
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, Clerk of Supreme Court
Appellants/Cross-Respondents,

v.

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

On Appeal from the First Judicial District Court of the State of
Nevada, Carson City
No. 19 OC 00127 1B

**JOINT APPENDIX
Volume VII of VII
(JA001328--001394)**

AARON D. FORD
Attorney General
CRAIG A. NEWBY
Deputy Solicitor General

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*Attorneys for Appellants/Cross-
 Respondents State of Nevada
 Department of Taxation and
 State of Nevada Department
 of Motor Vehicles and Pending
 Cross-Respondents Steve Sisolak, in
 his official capacity as Governor of the
 State of Nevada, and Kate Marshall, in
 her official capacity as Lieutenant
 Governor of the State of Nevada and
 President of the Senate of the State of
 Nevada*

DATE	DOCUMENT DESCRIPTION	VOLUME	PAGE Nos.
08/05/2019	Acceptance and Acknowledgement of Service (Secretary of the Senate Clift)	I	83-84
08/05/2019	Acceptance and Acknowledgement of Service (Senate Majority Leader Cannizzaro)	I	85-86
08/05/2019	Acknowledgement of Receipt of Documents (Attorney General's Office)	I	81-82
11/12/2019	Affidavit of James Settelmeyer	II	418-422
11/03/2020	Amended Notice of Appeal (Executive Department-Defendants)	VII	1328-1381
09/16/2019	Answer to Plaintiffs' First Amended Complaint by Defendants State of Nevada ex rel. Senate Majority Leader Nicole Cannizzaro and Secretary of the Senate Claire Clift	I	87-100

07/19/2019	Complaint	I	1-14
08/05/2019	Declarations of Service (7 total)	I	32-80
10/12/2020	Executive Defendants' and Defendant-Intervenor Nevada Legislature's Joint Motion for Stay Pending Appeal	VI	1222-1235
11/10/2020	Executive Defendants' and Defendant-Intervenor Nevada Legislature's Reply Supporting Joint Motion for Stay Pending Appeal	VII	1382-1390
08/18/2020	Executive Defendants' Appendix to Reply (Volumes I-II)	III	474-602
08/21/2020	Executive Defendants' Joinder to Legislative Defendants' Countermotion for Summary Judgment	III	671-674
08/18/2020	Executive Defendants' Reply Supporting Motion to Dismiss and Opposition to Plaintiffs' Motion for Summary Judgment	II	457-473
09/04/2020	Exhibits 1-12 in support of Plaintiffs' Reply in Support of Motion for Summary Judgment; and Opposition to Legislative Defendants' and Legislature's Counter-Motion for Summary Judgment	IV-V	725-1056
07/30/2019	First Amended Complaint	I	15-31
12/26/2019	Legislature's Answer to First Amended Complaint	II	445-456
08/19/2020	Legislative Defendants' Opposition and Counter-Motion for Summary Judgment	III	603-670
09/15/2020	Legislative Defendants' Reply in Support of Counter-Motion for Summary Judgment	V	1076-1100
11/06/2019	Nevada Legislature's Motion to Intervene as Defendant	II	382-417

10/09/2020	Nevada Legislature's Notice of Appeal	VI	1214-1217
10/09/2020	Notice of Appeal (Executive Department-Defendants)	VI	1218-1221
10/07/2020	Order after Hearing on September 21, 2020, and Final Judgment	VI	1178-1191
10/13/2020	Order Granting Executive Defendants' and Defendant-Intervenor Nevada Legislature's Joint Motion for Stay Pending Appeal	VI	1236-1239
11/13/2020	Order Granting Executive Defendants' and Defendant-Intervenor Nevada Legislature's Joint Motion for Stay Pending Appeal	VII	1391-1394
12/19/2019	Order Granting Nevada Legislature's Motion to Intervene as Defendant-Intervenor and Denying Plaintiff Senators' Motion to Disqualify LCB Legal as Counsel for Nevada Legislature	II	433-444
11/03/2020	Order Granting Plaintiffs' Motion for Reconsideration	VI	1323-1327
10/06/2020	Original JAVS Transcript of Proceedings-September 21, 2020 oral argument	VI	1101-1177
10/20/2020	Plaintiffs' Motion for Reconsideration	VI	1240-1318
10/23/2020	Plaintiffs' Notice of Appeal	VI	1319-1322
09/30/2019	Plaintiffs' Opposition to Defendants' Motion to Dismiss or, in the Alternative, Plaintiffs' Motion for Summary Judgment	II	225-381
11/18/2019	Plaintiffs' Qualified Opposition to Motion to Intervene and Plaintiff Senators' Motion to Disqualify	II	423-432
09/04/2020	Plaintiffs' Reply in Support of Motion for Summary Judgment; and Opposition	IV	675-724

	to Legislative Defendants' and Legislature's Counter-Motion for Summary Judgment (Including Affidavit of Jennifer McMenemy and Affidavit of Senator James Settelmeyer		
09/08/2020	Plaintiffs' Supplement to Reply in Support of Motion for Summary Judgment; and Opposition to Legislative Defendants' and Legislature's Counter-Motion for Summary Judgment (Including Exhibit 13)	V	1057-1075
10/08/2020	Plaintiffs' Notice of Entry of Order After Hearing on September 21, 2020 and Final Judgment	VI	1192-1213
09/16/2019	State's Motion to Dismiss	I	101-224

RESPECTFULLY SUBMITTED this 11th day of March, 2021.

AARON D. FORD
Attorney General

By: /s/ Craig Newby
CRAIG A. NEWBY
Deputy Solicitor General
Attorney for Executive Defendants

CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General and that on this 11th day of March, 2021, I served a copy of the foregoing JOINT APPENDIX, by electronic service to:

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

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

/s/ Kristalei Wolfe

1 AARON D. FORD
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2 CRAIG A. NEWBY (Bar No. 8591)
Deputy Solicitor General
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6 CNewby@ag.nv.gov

REC'D & FILED ✓
2020 NOV -3 AM 11:56
AUBREY KOWLATT
CLERK
BY [Signature] DEPUTY

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

9 **FIRST JUDICIAL DISTRICT COURT OF NEVADA**

10 **CARSON CITY**

11 THE HONORABLE JAMES
12 SETTELMEYER, et al.,

13 Plaintiffs,

14 vs.

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

17 Defendants.

Case No. 19 OC 00127-1B

Dept. No. I

18 **AMENDED NOTICE OF APPEAL**

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

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1 "Order after Hearing on September 21, 2020, and Final Judgment," entered on October 7,
2 2020 and notice of entry of which was served on October 8, 2020. The Nevada Tax
3 Commission approved the Department of Taxation's appeal at its October 26, 2020 meeting.

4 DATED this 3rd day of November 2020.

5 AARON D. FORD
6 Attorney General

7 By:

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

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

DATED this 3rd day of November, 2020.

AARON D. FORD
Attorney General

By:


CRAIG A. NEWBY (Bar No. 8591)
Deputy Solicitor General

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CERTIFICATE OF SERVICE

I hereby certify that I mailed by United States, First Class, the foregoing
AMENDED NOTICE OF APPEAL on the 3rd day of November, 2020, including service
upon the following counsel of record:

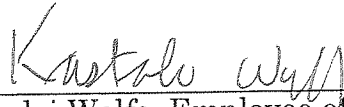
Karen A. Peterson, Esq.
Justin M. Townsend, Esq.
ALLISON MacKENZIE, LTD.
402 North Division Street
Carson City, Nevada 89703

Attorneys for Plaintiffs

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

*Attorneys for The Legislature of
the State of Nevada*

By:



Kristalei Wolfe, Employee of the Office
of the Attorney General

REC'D & FILED

2020 NOV -5 AM 8:56

AUBREY ROWLATT
CLERK

**In The First Judicial District Court of the State of Nevada
In and for Carson City**

DEPUTY

THE HONORABLE JAMES
SETTELMAYER, ET AL. ,

Plaintiff,

vs.

