

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/Cross-Respondents,

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
nonprofit corporation;

Electronically Filed
Jan 06 2021 04:29 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Case No. 81924

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

Respondents/Cross-Appellants.

**RESPONDENTS'/CROSS-APPELLANTS'
RESPONSE TO ORDER TO SHOW CAUSE**

Respondents/Cross-Appellants, by and through their counsel, ALLISON MacKENZIE, LTD., hereby respond to the Court's Order to Show Cause why the cross-appeal should not be dismissed for lack of jurisdiction.

I.

Procedural Background

Respondents/Cross-Appellants, Plaintiffs below, are (1) a group of Republican State Senators who sued in their official capacities and as individual fee and taxpayers ("Plaintiff Senators"); and (2) various business interests, including individual business organizations who conduct business in Nevada and state and federal business and trade associations representing a conglomeration of Nevada businesses impacted by the legislation at issue in this matter ("Plaintiff Businesses").

Plaintiffs filed a First Amended Complaint in this matter on July 30, 2019 and asserted constitutional claims arising from the manner of passage and approval of Senate Bill 542 ("SB 542") and Senate Bill 551 ("SB 551") during the 80th Session of the Legislature in 2019. Plaintiffs named state officers of the legislative branch

and state officers and agencies of the executive branch as defendants in the First Amended Complaint. A copy of Plaintiffs' First Amended Complaint is attached hereto as **Exhibit A**. The state officers were named based upon their statutory and constitutional duties and functions in approving SB 542 and SB 551. *See* First Amended Complaint, pp. 6-7 at ¶¶ 16 – 19. The state officers were named as they had an interest which would be affected by the Court's declaration. NRS 30.130. The Legislature was not named as a party and there are no allegations in the First Amended Complaint against the Legislature.

The executive branch defendants were (1) the Honorable Kate Marshall, in her official capacity as Lieutenant Governor of the State of Nevada and as President of the Senate; (2) the Honorable Steve Sisolak, in his official capacity as Governor of the State of Nevada; (3) the Nevada Department of Taxation; and (4) the Nevada Department of Motor Vehicles (collectively the "Executive Defendants").

The legislative branch defendants were (1) the Honorable Nicole Cannizzaro, in her official capacity as Senate Majority Leader and (2) Claire J. Clift, in her official capacity as the Secretary of the Senate (collectively the "Legislative Defendants").

The Legislature of the State of Nevada (the "Legislature") intervened as a Defendant-Intervenor and voluntarily brought itself into Plaintiffs' action. While the Legislature as a party may represent the interests of the legislative branch state

officers, the Legislature does not represent the executive branch state officers. Further, the Nevada Department of Taxation and Nevada Department of Motor Vehicles had no involvement in the manner of passage and approval of SB 542 and SB 551.

The First Amended Complaint contained four separate and distinct claims for relief: (1) dilution and nullification of the Plaintiff Senators' constitutional right to cast an effective legislative vote; (2) deprivation of property without due process as a result of collection of the unconstitutional taxes and fees; (3) declaratory relief; and (4) injunctive relief. The First Amended Complaint challenged the constitutionality of SB 542 and SB 551 as well as the constitutionality of the manner in which SB 542 and SB 551 were passed into law. First Amended Complaint, p. 7 at ¶ 23.

On September 16, 2019, the Executive Defendants filed a Motion to Dismiss the First Amended Complaint. On September 30, 2019, Plaintiffs filed an Opposition to Motion to Dismiss or, in the Alternative, a Motion for Summary Judgment. The briefing of these two motions was stayed while a separate Motion to Disqualify the Legislative Defendants' counsel was resolved. On August 18, 2020, the Legislative Defendants and the Legislature filed an Opposition to Plaintiffs' Motion for Summary Judgment and a Counter-Motion for Summary Judgment. On August 21, 2020, the Executive Defendants filed a Joinder to the Counter-Motion

for Summary Judgment. On September 4, 2020, Plaintiffs filed a Reply in Support of their Motion for Summary Judgment and an Opposition to the Counter-Motion for Summary Judgment. On September 14, 2020, the Legislative Defendants and the Legislature filed a Reply in Support of their Counter-Motion for Summary Judgment.

On September 21, 2020, the District Court heard oral argument from the parties on the pending dispositive motions – Plaintiffs’ Motion for Summary Judgment, Executive Defendants’ Motion to Dismiss, and Legislative Defendants’ and the Legislature’s Counter-Motion for Summary Judgment joined by the Executive Defendants.

On October 7, 2020, the District Court entered an Order After Hearing on September 21, 2020 and Final Judgment (the “Order”). A copy of the District Court’s Order is attached hereto as **Exhibit B**. The District Court granted summary judgment in favor of Plaintiffs on their Second, Third, and Fourth Claims for Relief – invalidating SB 542 and SB 551 on constitutional grounds, enjoining the Department of Taxation and the Department of Motor Vehicles from collecting the taxes and fees imposed thereby, and ordering those agencies to refund all taxes and fees already collected pursuant to the unconstitutional bills. Order, p. 11 at ¶¶ 1-2. The District Court granted summary judgment *against* Plaintiffs, however, on their First Claim for Relief and in favor of all individual defendants – Senator Cannizzaro,

Secretary Clift, Lieutenant Governor Marshall, and Governor Sisolak (the “Individual Defendants”), by dismissing the Individual Defendants from Plaintiffs’ action. Order, p. 12 at ¶ 4. The District Court also granted summary judgment against Plaintiffs on their claims for attorneys’ fees as special damages against all Defendants. Order, p. 11 at ¶ 3. Ordering Paragraph 5 of the Order denied Defendants’ Counter-Motion for Summary Judgment “*except as otherwise provided in paragraphs 3 and 4 of this Order.*” (emphasis added).

