged the technology fee unlawfully extended by SB 542 in violation of the two-thirds majority
20 required by the Nevada Constitution. Revenue of approximately \$7 million per year will continue to
21 be generated and collected by Defendant NEVADA DEPARTMENT OF MOTOR VEHICLES. The
22 technology fee as will be imposed upon the individual Plaintiff citizens, residents and taxpayers and
23 members of Plaintiff organizations will deprive said Plaintiffs of their property without due process
24 of law in violation of the Fourteenth Amendment of the United States Constitution and Article 1,
25 Section 8(5) of the Nevada Constitution.

26 71. Plaintiffs have been required to engage the services of counsel to pursue their rights
27 and are entitled to reasonable attorneys' fees and costs of suit.

28 ///

THIRD CLAIM FOR RELIEF

72. Plaintiffs repeat and incorporate each of the foregoing paragraphs as though fully set forth herein.

73. Plaintiffs' rights, status or other legal relations are affected by SB 542 and SB 551 and Plaintiffs seek a declaration of their rights, status or other relations. Declaratory relief pursuant to NRS Chapter 30 is appropriate because it will effectively adjudicate the rights, status or other legal relations of the parties.

74. There exists an actual justiciable controversy between Plaintiffs and Defendants concerning the applicability of Article 4, Section 18(2) of the Nevada Constitution to the voting on and passage of SB 542 and SB 551.

75. Plaintiffs and Defendants have adverse interests, and an actual justiciable controversy exists between them within the jurisdiction of this Court.

76. Plaintiffs have a legally protectable interest in this controversy by virtue of their votes against SB 542 and SB 551 and/or the payment of the extended payroll tax and technology fee deemed enacted without the required two-thirds vote of the Nevada Senate required by the Nevada Constitution.

77. The controversy before this Court is ripe for judicial determination because relevant portions of SB 551 were effective upon passage and approval and imposition of the extended payroll tax rate went into effect on July 1, 2019. Taxpayer employers will be required to report and remit the extended payroll tax to the NEVADA DEPARTMENT OF TAXATION that went into effect July 1, 2019 commencing on October 1, 2019. SB 542 was effective upon passage and approval and the technology fee was extended from July 1, 2020, which occurs before the next legislative session, to June 30, 2022. Plaintiffs seek a declaration from this Court prior to the State of Nevada's collection of the payroll tax and technology fee from taxpayers and fee payers to avoid such taxpayers and fee payers having to seek refunds from the State of Nevada and the State of Nevada having to issue refunds of payroll taxes and technology fees unlawfully collected.

78. Plaintiffs request declarations that (a) SB 542 and SB 551 are bills which create, generate, and/or increase public revenues or changes in the computation bases for taxes, fees,

1 assessments or rates; (b) Article 4, Section 18(2) of the Nevada Constitution required that two-thirds
2 of the Senate vote to pass both SB 542 and SB 551; (c) the votes of the eight Plaintiff Senators should
3 be given effect; and (d) SB 542 and SB 551 must be invalidated for lack of supporting votes of two-
4 thirds of the Senate as required by Article 4, Section 18(2) of the Nevada Constitution.

5 79. Plaintiffs have been required to engage the services of counsel to pursue their rights
6 and are entitled to reasonable attorneys' fees and costs of suit.

7 **FOURTH CLAIM FOR RELIEF**

8 80. Plaintiffs repeat and incorporate each of the foregoing paragraphs as though fully set
9 forth herein.

10 81. On or after September 30, 2019, the Court must enjoin the enforcement of SB 551 and
11 prior to July 1, 2020, the Court must enjoin the enforcement of SB 542, and the Court must also enjoin
12 the NEVADA DEPARTMENT OF TAXATION and NEVADA DEPARTMENT OF MOTOR
13 VEHICLES, respectively, from collecting any revenues pursuant to the subject revenue provisions of
14 SB 551 and SB 542 complained of herein.

15 82. If such injunctions are not entered, the Plaintiff Senators will suffer immediate,
16 irreparable harm in that the votes of said Senators will not be given effect as intended and as required
17 by Article 4, Section 18(2) of the Nevada Constitution.

18 83. If such injunctions are not entered, Plaintiff taxpayers and fee payers, members of
19 Plaintiff organizations and all similarly situated taxpayers and fee payers throughout the State of
20 Nevada, will suffer immediate, irreparable harm in that (a) they will be deprived of funds through the
21 payment of unlawfully enacted revenue-raising measures and (b) the Constitutional protections against
22 tax or fee public revenue measures without the support of two-thirds of both legislative houses will
23 effectively be eliminated.