STATE OF NEVADA, EX REL. THE
HONORABLE NICOLE CANNIZZARO, ET
AL. ,

Defendant.

Case No.: 19 OC 00127 1B

Dept. No.: I

**NOTICE OF DEFICIENCY IN NOTICE
OF APPEAL**

PLEASE TAKE NOTICE that a Notice of Appeal was filed NOVEMBER 2,
2020, in the above-entitled action despite the fact that there appears to be the following
deficiency(ies) noted by the Clerk at the time of filing:

- ☐ \$24.00 District Court filing fee not paid.
- ☐ \$250.00 filing fee for the Clerk of the Supreme Court not paid.
- ☐ Document not signed.
- ☐ Document presented was not an original.
- ☒ Case Appeal Statement not filed.
- ☐ No proof of service upon opposing counsel/litigant.
- ☐ Other

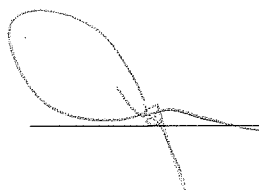
DATED this 5TH day of NOVEMBER, 2020.

AUBREY ROWLATT, CLERK

By _____, Deputy

CERTIFICATE OF SERVICE

I hereby certify that I am employed by the Office of the Carson City District Court Clerk, Carson City, Nevada, and that on the 5TH day of NOVEMBER, 2020, I served the foregoing NOTICE OF DEFICIENCY IN NOTICE OF APPEAL by e-filing with appeal documents to Elizabeth A. Brown, Clerk of the Supreme Court, 201 S. Carson Street, Ste. 250, Carson City, NV 89701-4702 and by depositing for mailing a true copy thereof to CRAIG A. NEWBY, DEPUTY SOLICITOR GENERAL, OFFICE OF THE ATTORNEY GENERAL, 555 W. WASHINGTON AVE., STE. 3900, LAS VEGAS, NV 89101; KAREN PETERSON, ESQ., JUSTIN M. TOWNSEND, ESQ., ALLISON MACKENZIE, LTD., 402 NORTH DIVISON STREET, CARSON CITY, NV 89703; KEVIN C. POWERS ESQ., GENERAL COUNSEL, LEGISLATIVE COUNSEL BUREAU, LEGAL DIVISOIN, 410 SOUTH CARSON STREET, CARSON CITY, NV 89701.

A handwritten signature in dark ink, consisting of a large, stylized loop followed by a horizontal line and a short vertical stroke at the end.

Judge: RUSSELL, JUDGE JAMES
TODD

Case No. 19 OC 00127 1B

Ticket No.
CTN:

SETTELMAYER, JAMES et al

By:

CANNIZZARO, NICOLE

DRSPND

-vs-

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

Dob:
Lic:
CLIFT, CLAIRE J

Sex:
Sid:
DRSPND

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

Dob:
Lic:
MARSHALL, KATE

Sex:
Sid:
DRSPND

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

Dob:
Lic:
NEVADA DEPARTMENT OF
MOTOR VEHICLES

Sex:
Sid:
DRSPND

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

Dob:
Lic:
NEVADA DEPARTMENT OF
TAXATION

Sex:
Sid:
DRSPND

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

Dob:
Lic:
SISOLAK, STEVE

Sex:
Sid:
DRSPND

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

Dob:
Lic:
STATE OF NEVADA

Sex:
Sid:
DRSPND

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

Dob:
Lic:

Sex:
Sid:

Plate#:
Make:
Year: Accident:
Type:
Venue:
Location:

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

Bond: Set:
Type: Posted:

Charges:

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

Ct. Offense Dt: Cvr:
Arrest Dt:

JA001334

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

Sentencing:

No.	Filed	Action	Operator	Fine/Cost	Due
1	11/05/20	NOTICE OF DEFICENCY IN NOTICE OF APPEAL	1BCFRANZ	0.00	0.00
2	11/03/20	NOTICE OF ENTRY OF ORDER	1BCFRANZ	0.00	0.00
3	11/03/20	AMENDED NOTICE OF APPEAL	1BPETERSON	24.00	0.00
4	11/03/20	FILE RETURNED AFTER SUBMISSION - ORDER ENTERED	1BPETERSON	0.00	0.00
5	11/03/20	ORDER GRANTING MOTION FOR RECONSIDERATION	1BPETERSON	0.00	0.00
6	10/23/20	PLAINTIFFS' CASE APPEAL STATEMENT	1BCCOOPER	0.00	0.00
7	10/23/20	PLAINTIFFS NOTICE OF APPEAL Receipt: 67330 Date: 10/26/2020	1BCCOOPER	24.00	0.00
8	10/20/20	PLAINTIFFS' MOTION FOR RECONSIDERATION	1BPETERSON	0.00	0.00
9	10/19/20	NOTICE OF ENTRY OF ORDER GRANTING EMERGENCY JOINT MOTION BY EXECUTIVE DEFENDANTS AND DEFENDANT-INTERVENOR NEVADA LEGISLATURE FOR ADMINISTRATIVE STAY	1BPETERSON	0.00	0.00
10	10/19/20	FILE RETURNED AFTER SUBMISSION - ORDER ENTERED	1BPETERSON	0.00	0.00
11	10/19/20	ORDER GRANTING EMERGENCY JOINT MOTION BY EXECUTIVE DEFENDANTS AND DEFENDANT-INTERVENOR NEVADA LEGISLATURE FOR ADMINISTRATIVE STAY	1BPETERSON	0.00	0.00
12	10/19/20	NOTICE OF ENTRY OF ORDER GRANTING EXECUTIVE DEFENDANTS' AND DEFENDANT-INTERVENOR NEVADA LEGISLATURE'S JOINT MOTION FOR STAY PENDING APPEAL	1BPETERSON	0.00	0.00
13	10/14/20	PLAINTIFFS' RESPONSE TO EMERGENCY JOINT MOTION FOR ADMINISTRATIVE STAY	1BPETERSON	0.00	0.00
14	10/13/20	ORDER GRANTING EXECUTIVE DEFENDANTS AND DEFENDANT INTERVENOR NEVADA LEGISLATURES JOINT MOTION FOR STAY PENDING APPEAL(2)	1BCCOOPER	0.00	0.00

