IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA, Petitioner, vs. THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, in and for THE COUNTY OF CLARK; and THE HONORABLE RICHARD SCOTTI, District Judge, Respondents, and JENNIFER LYNN PLUMLEE, Real Party in Interest.	Electronically Filed Mar 19 2021 11:18 p.m. Elizabeth A. Brown Clerk of Supreme Court **Case No. 82236** Original Action for Writ to Eighth Judicial District Court, Clark County, Nevada, Case No. C-20-346852-A
THE STATE OF NEVADA, Petitioner, vs. THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, in and for THE COUNTY OF CLARK; and THE HONORABLE RICHARD SCOTTI, District Judge, Respondents, and MATTHEW HANEY MOLEN, Real Party in Interest.	**Case No. 82249** Original Action for Writ to Eighth Judicial District Court, Clark County, Nevada, Case No. C-20-348754-A

NEVADA LEGISLATURE'S AMICUS CURIAE BRIEF SUPPORTING REVERSAL OF THE DISTRICT COURT'S INTERPRETATION AND APPLICATION OF THE SEPARATION-OF-POWERS PROVISION IN ARTICLE 3, SECTION 1 OF THE NEVADA CONSTITUTION

KEVIN C. POWERS, General Counsel
Nevada Bar No. 6781
LEGISLATIVE COUNSEL BUREAU, LEGAL DIVISION
401 S. Carson St.
Carson City, NV 89701
Tel: (775) 684-6830; Fax: (775) 684-6761
Email: kpowers@lcb.state.nv.us
Attorneys for Legislature of the State of Nevada

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INTRODUCTION

The Legislature of the State of Nevada (Legislature), by and through its counsel the Legal Division of the Legislative Counsel Bureau ("LCB Legal") under NRS 218F.720, hereby files this amicus curiae brief supporting reversal of the district court's interpretation and application of the separation-of-powers provision in Article 3, Section 1 of the Nevada Constitution.[1]

In its orders, the district court decided that a deputy district attorney who prosecutes criminal cases and who also serves in the Legislature violates a criminal defendant's rights to "procedural due process" on the basis that such dual service violates the separation-of-powers provision. (*Plumlee App. V1:249-52; Molen App. V1:233-36.*) The Legislature asks this Court to reverse and vacate the district court's decision in these cases because the decision was based on a clearly erroneous interpretation and application of constitutional and statutory law.

First, the district court's decision was based on a clearly erroneous interpretation and application of constitutional and statutory law because deputy district attorneys serve as county employees—not as state officers or county

[1] The Legislature's amicus brief is limited solely to legal issues supporting reversal of the district court's interpretation and application of the separation-of-powers provision. This brief does not address any other legal issues arising from the particular facts of these cases, and this brief does not support or oppose any of the parties with regard to any other legal issues.

officers—and they do not exercise sovereign functions belonging to the state executive branch when they participate in criminal prosecutions.

Second, the district court's decision was based on a clearly erroneous interpretation and application of the separation-of-powers provision because that provision does not prohibit legislators from holding positions of public employment with county governments as deputy district attorneys. In particular, the separation-of-powers provision does not prohibit legislators from holding any positions of public employment with local governments because local governments and their officers and employees are not part of one of the three departments of state government.

Third, even if the separation-of-powers provision is interpreted to apply to local governments, the provision still would not prohibit legislators from holding positions of public employment as deputy district attorneys with county governments because deputy district attorneys are county employees who do not exercise sovereign functions belonging to the state executive branch when they participate in criminal prosecutions.

Therefore, the Legislature asks this Court to issue a writ to Respondents, the Eighth Judicial District Court and the Honorable Richard Scotti, District Judge, reversing and vacating the district court's decision in these cases because the

decision was based on a clearly erroneous interpretation and application of constitutional and statutory law.

ARGUMENT

I. Standards of review for writ relief.

Because writ relief is an extraordinary remedy that invokes this Court's original jurisdiction, the decision whether to grant such relief lies within this Court's sole discretion. State v. Dist. Ct. (Schneider), 132 Nev. 600, 603 (2016). This Court may grant writ relief when the petitioner does not have a plain, speedy and adequate remedy in the ordinary course of the law to challenge the district court's decision. Id. Additionally, this Court may grant writ relief "where an important issue of law needs clarification and public policy is served by this court's invocation of its original jurisdiction." Bus. Computer Rentals v. State Treasurer, 114 Nev. 63, 67 (1998). For example, writ relief is warranted when the petition "raises pressing issues involving the Nevada Constitution and the public policy of this state." Id.