The Legislature, the Department of Taxation, and the Department of Motor Vehicles have appealed from the District Court’s (1) pronouncement that SB 551 and SB 542 were passed unconstitutionally, (2) injunction against collecting the taxes and fees imposed thereby, and (3) order that all fees and taxes already collected pursuant thereto be refunded.¹

Plaintiffs have cross-appealed from (1) the District Court’s dismissal of the Individual Defendants and (2) the denial of Plaintiffs’ claim for attorneys’ fees as special damages against all Defendants. Specifically, the District Court’s dismissal of the Individual Defendants renders impossible the recovery of any damages and denies the Plaintiff Senators a remedy for the declared violation of their constitutional rights under Plaintiff Senators’ First Claim for Relief. All parties

¹ The Individual Defendants – Senator Cannizzaro, Secretary Clift, Lieutenant Governor Marshall, and Governor Sisolak – did not appeal from the Order.

agree the District Court's order is a final, appealable judgment. *See* Appellants' Joint Docketing Statement, Response to Question 24, filed November 3, 2020; Plaintiffs' Docketing Statement, Response to Question 24, filed November 23, 2020.

II.

Argument

In the Order to Show Cause, the Court cites *Ford v. Showboat Operating Co.*, 110 Nev. 752, 756, 877 P.2d 546, 549 (1994) to outline the principle that “[a] party who prevails in the district court and who does not wish to alter any rights of the parties arising from the judgment is not aggrieved by the judgment.” There is no dispute here that Plaintiffs prevailed on the substantive issues raised by their Second, Third, and Fourth Claims for Relief as reflected in Ordering Paragraphs 1 and 2 on page 11 of the Order. Further, Plaintiffs do not wish to alter any rights of the parties arising from those two Paragraphs of the Order.

Plaintiffs do, however, wish to alter the rights of the parties arising from Ordering Paragraphs 3 and 4 contained on pages 11 to 12 of the Order. Plaintiff Senators seek attorneys' fees as special damages as a result of the unconstitutional dilution and nullification of their votes by the Individual Defendants who approved SB 542 and SB 551 into law. Moreover, all Plaintiffs seek attorneys' fees as a measure of their damages arising from (1) the legal effort to demonstrate the

unconstitutionality of those bills and (2) the legal effort to reverse and enjoin the collection of the unconstitutional taxes and fees imposed by SB 542 and SB 551.

In *Ford*, the plaintiff in the underlying action sued her former employer for intentional infliction of emotional distress and sexual harassment. 110 Nev. at 753, 877 P.2d at 547. The district court granted summary judgment in favor of the employer and concluded the conduct at issue “was not outrageous as a matter of law.” *Id.* The employee moved to amend the judgment contending whether conduct is outrageous is a factual question for the jury. *Id.* The district court amended the judgment and concluded that “outrageous conduct is an issue for the trier of fact which would be for the jury if a jury had been requested.” *Id.* (internal quotations omitted). The employee appealed from the amended judgment and the employer cross-appealed only on the legal conclusion that outrageous conduct is an issue for a jury.

This Court, in analyzing the Nevada Rules of Appellate Procedure and appellate standards in federal court as well as other jurisdictions, recognized that most jurisdictions, including Nevada, have adopted the federal approach to cross-appeals, which is that only a party who is “aggrieved by a judgment” may appeal. *Id.* at 756, 877 P.2d at 548-49; *see also* NRAP 3A(a). This Court also recognized that a respondent “who seeks to alter the rights of the parties under a judgment must file a notice of cross-appeal.” *Id.* at 755, 877 P.2d at 548. Finally, this Court held

that no appeal could be taken from a conclusion of law, such as the one at issue in *Ford*, as the employer in that case did not seek to alter the rights of any parties arising from the judgment from which the appeals were taken. *Id.* at 756, 877 P.2d at 549. In other words, even if the employer prevailed upon this Court that outrageous conduct is not an issue for the jury, such a modification would have no impact on the rights of the parties under the judgment from which the appeal and cross-appeal were taken.

Here, Plaintiffs seek to alter the rights of the parties below arising from the Order in two ways. First, the Order dismisses the Individual Defendants, and, by this cross-appeal, Plaintiffs seek to have the dismissal of the Individual Defendants reversed. Order, p. 12 at ¶ 4.