JA001335

No.	Filed	Action	Operator	Fine/Cost	Due
15	10/12/20	EMERGENCY JOINT MOTION BY EXECUTIVE DEFENDANTS AND DEFENDANT-INTERVENOR NEVADA LEGISLATURE FOR ADMINISTRATIVE STAY	1BCFRANZ	0.00	0.00
16	10/12/20	EXECUTIVE DEFENDANTS' AND DEFENDANT-INTERVENOR NEVADA LEGISLATURE'S JOINT MOTION FOR STAY PENDING APPEAL	1BCFRANZ	0.00	0.00
17	10/09/20	PLAINTIFFS MEMORANDUM OF COSTS	1BCCOOPER	0.00	0.00
18	10/09/20	NEVADA LEGISLATURES CASE APPEAL STATEMENT	1BCCOOPER	0.00	0.00
19	10/09/20	NEVADA LEGISLATURES NOTICE OF APPEAL	1BCCOOPER	0.00	0.00
20	10/09/20	CASE APPEAL STATEMENT FOR THE NEVADA DEPARTMENT OF TAXATION AND THE NEVADA DEPARTMENT OF MOTOR VEHICLES	1BCCOOPER	0.00	0.00
21	10/09/20	NOTICE OF APPEAL	1BCCOOPER	0.00	0.00
22	10/08/20	NOTICE OF ENTRY OF ORDER AFTER HEARING ON SEPTEMBER 21, 2020, AND FINAL JUDGMENT	1BJHIGGINS	0.00	0.00
23	10/07/20	ORDER AFTER HEARING ON SEPTEMBER 21, 2020, AND FINAL JUDGMENT	1BJHIGGINS	0.00	0.00
24	10/06/20	ORIGINAL OF JAVS TRANSCRIPT OF PROCEEDINGS - ORAL ARGUMENT	1BPETERSON	0.00	0.00
25	09/21/20	HEARING HELD: The following event: MOTION HEARING - CIVIL scheduled for 09/21/2020 at 1:30 pm has been resulted as follows: Result: HEARING HELD Judge: RUSSELL, JUDGE JAMES TODD Location: DEPT I	1BJHIGGINS	0.00	0.00
26	09/15/20	DEFENDANTS STATE OF NEVADA EX REL. SENATE MAJORITY LEADER NICOLE CANNIZZARO AND SECRETARY OF THE SENATE CLAIRE CLIFT'S AND DEFENDANT-INTERVENOR NEVADA LEGISLATURE'S REPLY IN SUPPORT OF COUNTER-MOTION FOR SUMMARY JUDGMENT	1BPETERSON	0.00	0.00
27	09/14/20	DEFENDANTS STATE OF NEVADA EX REL. SENATE MAJORITY LEADER NICOLE CANNIZZARO AND SECRETARY OF THE SENATE CLAIRE CLIFT'S AND DEFENDANT-INTERVENOR NEVADA LEGISLATURE'S REPLY IN SUPPORT OF COUNTER-MOTION FOR SUMMARY JUDGMENT	1BPETERSON	0.00	0.00
28	09/08/20	PLAINTIFFS SUPPLEMENT TO REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT; AND OPPOSITION TO LEGISLATIVE DEFENDANTS AND LEGISLATURES COUNTER MOTION FOR SUMMARY JUDGMENT	1BCCOOPER	0.00	0.00
29	09/04/20	AFFIDAVIT OF JENNIFER MCMENOMY	1BCCOOPER	0.00	0.00
30	09/04/20	AFFIDAVIT OF SENATOR JAMES SETTLEMEYER	1BCCOOPER	0.00	0.00

JA001336

No.	Filed	Action	Operator	Fine/Cost	Due
31	09/04/20	EXHIBITS 1-12 TO THE PLAINTIFFS REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT; AND OPPOSITION TO LEGISLATIVE DEFENDANTS AND LEGISLATIVURES COUNTER MOTION FOR SUMMARY JUDGMENT	1BCCOOPER	0.00	0.00
32	09/04/20	PLAINTIFFS REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT; AND OPPOSITION TO LEGISLATIVE DEFENDANTS AND LEGISLATURES COUNTER MOTION FOR SUMMARY JUDGMENT	1BCCOOPER	0.00	0.00
33	08/21/20	JOINDER TO THE LEGISLATIVE DEFENDANTS COUNTER MOTION FOR SUMMARY JUDGMENT	1BCCOOPER	0.00	0.00
34	08/19/20	DEFENDANTS STATE OF NEVADA EX. REL. SENATE MAJORITY LEADER NICOLE CANNIZZARO AND SECRETARY OF THE SENATE CLAIRE CLIFTS AND DEFENDANT INTERVENTOR NEVADA LEGISLATURES OPPOSITION TO PLAINTIFFS MTION FOR SUMMARY JUDGMENT AND COUNTER MOTION FOR SUMMARY JUDGMENT	1BCCOOPER	0.00	0.00
35	08/18/20	DEFENDANTS STATE OF NEVADA EX. REL. SENATE MAJORITY LEADER NICOLE CANNIZZARO AND SECRETARY OF THE SENATE CLAIRE CLIFTS AND DEFENDANT INTERVENTOR NEVADA LEGISLATURES OPPOSITION TO PLAINTIFFS MTION FOR SUMMARY JUDGMENT AND COUNTER MOTION FOR SUMMARY JUDGMENT	1BCCOOPER	0.00	0.00
36	08/18/20	APPENDIX TO DEFENDANTS' SUPPLEMENTAL AUTHORITY BATES STAMPED PAGES 26-125 VOLUME II	1BSBARAJAS	0.00	0.00
37	08/18/20	APPENDIX TO DEFENDANTS' SUPPLEMENTAL AUTHORITY BATES STAMPED PAGES 01-25 VOLUME 1	1BSBARAJAS	0.00	0.00
38	08/18/20	REPLY SUPPORTING EXECUTIVE DEFENDANTS' MOTION TO DISMISS AND OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT	1BSBARAJAS	0.00	0.00
39	08/13/20	FILE RETURNED AFTER SUBMISSION - ORDER ENTERED	1BSBARAJAS	0.00	0.00
40	08/13/20	STIPULATION REGARDING BRIEFING SCHEDULE AND ORDER	1BSBARAJAS	0.00	0.00
41	08/13/20	REQUEST FOR SUBMISSION STIPULATION REGARDING BRIEFING SCHEDULE AND ORDER	1BSBARAJAS	0.00	0.00
42	07/23/20	NOTICE IN LIEU OF REMITTITUR	1BCCOOPER	0.00	0.00
43	07/09/20	ORDER VACATING ORDER DISQUALIFYING LCB LEGAL	1BSBARAJAS	0.00	0.00
44	01/13/20	ORDER DIRECTING ANSWER GRANTING STAY AND SCHEDULING ORAL ARGUMENT	1BCCOOPER	0.00	0.00
45	12/26/19	NEVADA LEGISLATURE'S ANSWER TO PLAINTIFFS' FIRST AMENDED COMPLAINT	1BSBARAJAS	0.00	0.00
46	12/19/19	AMENDED NOTICE OF ENTRY OF ORDER GRANTING NEVADA LEGISLATURE'S MOTION TO INTERVENE AS DEFENDANT-INTERVENOR AND DENYING PLAINTIFF SENATORS' MOTION TO DISQUALIFY LCB LEGAL AS COUNSEL FOR NEVADA LEGISLATURE	LEPOKEEFE	0.00	0.00

