

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,

Electronically Filed
Jan 06 2021 04:34 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Case No. 81924

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;

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

Respondents/Cross-Appellants.

**RESPONDENTS'/CROSS-APPELLANTS'
MOTION TO AMEND CAPTION**

Respondents/Cross-Appellants, by and through their counsel, ALLISON MacKENZIE, LTD., hereby move this Court for an order adding the Honorable Nicole Cannizzaro, Senate Secretary Claire J. Clift, the Honorable Kate Marshall, and the Honorable Steve Sisolak to the caption of this appeal as Cross-Respondents. This Motion is submitted pursuant to NRAP 27 and is based upon the following points and authorities and all pleadings and papers on file in this case.

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 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.

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 in 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. 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. 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.

The Individual Defendants are specifically identified as being dismissed by the District Court in the respective Docketing Statements filed by Appellants on November 3, 2020 and Plaintiffs on November 23, 2020. In addition, Plaintiffs did identify Nicole Cannizzaro, Claire Clift, Kate Marshall, and Steve Sisolak as "Respondents who have not appealed" in their October 23, 2020 Case Appeal Statement.

///

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

By this Motion, Plaintiffs seek to correct the caption of this appeal to ensure the individuals named as Defendants in the First Amended Complaint and dismissed by the District Court's Order are properly included in the caption in this appeal as Cross-Respondents based upon the cross-appeal filed by Plaintiffs, so long as the cross-appeal is not dismissed by the pending Order to Show Cause.

II.

Argument

The Individual Defendants were granted summary judgment and dismissed from this matter by the District Court. Order, p. 12 at ¶ 4. The Legislature, the Department of Motor Vehicles, and the Department of Taxation are the only defending parties below who appealed from the Order. Plaintiffs appeal, in part, however, from the District Court's Ordering Paragraph 4 granting summary judgment in favor of and dismissing the Individual Defendants, thus making them respondents to the cross-appeal noticed by the Plaintiffs.

The Individual Defendants were parties to the proceedings below, were served with process and with the First Amended Complaint, and were actively represented by counsel below, who argued for their dismissal. The Individual Defendants were not aggrieved by and did not appeal from their dismissal and are not included in the caption in this matter as Appellants. Their only proper designation here is Cross-Respondents.

In *Ford v. Showboat Operating Co.*, 110 Nev. 752, 756, 877 P.2d 546, 549 (1994), this Court noted 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.” Thus, in considering the proper designation of the Individual Defendants in this matter, the Court should look at the cross-appeal on its own, in which case Plaintiffs would be the appellants and the Individual Defendants would be respondents with respect to Plaintiffs’ cross-appeal of the dismissal of the Individual Defendants.

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. Therefore, the Individual Defendants must participate in and respond to this cross-appeal as Cross-Respondents.

III.

Conclusion

For the reasons given herein, this Court should grant Respondents/Cross-Appellants' Motion and amend the caption to include the Individual Defendants as Cross-Respondents in this matter if the Court determines it has jurisdiction over the cross-appeal filed by Respondents/Cross-Appellants.

DATED this 6th day of January, 2021.

ALLISON MacKENZIE, LTD.
402 North Division Street
Carson City, NV 89703
(775) 687-0202 – Telephone
(775) 882-7918 – Facsimile

By: /s/ Karen A. Peterson
KAREN A. PETERSON, ESQ.
Nevada State Bar No. 366
Email: kpeterson@allisonmackenzie.com
JUSTIN M. TOWNSEND, ESQ.
Nevada State Bar No. 12293
Email: jtownsend@allisonmackenzie.com

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.
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 6th day of January, 2021.

/s/ Nancy Fontenot
NANCY FONTENOT

EXHIBIT A

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 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 THE HONORABLE JAMES SETTELMEYER,
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 ///

///

REC'D & FILED

2019 JUL 30 PM 1:59

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 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.
27
28

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

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

5 **SECOND CLAIM FOR RELIEF**

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

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

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

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

28 ///

THIRD CLAIM FOR RELIEF

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

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

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

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

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

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

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

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

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

7 **FOURTH CLAIM FOR RELIEF**

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

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

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

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

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

AFFIRMATION

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief as follows:


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

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
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DATED this 30th day of July, 2019.

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

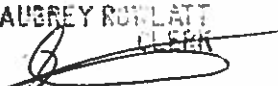
4811-3479-0046, v. 1

EXHIBIT B

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

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

Plaintiffs,

vs.

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

Case No: 19 OC 00127 1B

Dept. No: I

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

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

6 Defendants.

7 and

8 THE LEGISLATURE OF THE
9 STATE OF NEVADA,

10 Defendant-Intervenor.

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

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

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

18 **Relevant Procedural History**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 **Factual Background**

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

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

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

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

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

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

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

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

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

23 Conclusions of Law

24 1. SB 542 and SB 551 are unconstitutional.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 **Order and Final Judgment**

7 Good cause appearing therefor,

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

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

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

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
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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