In Nevada, a party is aggrieved “when either a personal right or right of property is adversely and substantially affected” by a final ruling. *Valley Bank of Nev. v. Ginsburg*, 110 Nev. 440, 446, 874 P.2d 729, 734 (1994). A party is also aggrieved by “the imposition of some injustice, or illegal obligation or burden, by a court, upon a party, or the denial to him of some equitable or legal right.” *Webb v. Clark Cnty. Sch. Dist.*, 125 Nev. 611, 617, 218 P.3d 1239, 1244 (2009) (citation omitted). This Court has recognized that plaintiffs who prevail in the district court may still be aggrieved by and may appeal from a favorable judgment if they believe the judgment was less favorable than they believe it should be or to challenge the

adequacy of the awarded damages. *Attia v. Dennis E. Rusk, Architect, LLC*, No. 75290, 2019 WL 6119216, Nov. 15, 2019, unpublished disposition (agreeing with a cross-appellant’s contention that it was reversible error for the district court to dismiss a claim for punitive damages even where the cross-appellant had prevailed on the underlying contract claim and was awarded actual damages and interest).

This Court, in *Ford*, also recognized the general principle that the Nevada Rules of Appellate Procedure contemplate “appeals that stand on their own” and not appeals “that are jurisdictionally dependent for their existence on the existence of some other appeal.” 110 Nev. at 756, 877 P.2d at 549. Courts have recognized that “a plaintiff who had sued codefendants and obtained judgment against only one who took an appeal, could not, by answering the appeal have the judgment reviewed as to the other defendant in whose favor the judgment had” been entered. *Reid v. Monticello*, 33 So.2d 760, 762 (La. Ct. App. 1948). The “only way in which a judgment can be reviewed in this respect would be for the plaintiff himself to appeal from that part of it.” *Id.* Appeal from an order of dismissal of some but not all defendants is an order from which this Court has recognized a right of appeal. *See Taylor v. Barringer*, 75 Nev. 409, 410, 344 P.2d 676 (1959).

Here, Plaintiffs contend dismissal of the Individual Defendants must be reversed. Plaintiffs seek to alter the rights of the parties under the Order. The only way for this portion of the District Court’s judgment to be reversed was for Plaintiffs

to file an appeal of that portion of the Order. That is exactly what Plaintiffs did. Other courts have recognized that individual state officers may be named as Defendants in their official capacities for violations of constitutional rights. *See Philpot v. Patton*, 837 S.W.2d 491, 493-94 (Ky. 1992) (recognizing legislative immunity does not protect individual legislators from being named as defendants, in their official capacity, where there is a question of whether the actions of the legislators, in their official capacity, violated constitutional mandates), *citing Rose v. Council for Better Education, Inc.*, 790 S.W.2d 186, 203-04 (Ky. 1989) (noting legislators are not immune from claims for declaratory relief just because they were acting in their official capacity). For these reasons, Plaintiffs' cross-appeal should not be dismissed.

Further, Plaintiff Senators are aggrieved by the dismissal of the Individual Defendants because the right to an effective vote is fundamental in a free democratic society and Plaintiff Senators cannot recover attorneys' fees as a remedy for the violation of their constitutional rights without the Individual Defendants as parties. A voter has the constitutional right to have his vote given as much weight as any other vote and not to have his vote denied, debased, or diluted in any manner. *Clark Cty. v. City of Las Vegas*, 92 Nev. 323, 342, 550 P.2d 779, 792 (1976) *citing Hadley v. Junior College District*, 397 U.S. 50, 52 (1970). Legislators, like private citizens, have a constitutional right to have their votes counted and made effective. *Biggs v.*

Cooper, 323 P.3d 1166, 1172 (Ariz. Ct. App. 2014), *aff'd in part, vacated in part sub nom. Biggs v. Cooper ex rel. Cty. Of Maricopa*, 341 P.3d 457 (Ariz. 2014).

Plaintiff Senators have a constitutional right to vote as duly elected members of the Legislature pursuant to Article 4, Section 1, Section 4, and Section 18(1) of the Nevada Constitution. With respect to SB 542 and SB 551, that right was diluted and nullified by the actions of the dismissed Individual Defendants, namely, by their failure in performing their statutory and constitutional duties in approving the bills to require a two-thirds constitutional majority to pass and enact those bills. These individuals were named and factual allegations were made in the First Amended Complaint regarding their actions in support of the Plaintiff Senators' First Claim for Relief. Without these individuals, the Plaintiff Senators lack a remedy, i.e., recovery of attorneys' fees, under their First Claim for Relief. The common law provides a remedy for every wrong, particularly for one whose state constitutional rights have been abridged. *See Corum v. University of North Carolina*, 413 S.E. 2d 276, 289, 291-291 (1992); *cf. Badillo v. American Brands, Inc.*, 117 Nev. 34, 42, 16 P.3d 435, 440 (2001) (The Court cannot recognize a remedy absent an underlying cause of action). Prospective relief alone is not sufficient as a meaningful remedy for the unconstitutional deprivation of a party's rights. *See State, Nevada Department of Taxation v. Scotsman Mfg. Co., Inc.*, 109 Nev 252, 256, 849 P.2d 317, 320 (1993). The District Court's Order leaves the Plaintiff Senators with no

redress for the attorney's fees they incurred as damages based upon the declared unconstitutional exercise of legislative and executive power by the Individual Defendants. Thus, Plaintiff Senators are aggrieved by the District Court's Order dismissing the Individual Defendants. *Webb v. Clark Cnty. Sch. Dist.*, 125 Nev. 611, 617, 218 P.3d 1239, 1244 (2009).