JA001337

No.	Filed	Action	Operator	Fine/Cost	Due
47	12/19/19	NOTICE OF ENTRY OF ORDER GRANTING PLAINTIFF SENATORS' MOTION TO DISQUALIFY LCB LEGAL AS COUNSEL FOR LEGISLATURE DEFENDANTS SENATOR CANNIZZARO AND AND SECRETARY OF THE SENATE CLIFT; ORDER DENYING STAY; ORDER SETTING PROCEDURAL SCHEDULE	1BPOKEEFE	0.00	0.00
48	12/19/19	NOTICE OF ENTRY OF ORDER GRANTING NEVADA LEGISLATURE'S MOTION TO INTERVENE AS DEFENDANT- INTERVENOR AND DENYING PLAINTIFF SENATORS' MOTION TO DISQUALIFY LCB LEGAL AS COUNSEL FOR NEVADA LEGISLATURE	1BPOKEEFE	0.00	0.00
49	12/19/19	ORDER GRANTING PLAINTIFF SENATORS' MOTION TO DISQUALIFY LCB LEGAL AS COUNSEL FOR LEGISLATIVE DEFENDANTS SENATOR CANNIZZARO AND SECRETARY OF THE SENATE CLIFT; ORDER DENYING STAY; ORDER SETTING PROCEDURAL SCHEDULE	1BPOKEEFE	0.00	0.00
50	12/19/19	ORDER GRANTING NEVADA LEGISLATURE'S MOTION TO INTERVENE AS DEFENDANT- INTERVENOR AND DENYING PLAINTIFF SENATORS' MOTION TO DISQUALIFY LCB LEGAL AS COUNSEL FOR NEVADA LEGISLATURE	1BPOKEEFE	0.00	0.00
51	12/18/19	CERTIFIED COPY OF TRANSCRIPT OF PROCEEDINGS-ORAL ARGUMENT	1BPOKEEFE	0.00	0.00
52	11/26/19	JAVS TRANSCRIPT OF PROCEEDINGS ORAL ARGUMENT 11/19/2019	1BPOKEEFE	0.00	0.00
53	11/25/19	EVENT RESCHEDULED The following event: DECLARATORY RELIEF HEARING scheduled for 04/01/2020 at 9:00 am has been resulted as follows: Result: RESCHEDULED Judge: RUSSELL, JUDGE JAMES TODD Location: DEPT I	1BPOKEEFE	0.00	0.00
54	11/22/19	TRIAL DATE MEMO	1BPOKEEFE	0.00	0.00
55	11/19/19	HEARING HELD: The following event: MOTION HEARING - CIVIL scheduled for 11/19/2019 at 3:30 pm has been resulted as follows: Result: HEARING HELD Judge: RUSSELL, JUDGE JAMES TODD Location: DEPT I	1BJHIGGINS	0.00	0.00
56	11/18/19	PLAINTIFFS' QUALIFIED OPPOSITION TO MOTION TO INTERVENE AND PLAINTIFF SENATORS MOTION TO DISQUALIFY	1BPOKEEFE	0.00	0.00
57	11/13/19	REQUEST TO SUBMIT DOCUMENTS FOR ORAL ARGUMENT	1BPOKEEFE	0.00	0.00
58	11/12/19	AFFIDAVIT OF SENATOR JAMES SETTELMEYER	1BPOKEEFE	0.00	0.00
59	11/12/19	AFFIDAVIT OF KAREN PETERSON	1BPOKEEFE	0.00	0.00
60	11/12/19	REPLY IN SUPPORT OF MOTION TO DISQUALIFY	1BPOKEEFE	0.00	0.00
61	11/06/19	AFFIRMATION PURSUANT TO NRS 239.030	1BVANESSA	0.00	0.00

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No.	Filed	Action	Operator	Fine/Cost	Due
62	11/06/19	NEVADA LEGISLATURE'S MOTION TO INTERVENE AS DEFENDANT	1BVANESSA	0.00	0.00
63	11/04/19	OPPOSITION TO PLAINTIFF SENATORS' MOTION TO DISQUALIFY LCB LEGAL AS COUNSEL FOR DEFENDANTS STATE OF NEVADA EX REL. SENATE MAJORITY LEADER NICOLE CANNIZZARO AND SECRETARY OF THE SENATE CLAIRE CLIFT	1BPOKEEFE	0.00	0.00
64	10/29/19	STIPULATION AND ORDER REGARDING STAY OF PROCEEDINGS PENDING RESOLUTION OF PLAINTIFF SENATORS' MOTION TO DISQUALIFY COUNSEL FOR DEFENDANTS SENATE MAJORITY LEADER NICOLE CANNIZZARO AND SECRETARY OF THE SENATE CLAIRE CLIFT	1BJULIEH	0.00	0.00
65	10/28/19	TRIAL DATE MEMO	1BCCOOPER	0.00	0.00
66	10/28/19	REQUEST TO SUBMIT STIPULATION AND ORDER	1BCCOOPER	0.00	0.00
67	10/24/19	PLAINTIFF SENATORS MOTION TO DISQUALIFY	1BCCOOPER	0.00	0.00
68	10/10/19	FILE RETURNED AFTER SUBMISSION - ORDER ENTERED	1BVANESSA	0.00	0.00
69	10/10/19	STIPULATION REGARDING BRIEFING SCHEDULE FOR DISPOSITIVE MOTIONS, HEARING DATE FOR ORAL ARGUMENT AND RELATED PROCEDURAL MATTERS AND ORDER	1BVANESSA	0.00	0.00
70	10/09/19	REQUEST TO SUBMIT STIPULATION AND ORDER	1BVANESSA	0.00	0.00
71	09/30/19	PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO DISMISS OR, IN THE ALTERNATIVE, PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT	1BJHIGGINS	0.00	0.00
72	09/16/19	MOTION TO DISMISS	1BCCOOPER	0.00	0.00
73	09/16/19	INITIAL APPEARANCE BY DEFENDANT STATE OF NEVADA EX REL. SENATE MAJORITY LEADER NICOLE CANNIZZARO AND SECRETARY OF THE SENATE CLAIRE CLIFT	1BCTORRES	0.00	0.00
74	09/16/19	ANSWER TO PLAINTIFFS' FIRST AMENDED COMPLAINT BY DEFENDANTS STATE OF NEVADA EX REL. SENATE MAJORITY LEADER NICOLE CANNIZZARO AND SECRETARY OF THE SENATE CLAIRE CLIFT	1BCTORRES	218.00	0.00
75	08/05/19	ACKNOWLEDGMENT OF RECEIPT OF DOCUMENTS - (3)	1BVANESSA	0.00	0.00
76	08/05/19	DECLARATION OF SERVICE - (7)	1BVANESSA	0.00	0.00
77	07/30/19	ISSUING SUMMONS AND ADD'L SUMMONS (5) FOR FIRST AMENDED COMPLAINT	1BVANESSA	0.00	0.00
78	07/30/19	ADDITIONAL PLAINTIFF Receipt: 61366 Date: 07/30/2019	1BVANESSA	30.00	0.00
79	07/30/19	ADDITIONAL PLAINTIFF Receipt: 61366 Date: 07/30/2019	1BVANESSA	30.00	0.00