24 84. Plaintiffs are likely to succeed on the merits of their claims made herein because both
25 SB 542 and SB 551 are revenue-generating bills and, therefore, clearly require at least the votes of
26 two-thirds of the Senate for passage.
27
28

86. Defendants cannot be said to suffer any harm through strict adherence to the Nevada Constitution while Plaintiffs and the constituents and members they represent will suffer severe and irreparable harm if they are deprived of their rights under Article 4, Section 18(2) of the Nevada Constitution.

87. Plaintiffs have been required to engage the services of counsel to pursue their rights under the Nevada Constitution and are entitled to recovery of reasonable attorneys' fees and costs of suit.

AFFIRMATION

The undersigned hereby affirm that the foregoing document submitted for filing **DOES NOT** contain the social security number of any person.

PRAYER FOR RELIEF


WHEREFORE, Plaintiffs pray for relief as follows:

1. For declarations that:
 - a. SB 542 and SB 551 are bills that create, generate, and/or increase public revenue or changes in the computation bases for taxes, fees, assessments or rates;
 - b. Article 4, Section 18(2) of the Nevada Constitution required that two-thirds of the Senate vote to pass both SB 542 and SB 551;
 - c. The votes of the eight Plaintiff Senators should be given effect; and
 - d. SB 542 and SB 551 must be invalidated for lack of supporting votes of two-thirds of the Senate.
2. For a temporary restraining order or a preliminary injunction if necessary, upon application or motion, effective on or about September 30, 2019 for SB 551 and effective on or about July 1, 2020 for SB 542 and a permanent injunction against the enforcement of SB 542 and SB 551.
3. For an award of attorneys' fees and costs of suit.
4. For such other and further relief as this Court may deem just and proper.

1 DATED this 30th day of July, 2019.

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4 Carson City, NV 89703
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6 By:

7 
8 KAREN A. PETERSON, ESQ.
9 Nevada State Bar No. 366
10 JUSTIN M. TOWNSEND, ESQ.
11 Nevada State Bar No. 12293
12 Email: kpeterson@allisonmackenzie.com
13 Email: jtownsend@allisonmackenzie.com

14 Attorneys for Plaintiffs

15 4811-3479-0046, v. 1

Case No. 81924

APPELLANTS' JOINT DOCKETING STATEMENT

TAB 2

Order After Hearing on September 21, 2020, and Final Judgment

Filed October 7, 2020

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REC'D & FILED

2020 OCT -7 PH 3: 08

AUBREY ROWLANDT

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: I

**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 Settlemeyer, 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.

ALLISON MacKENZIE, LTD.
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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

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2 Email: kpeter@allisonmackenzie.com
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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 NRCP 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

Case No. 81924

APPELLANTS' JOINT DOCKETING STATEMENT

TAB 3

Notice of Entry of Order After Hearing on September 21, 2020,

and Final Judgment

Filed October 8, 2020

1 KAREN A. PETERSON, ESQ.
Nevada State Bar No. 366
2 JUSTIN TOWNSEND, ESQ.
Nevada State Bar No. 12293
3 ALLISON MacKENZIE, LTD.
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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
22 in the State of Nevada; NEVADA FRANCHISED
AUTO DEALERS ASSOCIATION, a Nevada
23 nonprofit corporation; NEVADA TRUCKING
ASSOCIATION, INC., a Nevada nonprofit
24 corporation; and RETAIL ASSOCIATION
OF NEVADA, a Nevada nonprofit corporation,

25 Plaintiffs,

26 vs.

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

REC'D & FILED
2020 OCT -8 PM 1:10
AUBREY ROWLATT
CLERK
BY **C. FRANZ**
DEPUTY

Case No: 19 OC 00127 1B

Dept. No: I

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

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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.
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Carson City, NV 89703
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By: 

KAREN A. PETERSON, ESQ.
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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:

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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> |
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| "1" | Order After Hearing on September 21, 2020 and Final Judgment | 13 |

4852-0549-6270, v. 1

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REC'D & FILED

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AUDREY RORLATT

BY

DEPUTY

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
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: I

**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 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.

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

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

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

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

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

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

IT IS SO ORDERED.

DATED this 7th day of October, 2020.

J. T. Russell
DISTRICT COURT JUDGE

Submitted by:

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9 Attorneys for Plaintiffs
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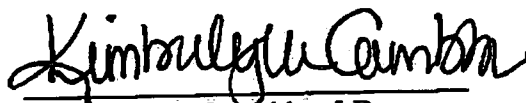
CERTIFICATE OF MAILING

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:

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Allison Mackenzie, Ltd.
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Kimberly M. Carrubba, J.D.
Law Clerk, Dept. 1