It does not appear the Individual Defendants have been included and named in the caption as Cross-Respondents in this case. *See* Order to Show Cause. Plaintiffs indicated in their Docketing Statement that dismissal of the Individual Defendants was an issue of their cross-appeal. *See* Cross Appellants' Response to Question 9 in their Docketing Statement filed November 23, 2020. A copy of Plaintiffs' Docketing Statement is attached hereto as **Exhibit C**. Concurrent with the filing of this Response, Cross Appellants have filed a Motion to Amend Caption to properly include the dismissed Individual Defendants in the caption of their cross-appeal.

The second way in which Plaintiffs seek to alter rights of the parties arising from the Order is to seek reversal of the District Court's denial of attorneys' fees as special damages against all Defendants. Plaintiffs seek recovery of attorneys' fees as special damages suffered in pursuit of all of their claims. This Court specifically recognized in *Ford* that a cross-appeal from a denial of an award of fees and costs is required, even where the respondent prevailed on the substantive issues and claims

in the suit. 110 Nev. at 757, *citing Sierra Creek Ranch v. J.I. Case*, 97 Nev. 457, 634 P.2d 458 (1981) (holding a respondent was required to file a notice of cross-appeal where it contended on appeal that while the district court properly entered judgment in respondent's favor it erred in refusing to award fees and costs). This Court has also recognized claims for attorneys' fees as damages in actions for declaratory or injunctive relief where the actions were necessitated by the opposing party's bad faith conduct. *Sandy Valley Associates v. Sky Ranch Estates Owners Association*, 117 Nev. 948, 958, 35 P.3d 964, 970 (2001), *receded from on other grounds by Horgan v. Felton*, 123 Nev. 577, 170 P.3d 982 (2007). Here, the District Court rejected Plaintiffs' claims for attorneys' fees as special damages against all Defendants. Plaintiffs properly filed their cross-appeal from the District Court's Order granting summary judgment in favor of Defendants on their claims to recover attorneys' fees as special damages. Order, p. 11 at ¶ 3.

III.

Conclusion

For the reasons given herein, Respondents/Cross-Appellants are aggrieved by and have standing to appeal from the Order, specifically Ordering Paragraphs 3 and 4 thereof. Respondents/Cross-Appellants seek to alter the rights of the parties below arising from the District Court's Order. Therefore, the cross-appeal should not be dismissed.

DATED this 6th day of January, 2021.

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Attorneys for Respondents/
Cross-Appellants

CERTIFICATE OF SERVICE

Pursuant to NRAP 25(1)(c), 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:

 X Court's electronic notification system

as follows:

Kevin C. Powers, Esq.
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DATED this 6th day of January, 2021.

/s/ Nancy Fontenot
NANCY FONTENOT

EXHIBIT A

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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,
in their official capacities as members of the
Senate of the State of Nevada and individually;
19 GREAT BASIN ENGINEERING
20 CONTRACTORS, LLC, a Nevada limited
liability company; GOODFELLOW
21 CORPORATION, a Utah corporation qualified
to do business in the State of Nevada;
22 KIMMIE CANDY COMPANY, a Nevada
corporation; KEYSTONE CORP., a Nevada
23 nonprofit corporation; NATIONAL FEDERATION
OF INDEPENDENT BUSINESS, a California
24 nonprofit corporation qualified to do business
in the State of Nevada; NEVADA FRANCHISED
25 AUTO DEALERS ASSOCIATION, a Nevada
nonprofit corporation; NEVADA TRUCKING
ASSOCIATION, INC., a Nevada nonprofit
corporation; and RETAIL ASSOCIATION
OF NEVADA, a Nevada nonprofit corporation,

26 Plaintiffs,

27 vs.

28 ///

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AUSREY 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 GOICOECHEA, 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.

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

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

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 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.

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.

FIRST CLAIM FOR RELIEF

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

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

64. The Defendants failed to require a two-thirds majority vote for passage of SB 542 and SB 551 as required by the Nevada Constitution. Such failure to require the passage of these bills without the required constitutional majority has resulted in the dilution of each of the Plaintiff 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.

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

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.

1 85. Public interest weighs in favor of strict application of the Constitutional two-thirds
2 requirement for enacting revenue-raising measures, which was added to the Nevada Constitution by
3 the affirmative vote of the Nevada public in 1994 and 1996.

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

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

11 **AFFIRMATION**

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

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiffs pray for relief as follows:

16 1. For declarations that:

17 a. SB 542 and SB 551 are bills that create, generate, and/or increase public
18 revenue or changes in the computation bases for taxes, fees, assessments or rates;

19 b. Article 4, Section 18(2) of the Nevada Constitution required that two-
20 thirds of the Senate vote to pass both SB 542 and SB 551;

21 c. The votes of the eight Plaintiff Senators should be given effect; and

22 d. SB 542 and SB 551 must be invalidated for lack of supporting votes of
23 two-thirds of the Senate.

24 2. For a temporary restraining order or a preliminary injunction if necessary, upon
25 application or motion, effective on or about September 30, 2019 for SB 551 and effective on or about
26 July 1, 2020 for SB 542 and a permanent injunction against the enforcement of SB 542 and SB 551.

27 3. For an award of attorneys' fees and costs of suit.