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No.	Filed	Action	Operator	Fine/Cost	Due
80	07/30/19	ADDITIONAL PLAINTIFF Receipt: 61366 Date: 07/30/2019	1BVANESSA	30.00	0.00
81	07/30/19	ADDITIONAL PLAINTIFF Receipt: 61366 Date: 07/30/2019	1BVANESSA	30.00	0.00
82	07/30/19	ADDITIONAL PLAINTIFF Receipt: 61366 Date: 07/30/2019	1BVANESSA	30.00	0.00
83	07/30/19	FIRST AMENDED COMPLAINT	1BVANESSA	0.00	0.00
84	07/24/19	RECEIPT	DATA2	0.00	0.00
85	07/24/19	NOTICE OF ASSIGNMENT BY CLERK	1BJHIGGINS	0.00	0.00
86	07/22/19	PEREMPTORY CHALLENGE OF JUDGE	1BCCOOPER	0.00	0.00
87	07/22/19	FILE RETURNED AFTER SUBMISSION - ORDER ENTERED	1BCCOOPER	0.00	0.00
88	07/22/19	ORDER DENYING TEMPORARY RESTRAINING ORDER WITHOUT PREJUDICE	1BCCOOPER	0.00	0.00
89	07/19/19	ISSUING SUMMONS & ADD'L SUMMONS - (6)	1BVANESSA	0.00	0.00
90	07/19/19	AFFIRMATION PURSUANT TO NRS 239.030	1BVANESSA	0.00	0.00
91	07/19/19	ADDITIONAL PLAINTIFF Receipt: 61230 Date: 07/19/2019	1BVANESSA	30.00	0.00
92	07/19/19	ADDITIONAL PLAINTIFF Receipt: 61230 Date: 07/19/2019	1BVANESSA	30.00	0.00
93	07/19/19	ADDITIONAL PLAINTIFF Receipt: 61230 Date: 07/19/2019	1BVANESSA	30.00	0.00
94	07/19/19	ADDITIONAL PLAINTIFF Receipt: 61230 Date: 07/19/2019	1BVANESSA	30.00	0.00
95	07/19/19	ADDITIONAL PLAINTIFF Receipt: 61230 Date: 07/19/2019	1BVANESSA	30.00	0.00
96	07/19/19	ADDITIONAL PLAINTIFF Receipt: 61230 Date: 07/19/2019	1BVANESSA	30.00	0.00
97	07/19/19	ADDITIONAL PLAINTIFF Receipt: 61230 Date: 07/19/2019	1BVANESSA	30.00	0.00
98	07/19/19	ADDITIONAL PLAINTIFF Receipt: 61230 Date: 07/19/2019	1BVANESSA	30.00	0.00
99	07/19/19	ADDITIONAL PLAINTIFF Receipt: 61230 Date: 07/19/2019	1BVANESSA	30.00	0.00
100	07/19/19	ADDITIONAL PLAINTIFF Receipt: 61230 Date: 07/19/2019	1BVANESSA	30.00	0.00
101	07/19/19	COMPLAINT Receipt: 61230 Date: 07/19/2019	1BVANESSA	265.00	0.00
Total:				981.00	0.00
Totals By: COST				981.00	0.00
INFORMATION				0.00	0.00
*** End of Report ***					

JA001340

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AUGHEY RUDLATT

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 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.
27
28

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.

J. T. Russell
DISTRICT COURT JUDGE

26 Submitted by:

27 **ALLISON MacKENZIE, LTD.**
402 North Division Street
28 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: kpeterson@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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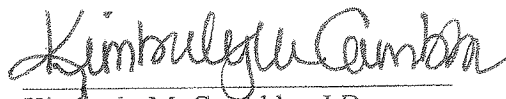
CERTIFICATE OF MAILING

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

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2 JUSTIN TOWNSEND, ESQ.
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Email: jtownsend@allisonmackenzie.com

6 Attorneys for Plaintiffs

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

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

25 Plaintiffs,

26 vs.

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

REC'D & FILED

2020 OCT -8 PM 1:10

AUDREY ROWLATT
CLERK
BY *[Signature]* DEPUTY

Case No: 19 OC 00127 1B

Dept. No: I

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

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

12 Defendants.

13 and

14 THE LEGISLATURE OF THE
15 STATE OF NEVADA,

16 Defendant-Intervenor.

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

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

AFFIRMATION

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

DATED this 8th day of October, 2020.

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

By: 

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

1 CERTIFICATE OF SERVICE

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

5 _____ Placing a true copy thereof in a sealed postage prepaid envelope in the United States
6 Mail in Carson City, Nevada [NRCP 5(b)(2)(B)]

7 _____ Hand-delivery - via Reno/Carson Messenger Service [NRCP 5(b)(2)(A)]

8 X _____ Electronic Transmission

9 _____ Federal Express, UPS, or other overnight delivery

10 _____ E-filing pursuant to Section IV of District of Nevada Electronic Filing Procedures
[NRCP 5(b)(2)(D)]

11 fully addressed as follows:

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

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

17 DATED this 8th day of October, 2020.

18 
19 _____
20 SHEILA CONTRERAS

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

INDEX OF EXHIBITS

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Email: jtownsend@allisonmackenzie.com

6 Attorneys for Plaintiffs

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

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15 THE HONORABLE IRA HANSEN, and
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16 in their official capacities as members of the
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17 GREAT BASIN ENGINEERING
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25 Plaintiffs,

26 vs.

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

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

Dept. No: **I**

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

1 in her official capacity as Senate Majority
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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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AFFIRMATION

The undersigned does hereby affirm that the preceding document DOES NOT contain the
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DATED this 8th day of October, 2020.

ALLISON MacKENZIE, LTD.
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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

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13 Legislative Counsel Bureau, Legal Division
kpowers@lcb.state.nv.us

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

17 DATED this 8th day of October, 2020.

18
19 _____
20 SHEILA CONTRERAS
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INDEX OF EXHIBITS

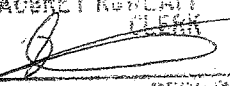
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4852-0549-6270, v. 1

ALLISON MacKENZIE, LTD.
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REC'D & FILED

2020 OCT -7 PM 3:08

AUDREY ROWLATT
CLERK
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;
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CONTRACTORS, LLC, a Nevada limited
liability company; GOODFELLOW
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to do business in the State of Nevada;
KIMMIE CANDY COMPANY, a Nevada
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nonprofit corporation; NATIONAL FEDERATION
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AUTO DEALERS ASSOCIATION, a Nevada
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ASSOCIATION, INC., a Nevada nonprofit
corporation; and RETAIL ASSOCIATION
OF NEVADA, a Nevada nonprofit corporation,

Plaintiffs,

vs.

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

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
7 Defendants.

8 and

9 THE LEGISLATURE OF THE
10 STATE OF NEVADA,

11 Defendant-Intervenor.

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

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

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

20 **Relevant Procedural History**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 **Factual Background**

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

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

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

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

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

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

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

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

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

23 Conclusions of Law

24 1. SB 542 and SB 551 are unconstitutional.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 **Order and Final Judgment**

7 Good cause appearing therefor,

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

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

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

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

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

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

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

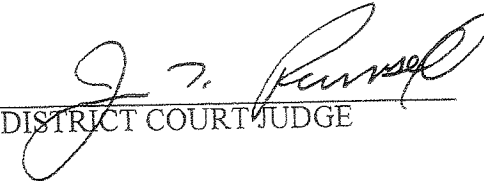
10 **7. IT IS HEREBY FURTHER ORDERED THAT** a final judgment is entered in this action
11 adjudicating all the claims of all the parties as set forth in this Order.

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

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

20 **IT IS SO ORDERED.**

21 DATED this 7th day of October, 2020.

22
23
24 
25 DISTRICT COURT JUDGE

26 Submitted by:

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

ALLISON MacKENZIE, LTD.
402 North Division Street, P.O. Box 646, Carson City, NV 89702
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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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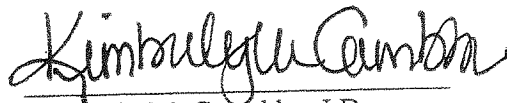
CERTIFICATE OF MAILING

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

FIRST JUDICIAL DISTRICT COURT MINUTES

CASE NO. 19 OC 00127 1B

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

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

MOTION FOR SUMMARY JUDGMENT

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

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

Peterson presented argument.

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

COURT ORDERED: They will all be admitted.

Powers and Newby presented arguments.

Court stated its findings of fact and conclusions of law.

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

Statements were made by Court.

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

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

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

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

Statements were made by Court.

Peterson to prepare Order.

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

FIRST JUDICIAL DISTRICT COURT MINUTES

CASE NO. 19 OC 00127 1B

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

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

MOTION TO DISQUALIFY THE LEGISLATIVE COUNSEL BUREAU AND MOTION TO INTERVENE

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

Statements were made by Court.

Peterson presented argument.

Statements were made by Court and Newby.