Under the Nevada Constitution, state district courts "have final appellate jurisdiction in cases arising in Justices Courts and such other inferior tribunals as may be established by law." Nev. Const. art. 6, § 6(1). As a result, when the district court exercises its final appellate jurisdiction and reverses a criminal conviction in the justice court or municipal court, the district court's decision is not

subject to further appellate review in the ordinary course of the law by an appeal to this Court. Stilwell v. City of N. Las Vegas, 129 Nev. 720, 722 (2013). Under such circumstances, the State does not have a plain, speedy and adequate remedy in the ordinary course of law to challenge the district court's decision, and the State's only remedy is to petition this Court for extraordinary writ relief. Schneider, 132 Nev. at 603.

As a general rule, this Court has "declined to entertain writs that request review of a decision of the district court acting in its appellate capacity unless the district court has improperly refused to exercise its jurisdiction, has exceeded its jurisdiction, or has exercised its discretion in an arbitrary or capricious manner." State v. Dist. Ct. (Hedland), 116 Nev. 127, 134 (2000). Under these standards, this Court will grant writ relief to correct an arbitrary or capricious exercise of discretion when the district court's decision is based on "[a] clearly erroneous interpretation of the law or a clearly erroneous application of a law or rule." State v. Dist. Ct. (Armstrong), 127 Nev. 927, 932 (2011) (quoting Steward v. McDonald, 958 S.W.2d 297, 300 (Ark. 1997)).

In these cases, this Court should exercise its discretion to entertain the State's writ petition because: (1) the State does not have a plain, speedy and adequate remedy in the ordinary course of the law to challenge the district court's decision; (2) the district court's decision raises important issues of state constitutional and

statutory law and adversely affects the public policy of this State which protects the concept of the "citizen-legislator" as the cornerstone of an effective, responsive and qualified part-time legislative body; and (3) the district court's decision was based on a clearly erroneous interpretation and application of constitutional and statutory law.

II. Standards of review for constitutional challenges.

This Court "applies a de novo standard of review to constitutional challenges." Callie v. Bowling, 123 Nev. 181, 183 (2007). Under that standard, this Court reviews the district court's interpretation and application of constitutional provisions de novo "without deference to the district court's decision." Sparks Nugget v. State Dep't of Tax'n, 124 Nev. 159, 163 (2008).

III. The district court's decision was based on a clearly erroneous interpretation and application of constitutional and statutory law because deputy district attorneys serve as county employees—not as state officers or county officers—and they do not exercise sovereign functions belonging to the state executive branch when they participate in criminal prosecutions.

In its orders, the district court determined that a deputy district attorney "enforcing the laws of the State of Nevada, and representing the State of Nevada, is actually exercising powers belonging to the [s]tate executive branch." (*Plumlee App. V1:250-51; Molen App. V1:234.*) However, the district court's determination contradicts well-established constitutional and statutory law which classifies deputy district attorneys as county employees and which does not authorize deputy

district attorneys to exercise sovereign functions belonging to the state executive branch when they participate in criminal prosecutions.

Under Article 4, Section 32 of the Nevada Constitution, because the office of the district attorney is a county office, Nevada's district attorneys are not state officers of the executive branch. Lane v. Second Jud Dist. Ct., 104 Nev. 427, 437 (1988); In re Contested Election of Mallory, 128 Nev. 436, 439 (2012). As explained by this Court:

> The plain language of Article 4, Section 32 clearly declares that district attorneys are county officers. And because the Nevada Constitution plainly identifies district attorneys as county officers, it necessarily follows that the office of district attorney cannot be considered a "state office[.]"

Mallory, 128 Nev. at 439. Thus, this Court has determined that Nevada's district attorneys are not acting as state officers of the executive branch when they conduct criminal prosecutions. Lane, 104 Nev. at 437.

Based on Nevada law, the Ninth Circuit has also determined that Nevada's district attorneys are not acting as state officers of the executive branch when they are sued for federal civil rights violations stemming from their exercise of policymaking authority in conducting criminal prosecutions. Webb v. Sloan, 330 F.3d 1158, 1164-65 (9th Cir. 2003); Botello v. Gammick, 413 F.3d 971, 979 (9th Cir. 2005). Under the federal civil rights statute in 42 U.S.C. § 1983, a county can be sued for damages for certain constitutional violations committed by county

officers who exercise "policymaking authority." McMillian v. Monroe Cnty., 520 U.S. 781, 785 (1997). By contrast, "[s]tates and state officials acting in their official capacities cannot be sued for damages under Section 1983." Goldstein v. City of Long Beach, 715 F.3d 750, 753 (9th Cir. 2013).

Because district attorneys perform a variety of official functions for the state and local governments, they can exercise policymaking authority for the state for some official functions and policymaking authority for the county for other official functions. Weiner v. San Diego Cnty., 210 F.3d 1025, 1028-31 (9th Cir. 2000); Goldstein, 715 F.3d at 753-59. Therefore, to determine whether the county can be sued for constitutional violations stemming from the district attorney's exercise of policymaking authority in conducting criminal prosecutions, federal courts must decide "whether the district attorney acted as a county official or as a state official when he decided to proceed with [the defendant's] criminal prosecution." Weiner, 210 F.3d at 1028. When federal courts make this determination, their "answer to that question is dependent on state law." Id.