28 4. For such other and further relief as this Court may deem just and proper.

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DATED this 30th day of July, 2019.

ALLISON MacKENZIE, LTD.
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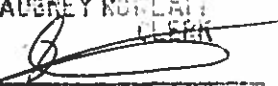
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EXHIBIT B

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REC'D & FILED

2020 OCT -7 PM 3: 08

AUGREY RUTLATT
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 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.

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

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

9 Attorneys for Plaintiffs
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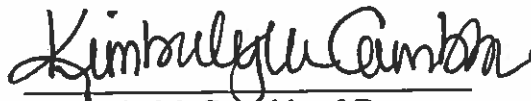
CERTIFICATE OF MAILING

Pursuant to 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

EXHIBIT C

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

THE LEGISLATURE OF THE STATE OF
NEVADA, et al.

vs.

THE HONORABLE JAMES A.
SETTELMAYER, et al.

No. 81924

Electronically Filed
Nov 23 2020 12:15 p.m.

DOCKETING STATEMENT
CIVIL APPEALS
Elizabeth A. Brown
Clerk of Supreme Court

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.

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 docketing statement:

Attorney Karen A. Peterson / Justin M. Townsend Telephone (775) 687-0202
Firm ALLISON MacKENZIE, LTD.
Address 402 North Division Street
Carson City, NV 89703

Client(s) Please see attachment.

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

3. Attorney(s) representing respondents(s):

Attorney Kevin C. Powers, Esq. Telephone (775) 684-6830
Firm Legislative Counsel Bureau, Legal Division
Address 401 South Carson Street
Carson City, NV 89701

Client(s) The Legislature of the State of Nevada

Attorney Aaron D. Ford / Craig A. Newby, Esq. Telephone (702) 486-3420
Firm Deputy Solicitor General; Nevada Office of the Attorney General
Address 555 East Washington Avenue, Suite 3900
Las Vegas, NV 89101

Client(s) Nevada Department of Taxation; Nevada Department of Motor Vehicles

(List additional counsel on separate sheet if necessary)

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

- | | |
|--|--|
| <input type="checkbox"/> Judgment after bench trial | <input checked="" type="checkbox"/> Dismissal: |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input checked="" type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input checked="" type="checkbox"/> Other (specify): <u>Please see attached.</u> |
| <input checked="" type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input checked="" type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input type="checkbox"/> Other disposition (specify): _____ |

5. Does this appeal raise issues concerning any of the following?

- ☐ 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:

Please see attached.

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, Carson City.

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

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

Please see attached.

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

On appeal, cross-appellants contend the district court erred by: (1) dismissing the individual Defendants notwithstanding the *Plaintiff Senators' claim that said Defendants' violated* their constitutional rights and nullified their votes; (2) determining there was no bad faith in regard to this matter; and (3) determining special damages could not be awarded to Plaintiffs.

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 raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

Morency v. State ex rel. Department of Education, Docket No. 81281; the issue on appeal is whether Assembly Bill 458 of the 2019 legislative session was subject to the two-thirds vote requirement of 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

☒ 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:

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 cross appeal raises as principal issues a question of first impression involving the Nevada Constitution and a question of statewide public importance.

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

Was it a bench or jury trial? Decision on motions for summary judgment.

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

No.

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:

N/A.

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)

(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 N/A.

☐ NRCP 52(b) Date of filing N/A.

☐ NRCP 59 Date of filing N/A.

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. ___, 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 See below

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: Defendants, the Legislature of the State of Nevada, Nevada Department of Taxation, and Nevada Department of Motor Vehicles

October 23, 2020: All Plaintiffs

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

NRAP 4(a)(1) and (2)

SUBSTANTIVE APPEALABILITY

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

(a)

- | | |
|---|---------------------------------------|
| <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 checked="" type="checkbox"/> Other (specify) <u>NRS 30.090</u> | |
-

(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. Under NRAP 3A(b)(3), the Supreme Court has jurisdiction to review an order granting or refusing to grant an injunctive or dissolving or refusing to dissolve an injunction. On October 7, 2020, the district court entered an order and final judgment adjudicating all claims of all the parties and granting final judgment in favor of Plaintiffs on their claims for declaratory, injunctive relief and violation of the taxpayers' constitutional rights, and ruling against Plaintiffs on their request for attorney's fees and claim of bad faith conduct by the Defendants.

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

(a) Parties:

Please see attached.

(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 District Court dismissed Defendants Senate Majority Leader Nicole Cannizzaro, Secretary of the Senate Claire J. Clift, Governor Steve Sisolak and Lieutenant Governor Kate Marshall, sued in their official capacities, from the underlying 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.

Plaintiffs' First Claim for Relief: Violation of Plaintiff Senators' Constitutional Rights

Plaintiffs' Second Claim for Relief: Violation of Taxpayers' Constitutional Rights

Plaintiffs' Third Claim for Relief: Declaratory Relief

Plaintiffs' Fourth Claim for Relief: Injunction Relief

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:

N/A.

(b) Specify the parties remaining below:

N/A.

(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)):

N/A.

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, cross-claims 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 docketing statement, that the information provided in this 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 docketing statement.