Powers presented argument.

Statements were made by Townsend, Court and Powers.

Court stated its findings of fact and conclusions of law.

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

Statements were made by Court.

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

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

Further statements were made by Court.

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

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

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

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

COURT ORDERED: It is not staying anything.

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

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

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

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

CASE NO. 19 OC 00127 1B

TITLE: SETTELMAYER VS STATE

11/19/19 – Cont.'d

Statements were made by Court, Powers and Peterson.

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

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

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

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

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

CIVIL COVER SHEET
 Carson City, Nevada
 Case No. 190C 00127 1B
(Assigned by Clerk's Office)

I. Party Information

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

PLEASE SEE ATTACHED

Attorney (name/address/phone):

KAREN A. PETERSON, Esq. and JUSTIN M. TOWNSEND, Esq.

ALLISON MacKENZIE, LTD.

402 NORTH DIVISION STREET

CARSON CITY, NV 89703

(775) 687-0202

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

PLEASE SEE ATTACHED 2019 JUL 19 PM 2:36

Attorney (name/address/phone):

Unknown

BY

RECEIVED

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

Civil Cases

Real Property

- ☐ **Landlord/Tenant - LT**
 - ☐ Unlawful Detainer - UD
- ☐ **Title to Property**
 - ☐ Foreclosure - FC
 - ☐ Liens - LE
 - ☐ Quiet Title - QT
 - ☐ Specific Performance - SP
- ☐ **Condemnation/Eminent Domain - CD**
- ☐ **Other Real Property - RO**
 - ☐ Partition - PT
 - ☐ Planning/Zoning - PZ

Torts

- ☐ **Negligence**
 - ☐ Negligence - Auto - VP
 - ☐ Negligence - Medical/Dental - MD
 - ☐ Negligence - Premises Liability - SF (Slip/Fall)
 - ☐ Negligence - Other - NO

☐ **Product Liability**

- ☐ Product Liability/Motor Vehicle - VH
- ☐ Other Torts/Product Liability - PL
- ☐ **Intentional Misconduct**
 - ☐ Torts/Defamation (Libel/Slander) - DF
 - ☐ Interfere with Contract Rights - IR
- ☐ **Employment Torts** (Wrongful term) - WT
- ☐ **Other Torts - TO**
 - ☐ Anti-trust - AI
 - ☐ Fraud/Misrepresentation - FM
 - ☐ Insurance - IN
 - ☐ Legal Tort - LG
 - ☐ Unfair competition - UC

Probate

- ☐ **Summary Administration - SU**
- ☐ **General Administration - FA**
- ☐ **Special Administration - SL**
- ☐ **Set Aside Estates - SE**
- ☐ **Trust/Conservatorships**
 - ☐ Individual Trustee - TR
 - ☐ Corporate Trustee - TM
- ☐ **Other Probate - OP**

Other Civil Filing Types

- ☐ **Construction Defect - CF**
 - ☐ Chapter 40
 - ☐ General
- ☐ **Breach of Contract**
 - ☐ Building & Construction - BC
 - ☐ Insurance Carrier - BF
 - ☐ Commercial Instrument - CI
 - ☐ Other Contracts/Acct/Judgment - CO
 - ☐ Collection of Actions - CT
 - ☐ Employment Contract - EC
 - ☐ Guarantee - GU
 - ☐ Sale Contract - SC
 - ☐ Uniform Commercial Code - UN
- ☐ **Civil Petition for Judicial Review**
 - ☐ Other Administrative Law - AO
 - ☐ Department of Motor Vehicles - DM
 - ☐ Worker's Compensation Appeal - SI

- ☐ **Appeal from Lower Court** (also check applicable civil case box)
 - ☐ Transfer from Justice Court - TJ
 - ☐ Justice Court Civil Appeal - CA
- ☐ **Civil Writ**
 - ☐ Other Special Proceeding - SS
- ☐ **Other Civil Filing**
 - ☐ Compromise of Minor's Claim - CM
 - ☐ Conversion of Property - CN
 - ☐ Damage to Property - DG
 - ☐ Employment Security - ES
 - ☐ Enforcement of Judgment - EJ
 - ☐ Foreign Judgment - Civil - FJ
 - ☐ Other Personal Property - PO
 - ☐ Recovery of Property - RE
 - ☐ Stockholder Suit - ST
 - ☒ Other Civil Matters - GC
 - ☐ Confession of Judgment - CJ
 - ☐ Petition to Seal Criminal Records - PS

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

- ☐ NRS Chapters 78-88
- ☐ Investments (NRS 104 Art. 8)
- ☐ Enhanced Case Mgmt/Business
- ☐ Commodities (NRS 90)
- ☐ Deceptive Trade Practices (NRS 598)
- ☐ Other Business Court Matters
- ☐ Securities (NRS 90)
- ☐ Trademarks (NRS 600A)

July 19, 2019

Date

[Signature]
 Signature of initiating party or representative

See other side for family-related case filings.

JA001380

PLAINTIFFS:

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

DEFENDANTS:

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

1 **OFFICE OF THE ATTORNEY GENERAL**

AARON D. FORD

2 Attorney General

CRAIG A. NEWBY

3 Deputy Solicitor General

Nevada State Bar No. 8591

4 555 E. Washington Ave., Suite 3900

Las Vegas, NV 89101

5 Tel: (702) 486-3420; Fax: (702) 486-3768

Email: cnewby@ag.nv.gov

6 *Attorneys for Executive Defendants*

7 **LEGISLATIVE COUNSEL BUREAU, LEGAL DIVISION**

KEVIN C. POWERS

8 General Counsel

Nevada State Bar No. 6781

9 401 S. Carson St.

Carson City, NV 89701

10 Tel: (775) 684-6830; Fax: (775) 684-6761

Email: kpowers@lcb.state.nv.us

11 *Attorneys for Defendant-Intervenor Nevada Legislature*

12 **FIRST JUDICIAL DISTRICT COURT OF NEVADA**
13 **CARSON CITY**

14 THE HONORABLE JAMES SETTELMAYER,
15 THE HONORABLE JOE HARDY, THE
16 HONORABLE HEIDI GANSERT, THE
17 HONORABLE SCOTT HAMMOND, THE
18 HONORABLE PETE GOICOECHEA, THE
19 HONORABLE BEN KIECKHEFER, THE
20 HONORABLE IRA HANSEN, and THE
21 HONORABLE KEITH PICKARD, in their
22 official capacities as members of the Senate of
23 the State of Nevada and individually; GREAT
24 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;

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AUBREY ROWLATT
CLERK

BY C. COOPER
DEPUTY

Case No. 19 OC 00127 1B

Dept. No. I

**EXECUTIVE DEFENDANTS' AND
DEFENDANT-INTERVENOR
NEVADA LEGISLATURE'S REPLY
SUPPORTING JOINT MOTION FOR
STAY PENDING APPEAL**

JA001382

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

3
4 Plaintiffs,

5 vs.

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

12 Defendants,

13 and

14 THE LEGISLATURE OF THE
15 STATE OF NEVADA,

16 Defendant-Intervenor.

17
18 **EXECUTIVE DEFENDANTS' AND DEFENDANT-INTERVENOR NEVADA**
19 **LEGISLATURE'S REPLY SUPPORTING JOINT MOTION FOR STAY**
20 **PENDING APPEAL**
21
22
23
24

1 Defendants State of Nevada ex rel. Nevada Department of Taxation and Nevada Department
2 of Motor Vehicles ("Executive Defendants") and Defendant-Intervenor Legislature of the State of
3 Nevada ("Legislature") (collectively "the State"), hereby file this Reply Supporting Joint Motion
4 for Stay Pending Appeal. This Reply is made under NRCP 62 and FJDCR 3.9 and is based upon
5 the attached Memorandum of Points and Authorities, all pleadings, documents and exhibits on file
6 in this case and any oral arguments this Court allows.

7 **MEMORANDUM OF POINTS AND AUTHORITIES**

8 In their opposition, Plaintiffs take no position in support of or in opposition to the requested
9 stay of the injunctive relief, and Plaintiffs support the requested stay of post-judgment proceedings
10 for attorney's fees and costs. Opp. at 3:8-10. Therefore, in the absence of any opposition from
11 Plaintiffs, the Court should grant the requested stay of the injunctive relief and the post-judgment
12 proceedings for attorney's fees and costs.

13 Plaintiffs oppose the requested stay of the declaratory relief which declared that the
14 challenged provisions of SB 542 and SB 551 were passed unconstitutionally and are void and
15 stricken from the law. Opp. at 3:20-22. Plaintiffs argue that such declaratory relief is not coercive
16 and does not compel the Executive Defendants to take any action and "is different and separate
17 from the injunctive relief granted to enjoin collection and compel the refund of the SB 542 and SB
18 551 taxes and fees." Opp. at 6:11-13. In short, Plaintiffs do not oppose an order from this Court
19 ensuring the Executive Defendants' continued collection of the challenged fees and taxes pending
20 appeal, subject to refund. It is a dispute as to the effect declaratory relief has on the State.

21 Specifically, under well-established case law governing the invalidation of statutory
22 provisions, because the declaratory relief invalidated the challenged provisions on their face, the
23 Executive Defendants require a stay of the declaratory relief pending appeal or will otherwise be
24 forced to stop enforcing the challenged provisions. Regardless of whether the declaratory relief is

1 coercive, the legal effect of the declaratory relief is prohibitory, and without a stay of the
2 declaratory relief pending appeal, the Executive Defendants will be harmed because the State will
3 be prohibited from collecting the fees and taxes under the provisions declared facially
4 unconstitutional. To preserve the status quo and allow the State to continue to carry out the
5 challenged provisions pending appeal, there must be a stay of both the declaratory and injunctive
6 relief. Otherwise, the purpose of the stay and the appeal will be defeated.

7 In cases between *private* parties, the general rule is that “a declaratory judgment in essence
8 does not carry with it the element of coercion as to either party.” *Aronoff v. Katleman*, 75 Nev.
9 424, 432, 345 P.2d 221, 225 (1959). However, when a court issues declaratory relief invalidating a
10 statute on its face, “[t]he effect of a declaration of unconstitutionality is to render the statute null
11 and void.” *Batesel v. Schultz*, 91 Nev. 553, 554, 540 P.2d 100, 100 (1975). As further explained by
12 the Nevada Supreme Court:

13 An act of the legislature which is not authorized by the state constitution at the time of
14 its passage is absolutely null and void. It is a misnomer to call such an act a law. It has
15 no binding authority, no vitality, no existence. It is as if it had never been enacted, and
16 it is to be regarded as never having been possessed of any legal force or effect.

17 *State ex rel. Stevenson v. Tufly*, 20 Nev. 427, 428, 22 P. 1054, 1034 (1890).

18 Thus, it is well established that “[o]nce a statute is determined to be unconstitutional, no
19 private citizen or *division of the State* may take any further action pursuant to the provisions of
20 that unconstitutional statute.” *Thomas v. N.C. Dep’t of Human Res.*, 478 S.E.2d 816, 823 (N.C. Ct.
21 App. 1996) (emphasis added), *aff’d mem.*, 485 S.E.2d 295 (N.C. 1997); 16A Am. Jur. 2d
22 *Constitutional Law* § 194 (Westlaw 2020). The reason for this rule is that “[a] declaratory
23 judgment is an adjudication, not an abstraction. Public officials must respect the court’s
24 declaration and follow its interpretation of the law.” *Louis Eckert Brewing Co. v. Unemployment*
Reserves Comm’n, 119 P.2d 227, 228 (Cal. Ct. App. 1941) (citations omitted). As explained by

1 New York's appellate courts:

2 [A] declaratory judgment is granted declaring article 88 null and void in so far as it
3 purports to include in the receipts from a sale on which the sales tax is assessed the
4 New York state gasoline or motor fuel tax, and plaintiffs are under no legal duty to
5 collect or remit to defendants taxes computed as aforesaid in accordance with said
6 article 88 or any other regulation that purports to include within the said tax the New
7 York state gasoline tax.

8 We do not, however, deem it necessary to grant the injunctive relief requested.
9 Respondents admit that the issue presented is essentially one of law. We are certain
10 that, when the law is settled, it will be obeyed by responsible public officials, that an
11 injunction would be nothing more than a mere formality, and that it is not here
12 necessary for one branch of the government to restrain another in order to obtain
13 obedience for declared law.

14 *Socony-Vacuum Oil Co. v. City of N.Y.*, 287 N.Y.S. 288, 293-94 (N.Y. App. Div. 1936) (citation
15 omitted), *aff'd mem.*, 5 N.E.2d 385 (N.Y. 1936); *Tirrell v. Johnston*, 171 A. 641, 642 (N.H. 1934)
16 ("When the law is settled it will be obeyed. It is therefore immaterial whether the proper
17 proceeding is an application for a restraining order or a petition for a declaratory judgment. A final
18 interpretation of the law in either form of proceeding would be binding upon these parties."), *aff'd*
19 *mem.*, 293 U.S. 533 (1934).

20 Accordingly, when a district court enters a declaratory judgment against state agencies
21 declaring statutes facially unconstitutional, the state agencies are bound by the district court's
22 declaratory judgment, unless they obtain a stay of the declaratory judgment pending appeal.
23 Therefore, in order to preserve the status quo and allow the State to continue to carry out the
24 challenged provisions pending appeal, there must be a stay of both the declaratory and injunctive
25 relief. Otherwise, the purpose of the stay and the appeal will be defeated.¹

26 Plaintiffs also argue that if there is a stay of the declaratory relief, "Defendant-Intervenor
27 Nevada Legislature will continue to attempt to pass unconstitutional legislation based upon [LCB
28

29 ¹ The Executive Defendants have kept and will maintain accurate records of any taxes and fees
30 paid as a result of the challenged statutory provisions.

Legal] opinions interpreting the constitutional provision.” Opp. at 3:25-27. As examples justifying this concern, Plaintiffs identify (1) a May 2020 Eighth Judicial District Court judgment pertaining to the supermajority provision that is pending before the Nevada Supreme Court on appeal, and (2) a July 2020 LCB Legal opinion regarding the application of the supermajority provision to an unrelated bill from the 31st Special Session that is dissimilar to the bills involved in this case. Neither justifies denying a stay of the declaratory relief in this case.

First, the Eighth Judicial District Court’s judgment and the corresponding appeal concern legislation passed by the 2019 Legislature in reliance on the same 2019 LCB Legal opinion involved in this case. Because the Eighth Judicial District Court’s judgment and the corresponding appeal concern the 2019 Legislature and the 2019 LCB Legal opinion, they are not evidence of what the 2021 Legislature may do in future regular or special sessions or what opinions LCB Legal may provide to the Legislature in any such sessions.