The Honorable James Settelmeyer et al.
Name of appellant

Karen A. Peterson, Justin M. Townsend
Name of counsel of record

November 23, 2020
Date

/s/ Karen Peterson, Justin M. Townsend
Signature of counsel of record

Carson City, Nevada
State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 23rd day of November, 2020, I served a copy of this completed docketing statement upon all counsel of record:

- ☐ By personally serving it upon him/her; or
- ☐ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

via Nevada Supreme Court's electronic filing system as follows:

Kevin C. Powers, Esq.
KPower@lcb.state.nv.us

Aaron D. Ford
Craig A. Newby, Esq.
CNewby@ag.nv.gov

Dated this 23rd day of November, 2020

/s/ Nancy Fontenot
Signature

Attachment to Docketing Statement
The Legislature of the State of Nevada, et al. vs.
The Honorable James A. Settelmeyer, et al.

Case No. 81924

2. Client(s):

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.

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

Dismissal Other:

The district court ordered Defendants Senate Majority Leader Nicole Cannizzaro, Secretary of the Senate Claire J. Clift, Governor Steve Sisolak and Lieutenant Governor Kate Marshall, who were being sued in their official capacities, dismissed from the action.

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. Cist. 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. 43, 466 P.3d 529 (2020).

(b) On October 9, 2020, Defendants, The Legislature of the State of Nevada, Department of Motor Vehicles and Department of Taxation filed a Notice of Appeal in the district court. This court docketed the appeal as Docket No. 81924.

(c) On October 23, 2020, all Plaintiffs filed a Notice of Appeal in the district court, and this Court docketed the cross-appeal on November 2, 2020, with the same docket number (81924) as Defendants' appeal.

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 and Senate Bill No. 551 of the 2019 legislative session based upon the Senate's failure to pass the bills by a two-thirds vote as required by Article 4, Section 18(2) of the Nevada Constitution.

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, injunctive relief and violation of the taxpayers' constitutional rights.

The district court concluded that Plaintiffs were not entitled to recover attorney's fees as special damages because there was not bad faith in regard to this matter. The district court concluded that as to an award of attorney's fees and costs, the individual Defendants would be dismissed and Intervenor, the Legislature, cannot be assessed attorney's fees and costs pursuant to NRS 218F.720, notwithstanding Plaintiffs' claims that NRS 218F.720 presents an unconstitutional infringement upon the judiciary. The district court concluded attorney's fees were not appropriate under NRS 18.010(2)(b) because there had not been bad faith in regard to this matter.

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

(a) Parties:

(1) District Court Plaintiffs:

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.

(2) District Court Defendants:

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

(3) District Court Defendant-Intervenor:

THE LEGISLATURE OF THE STATE OF NEVADA.

List of Docketing Statement Attachments
The Legislature of the State of Nevada, et al. vs.
The Honorable James A. Settelmeyer, et al.

Case No. 81924

- Attachment 1:** Plaintiffs' First Amended Complaint, filed July 30, 2019.
- Attachment 2:** Order After Hearing on September 21, 2020, and Final Judgment, filed October 7, 2020.
- Attachment 3:** Notice of Entry of Order After Hearing on September 21, 2020, and Final Judgment, filed November 3, 2020.

Attachment 1

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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,
in their official capacities as members of the
19 Senate of the State of Nevada and individually;
20 GREAT BASIN ENGINEERING
21 CONTRACTORS, LLC, a Nevada limited
22 liability company; GOODFELLOW
23 CORPORATION, a Utah corporation qualified
24 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

AUDREY 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 GOICOECHEA, 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.

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

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

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.

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.

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

1 85. Public interest weighs in favor of strict application of the Constitutional two-thirds
2 requirement for enacting revenue-raising measures, which was added to the Nevada Constitution by
3 the affirmative vote of the Nevada public in 1994 and 1996.

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

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

11 **AFFIRMATION**

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

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiffs pray for relief as follows:

16 1. For declarations that:

17 a. SB 542 and SB 551 are bills that create, generate, and/or increase public
18 revenue or changes in the computation bases for taxes, fees, assessments or rates;

19 b. Article 4, Section 18(2) of the Nevada Constitution required that two-
20 thirds of the Senate vote to pass both SB 542 and SB 551;

21 c. The votes of the eight Plaintiff Senators should be given effect; and

22 d. SB 542 and SB 551 must be invalidated for lack of supporting votes of
23 two-thirds of the Senate.

24 2. For a temporary restraining order or a preliminary injunction if necessary, upon
25 application or motion, effective on or about September 30, 2019 for SB 551 and effective on or about
26 July 1, 2020 for SB 542 and a permanent injunction against the enforcement of SB 542 and SB 551.

27 3. For an award of attorneys' fees and costs of suit.

28 4. For such other and further relief as this Court may deem just and proper.

1 DATED this 30th day of July, 2019.

2 ALLISON MacKENZIE, LTD.
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4 Carson City, NV 89703
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6 By: 

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13 Attorneys for Plaintiffs

14 4811-3478-0046, v. 1

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Attachment 2

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REC'D & FILED

2020 OCT -7 PM 3: 08

AUDREY RUTLAND
BY 
DEPUTY

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

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

Plaintiffs,

vs.

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

Case No: 19 OC 00127 1B

Dept. No: 1

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

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

6 Defendants.

7 and

8 THE LEGISLATURE OF THE
9 STATE OF NEVADA,

10 Defendant-Intervenor.

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

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

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

18 **Relevant Procedural History**

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

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

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

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

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

20 On October 24, 2019, Plaintiff Senators James 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.

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

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

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

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

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

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

20 **IT IS SO ORDERED.**

21 DATED this 7th day of October, 2020.

22
23
24 
DISTRICT COURT JUDGE

25
26 Submitted by:

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

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

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

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

9 Attorneys for Plaintiffs
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1 CERTIFICATE OF MAILING

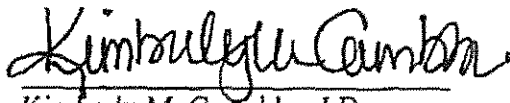
2 Pursuant to NRCP 5(b), I certify that I am an employee of the First Judicial District
3 Court, and that on this 8th day of October, 2020, I deposited for mailing, postage paid, at
4 Carson City, Nevada, and emailed a true and correct copy of the foregoing Order addressed as
5 follows:

6 Karen A. Peterson, Esq.
7 Allison Mackenzie, Ltd.
8 402 N. Division St.
9 Carson City, NV 89701

10 Kevin C. Powers, Esq.
11 General Counsel
12 Nevada Legislative Counsel Bureau, Legal Division
13 401 S. Carson St.
14 Carson City, NV 89701

15 Craig Newby, Esq.
16 Deputy Solicitor General
17 Office of the Attorney General
18 555 E. Washington Ave., Ste. 3900
19 Las Vegas, NV 89101

20
21
22
23
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25
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28



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

Attachment 3

ALLISON MacKENZIE, LTD.
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E-Mail Address: law@allisonmackenzie.com

1 KAREN A. PETERSON, ESQ.
Nevada State Bar No. 366
2 JUSTIN TOWNSEND, ESQ.
Nevada State Bar No. 12293
3 ALLISON MacKENZIE, LTD.
402 North Division Street
4 Carson City, NV 89703
Telephone: (775) 687-0202
5 Email: kpeterson@allisonmackenzie.com
Email: jtownsend@allisonmackenzie.com

6 Attorneys for Plaintiffs

7
8
9 IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
10 IN AND FOR CARSON CITY
11

12 THE HONORABLE JAMES SETTELMAYER,
THE HONORABLE JOE HARDY,
13 THE HONORABLE HEIDI GANSERT,
THE HONORABLE SCOTT HAMMOND,
14 THE HONORABLE PETE GOICOECHEA,
THE HONORABLE BEN KIECKHEFER,
15 THE HONORABLE IRA HANSEN, and
THE HONORABLE KEITH PICKARD,
16 in their official capacities as members of the
Senate of the State of Nevada and individually;
17 GREAT BASIN ENGINEERING
CONTRACTORS, LLC, a Nevada limited
18 liability company; GOODFELLOW
CORPORATION, a Utah corporation qualified
19 to do business in the State of Nevada;
KIMMIE CANDY COMPANY, a Nevada
20 corporation; KEYSTONE CORP., a Nevada
nonprofit corporation; NATIONAL FEDERATION
21 OF INDEPENDENT BUSINESS, a California
nonprofit corporation qualified to do business
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 NOV -3 PM 1:10
AUDREY ROWLATT
CLERK
BY K. PETERSON
DEPUTY

Case No: 19 OC 00127 1B

Dept. No: I

NOTICE OF ENTRY OF ORDER
GRANTING MOTION FOR
RECONSIDERATION

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 GRANTING
MOTION FOR RECONSIDERATION**

NOTICE IS HEREBY given that on the 3rd day of November, 2020, the Court duly entered its
ORDER GRANTING MOTION FOR RECONSIDERATION 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 3rd day of November, 2020.

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

By: 

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

CERTIFICATE OF SERVICE

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

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

fully addressed as follows:

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

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

DATED this 3rd day of November, 2020.


SHEILA CONTRERAS

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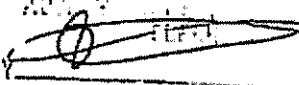
INDEX OF EXHIBITS

<u>Exhibit No.</u>	<u>Description</u>	<u>Number of Pages</u>
"1"	Order Granting Motion for Reconsideration	5
4819-3948-4880, v. 1		

EXHIBIT “1”

REC'D & FILED

2020 NOV -3 AM 8:06

BY 

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 GRANTING MOTION
FOR RECONSIDERATION**

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 GRANTING MOTION FOR RECONSIDERATION**

12 This matter is before the Court on Plaintiffs' Motion for Reconsideration, wherein Plaintiffs
13 seek reconsideration of this Court's October 13, 2020 Order Granting Joint Motion for Stay Pending
14 Appeal, pursuant to FJDCR 3.13.