Second, the July 2020 LCB Legal opinion concerns SB 3 of the 31st Special Session, which changed, on a temporary basis, the method of collecting taxes from mining operations on the net proceeds of minerals extracted in this State. *See State v. Manhattan Silver Mining Co.*, 4 Nev. 318, 332-34 (1868) (explaining that statutory changes in the method of collecting the net proceeds taxes “do not in any way alter the burden or amount of taxation. The old law and the new law alike require and authorize the collection of the same amount of taxes.”). Because the July 2020 LCB Legal opinion concerns unrelated and dissimilar legislation, it provides no basis for denying a stay of the declaratory relief in this case.

Finally, contrary to Plaintiffs’ arguments, the declaratory relief in this case cannot prevent the Legislature from passing legislation in future sessions while the appeal is pending. Under the separation-of-powers doctrine, the judiciary may declare that legislation *passed* by the Legislature is unconstitutional. However, the judiciary cannot prevent the Legislature from passing legislation

1 because such judicial action would infringe upon the Legislature's lawmaking function. *See*
2 *Goodland v. Zimmerman*, 10 N.W.2d 180, 182-85 (Wis. 1943). As explained by the Wisconsin
3 Supreme Court:

4 We are here dealing with a bill which has not yet become a law. There is no such thing
5 known to the law as an unconstitutional bill. A court cannot deal with the question of
6 constitutionality until a law has been duly enacted and some person has been deprived
7 of his constitutional rights by its operation. In a proper case a court may declare
8 whether the legislature has exceeded its constitutional powers in the enactment of the
9 law complained of. It is a rule of universal application that no one but a person injured
10 can question the constitutionality of a law. * * * When the legislative process has been
11 completed, a court may then in a proper case consider whether the power of the
12 legislature has been constitutionally exercised or whether the law enacted in the
13 exercise of its power is valid. This is fundamental law. So far as we are advised or able
14 to ascertain, no court has heretofore attempted to interfere with the right of the
15 legislature to enact and put in force a law.

16 *Id.* (collecting cases).

17 Therefore, good cause exists to stay pending appeal: (1) the October 7 "Final Judgment"
18 granting declaratory and injunctive relief; and (2) post-judgment proceedings for attorneys' fees
19 and costs. If the Nevada Supreme Court affirms the Final Judgment, taxpayers will be refunded
20 with more interest, resulting in no irreparable harm if there is a stay. However, if there is no stay,
21 the Executive Defendants will have to create a system for refunding taxes and the Department of
22 Motor Vehicle's \$1 technology fee. Should the Final Judgment be reversed or otherwise modified
23 without a stay, the Executive Defendants will be left to attempt recouping the refunded taxes and
24 fees, defeating the object of this appeal and constituting significant harm to the State.

25 **II. Conclusion and requested relief.**

26 Based upon the foregoing, Defendants request that this Court enter an order which grants
27 their Joint Motion for Stay Pending Appeal and stays: (1) the Order After Hearing on September
28 21, 2020, and Final Judgment, entered by the Court on October 7, 2020; and (2) all post-judgment
29 proceedings for attorney's fees and costs.

1 DATED: This 10th day of November, 2020.

2 Respectfully submitted,

3 AARON D. FORD
Attorney General

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12 **FIRST JUDICIAL DISTRICT COURT OF NEVADA**
13 **CARSON CITY**

14 THE HONORABLE JAMES SETTELMAYER,
15 THE HONORABLE JOE HARDY, THE
16 HONORABLE HEIDI GANSERT, THE
17 HONORABLE SCOTT HAMMOND, THE
18 HONORABLE PETE GOICOECHEA, THE
19 HONORABLE BEN KIECKHEFER, THE
20 HONORABLE IRA HANSEN, and THE
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NEVADA FRANCHISED AUTO DEALERS
ASSOCIATION, a Nevada nonprofit corporation;

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Case No. 19 OC 00127 1B

Dept. No. I

JA001391

1 NEVADA TRUCKING ASSOCIATION, INC., a
2 Nevada nonprofit corporation; and RETAIL
3 ASSOCIATION OF NEVADA, a Nevada
4 nonprofit corporation,

5
6 Plaintiffs,

7 vs.

8 STATE OF NEVADA ex rel. THE
9 HONORABLE NICOLE CANNIZZARO, in her
10 official capacity as Senate Majority Leader; THE
11 HONORABLE KATE MARSHALL, in her
12 official capacity as President of the Senate;
13 CLAIRE J. CLIFT, in her official capacity as
14 Secretary of the Senate; THE HONORABLE
15 STEVE SISOLAK, in his official capacity as
16 Governor of the State of Nevada; NEVADA
17 DEPARTMENT OF TAXATION; NEVADA
18 DEPARTMENT OF MOTOR VEHICLES; and
19 DOES I-X, inclusive,

20 Defendants,

21 and

22 THE LEGISLATURE OF THE
23 STATE OF NEVADA,

24 Defendant-Intervenor.

25
26 **~~PROPOSED~~ ORDER GRANTING EXECUTIVE DEFENDANTS' AND DEFENDANT-
27 INTERVENOR NEVADA LEGISLATURE'S JOINT MOTION FOR STAY
28 PENDING APPEAL**

1 Defendants State of Nevada ex rel. Nevada Department of Taxation and Nevada Department
2 of Motor Vehicles (“Executive Defendants”) and Defendant-Intervenor Legislature of the State of
3 Nevada (“Legislature”) (collectively “the State”), filed a Joint Motion for Stay Pending Appeal.

4 Based on review of the papers and pleadings on file in this case, along with prior argument
5 on other motions, this court finds good cause exists to stay pending appeal: (1) the October 7
6 Order After Hearing on September 21, 2020, and Final Judgment; and (2) the post-judgment
7 proceedings for attorneys’ fees and costs. Therefore, pursuant to Nevada Rule of Civil Procedure
8 62(c), this court **GRANTS** the Joint Motion and **ORDERS** the requested stay pending appeal
9 before the Nevada Supreme Court.

10 Good cause exists to do so as a matter of law. This court has already determined that
11 Defendants have not acted in bad faith in their defense of this action, and an appeal to the Nevada
12 Supreme Court would not be “frivolous.” *State v. Robles-Nieves*, 129 Nev. 537, 546, 306 P.3d
13 399, 406 (2013). The State’s appeal is not dilatory, as Defendants filed their respective notices of
14 appeal on October 9, 2020, the date after being served with notice of entry of the October 7 Order
15 and Final Judgment in this case. *Id.*

16 Further, any aggrieved taxpayer and fee payer is protected by repayment with interest should
17 the Nevada Supreme Court agree with the October 7 Order and Final Judgment in this case. There
18 is no irreparable harm to weigh against the administrative issues associated with undoing the
19 declaratory and injunctive relief for refunds in this case should the Nevada Supreme Court agree
20 with the State on appeal, which also would undo the object of the State’s appeal.

21 Finally, no bond is required to stay the October 7 Order and Final Judgment and the post-
22 judgment proceedings for attorneys’ fees and costs. NRCP 62(e).

23 ///

24 ///

Therefore, good cause having been shown:

1. IT IS ORDERED THAT the following orders, judgments and proceedings in this action are stayed pending appeal: (1) the October 7 Order After Hearing on September 21, 2020, and Final Judgment; and (2) the post-judgment proceedings for attorneys' fees and costs.

2. IT IS FURTHER ORDERED THAT no bond is required to stay the October 7 Order and Final Judgment and the post-judgment proceedings for attorneys' fees and costs.


3. IT IS FURTHER ORDERED THAT the Office of the Attorney General will serve a notice of entry of this Order on all other parties and file proof of such service within 7 days after the date on which the court sends this Order to the State's attorneys.

DATED this 13th day of November, 2020.


District Court Judge

Submitted by:

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