15 The Court, having read the papers and pleadings on file herein, and good cause appearing
16 therefore, finds and orders as follows:

17 **Relevant Procedural History**

18 This Court entered its Order After Hearing on September 21, 2020, and Final Judgment on
19 October 7, 2020 granting summary judgment in favor of Plaintiffs and granting their claims for
20 declaratory and injunctive relief. On October 9, 2020, Defendants filed their Notice of Appeal. On
21 October 12, 2020, Defendants filed and served their Joint Motion for Stay Pending Appeal ("Joint
22 Motion for Stay"). On October 13, 2020, this Court issued its Order Granting the Joint Motion for
23 Stay without allowing Plaintiffs an opportunity to file a response or opposition thereto. Notice of
24 Entry of the Order Granting the Joint Motion for Stay was filed October 19, 2020. Plaintiffs' Motion
25 for Reconsideration was filed on October 20, 2020, before the deadline to respond to the Joint Motion
26 for Stay.

27 **Legal Authority**

28 FJDCR 3.13 provides, in pertinent part, "[i]ssues once heard and disposed of will not be
renewed in the same cause except by leave of court granted upon motion" and that the Court "may

1 reconsider a decision if the court overlooked or misconstrued a material fact, or overlooked,
2 misunderstood, or misapplied law that directly controls a dispositive issue.”

3 Conclusions of Law

4 Motion practice in this Court is governed, in pertinent part, by FJDCR 3.7 through FJDCR 3.9,
5 inclusive. A motion is to be filed consistent with the provisions of FJDCR 3.7. Once filed and served,
6 an opposing party “will have 14 days after service of the motion to file a memorandum of points and
7 authorities in opposition to the motion.” FJDCR 3.8. Then, the moving party has 7 days to file a reply
8 to the opposition, if desired. FJDCR 3.9.

9 Further, FJDCR 3.11 provides that a motion, unless it is filed ex parte, must be formally
10 submitted to the Court for decision with the filing of a request to submit and that the Court will not
11 consider a request to submit until at least 15 days after the motion was filed.

12 Here, the Joint Motion for Stay was filed and served on October 12, 2020 and it was not filed
13 ex parte. Plaintiffs, therefore, were entitled to 14 days to file points and authorities in response to the
14 Joint Motion for Stay. The Court's entry of an Order Granting Joint Motion for Stay on October 13,
15 2020 was, therefore, premature and must be vacated to allow Plaintiffs' Response to Joint Motion for
16 Stay to be filed and considered by the Court.

17 Order

18 Good cause appearing therefor,

19 **1. IT IS HEREBY ORDERED THAT** this Court's October 13, 2020 Order Granting Joint
20 Motion for Stay is hereby vacated.

21 **2. IT IS HEREBY FURTHER ORDERED THAT** no opposition to Plaintiffs' Motion for
22 Reconsideration was ordered pursuant to FJDCR 3.13(b) or filed by any defendant.

23 **3. IT IS HEREBY FURTHER ORDERED THAT** Plaintiffs' Motion for Reconsideration
24 shall be treated as a request for leave to file such a motion and that such leave is hereby granted and
25 that Plaintiffs' Motion for Reconsideration is hereby granted in its entirety.

26 **4. IT IS HEREBY FURTHER ORDERED THAT** the Clerk of Court is directed to detach
27 from Plaintiffs' Motion for Reconsideration the original Response to Defendants' Joint Motion for
28 Stay Pending Appeal, attached thereto as Exhibit “1”, and shall immediately file the same.

ALLISON MacKENZIE, LTD.
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E-Mail Address: law@allisonmackenzie.com

1 **5. IT IS HEREBY FURTHER ORDERED THAT** Plaintiffs' attorneys, Allison MacKenzie,
2 Ltd., will serve a notice of entry of this Order on all other parties and file proof of such service within
3 7 days after the Court sends this order to said attorneys.

4 **6. IT IS HEREBY FURTHER ORDERED THAT** Defendants may file points and
5 authorities in reply to Plaintiffs' Response to Defendants' Joint Motion for Stay Pending Appeal.
6 within 7 days of written notice of entry of this Order, consistent with FJDCR 3.9.

7 **IT IS SO ORDERED.**

8 DATED this 3rd day of November, 2020.

9
10
11 
DISTRICT COURT JUDGE

12
13 Submitted by:

14 **ALLISON MacKENZIE, LTD.**
15 402 North Division Street
16 Carson City, NV 89703

17 Telephone: (775) 687-0202
18 Email: kpeterson@allisonmackenzie.com
19 Email: jtownsend@allisonmackenzie.com

20 By: /s/ Karen A. Peterson
21 KAREN A. PETERSON, ESQ.
22 Nevada State Bar No. 366
23 JUSTIN TOWNSEND, ESQ.
24 Nevada State Bar No. 12293

25 Attorneys for Plaintiffs
26
27
28

1 CERTIFICATE OF MAILING

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

6 Karen Peterson, Esq.
7 Allison Mackenzie, Ltd.
8 P.O. Box 646
9 Carson City, NV 89701
Email: kpeterston@allisonmackenzie.com

10 Craig A. Newby, Deputy Solicitor General
11 Office of the Attorney General
12 555 E. Washington Ave., Ste. 3900
13 Las Vegas, NV 89101
Email: cnewby@ag.nv.gov

14 Kevin C. Powers, General Counsel
15 Nevada Legislative Counsel Bureau
16 401 S. Carson St.
Carson City, NV 89701
Email: kpowers@lcb.state.nv.us

17 

18 Kimberly M. Carrubba, Esq.
19 Law Clerk, Dept. 1
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