In Webb, the Ninth Circuit reviewed Nevada law, including this Court's decision in Lane, and determined that Nevada's district attorneys are acting as county officers, not as state officers of the executive branch, when they conduct criminal prosecutions. Webb, 330 F.3d at 1164-65. Therefore, the Ninth Circuit concluded that Nevada's district attorneys exercise policymaking authority for the

county—instead of the state executive branch—when they conduct criminal prosecutions. Id.

In Webb, the Ninth Circuit also reviewed Nevada law to determine whether Nevada's deputy district attorneys exercise policymaking authority for the county in a manner similar to the district attorneys who employ them. Id. at 1164-66. At the time, Nevada law provided in NRS 252.070(1) that:

> All district attorneys are authorized to appoint deputies, who may transact all official business relating to the offices to the same extent as their principals.

NRS 252.070(1) (2001). The Ninth Circuit determined that "[b]y its plain text, that statute confers authority on deputy district attorneys that is coextensive with the authority enjoyed by principal district attorneys. Thus, if principal district attorneys are final policymakers, then so are their deputies." Webb, 330 F.3d at 1164. In making this determination, the Ninth Circuit noted that its decision was based on the Nevada statutes that were in effect at the time of the decision and that "it is within the Nevada [L]egislature's power to constrain the authority of deputies if it should see fit." Id. at 1166 n.5.

Following the Ninth Circuit's interpretation of Nevada law with regard to deputy district attorneys, the Legislature amended NRS 252.070(1) in 2005 to provide explicitly that deputy district attorneys do not exercise "policymaking authority for the office of the district attorney or the county by which the deputy

district attorney is employed." Assembly Bill No. 477 (AB 477), 2005 Nev. Stat., ch. 209, § 6, at 682. After the 2005 amendment, NRS 252.070(1) now states:

> All district attorneys may appoint deputies, who are authorized to transact all official business relating to those duties of the office set forth in NRS 252.080 and 252.090 to the same extent as their principals and perform such other duties as the district attorney may from time to time direct. **The appointment of a deputy district attorney must not be construed to confer upon that deputy policymaking authority for the office of the district attorney or the county by which the deputy district attorney is employed**.

NRS 252.070(1) (2019) (emphasis added).

Thus, under Nevada law, deputy district attorneys are not state officers because they do not exercise sovereign functions of the executive branch when they conduct criminal prosecutions. See Lane, 104 Nev. at 437; Webb, 330 F.3d at 1164-65. Furthermore, deputy district attorneys are not county officers because they do not exercise "policymaking authority for the office of the district attorney or the county by which the deputy district attorney is employed." NRS 252.070(1). Consequently, under Nevada law, deputy district attorneys are county employees who do not exercise sovereign functions belonging to the state executive branch when they participate in criminal prosecutions. Accordingly, the district court's decision was based on a clearly erroneous interpretation and application of constitutional and statutory law because deputy district attorneys serve as county employees—not as state officers or county officers—and they do not exercise

sovereign functions belonging to the state executive branch when they participate in criminal prosecutions.

IV. The district court's decision was based on a clearly erroneous interpretation and application of the separation-of-powers provision because that provision does not prohibit legislators from holding positions of public employment with county governments as deputy district attorneys.

In its orders, the district court rejected the State's and LCB Legal's arguments that the separation-of-powers provision does not prohibit legislators from holding positions of public employment with local governments because local governments and their officers and employees are not part of one of the three departments of state government. (*Plumlee App. V1:249-52; Molen App. V1:233-36.*) The district court also rejected the State's and LCB Legal's arguments that the separation-of-powers provision does not prohibit legislators from holding positions of public employment with the state executive branch because persons who hold such positions of public employment do not exercise any sovereign functions appertaining to the state executive branch. (*Plumlee App. V1:249-52; Molen App. V1:233-36.*) The district court's rejection of these arguments was based on a clearly erroneous interpretation and application of the separation-of-powers provision because the district court's reasoning conflicts with historical evidence, legal treatises and other authorities on constitutional law, case law from other jurisdictions interpreting similar state constitutional provisions, common-law rules governing public officers and employees and, most importantly, the intent of the

Framers and their underlying public policies supporting the concept of the "citizen-legislator" as the cornerstone of an effective, responsive and qualified part-time legislative body.

A. The separation-of-powers provision does not prohibit legislators from holding positions of public employment with local governments because local governments and their officers and employees are not part of one of the three departments of state government.

The separation-of-powers provision provides that "[t]he powers of the Government of the **State of Nevada** shall be divided into three separate departments,—the Legislative,—the Executive and the Judicial." Nev. Const. art. 3, § 1 (emphasis added). By using the term "State" in the separation-of-powers provision, the Framers of the Nevada Constitution expressed a clear intent to have the provision apply only to the three departments of state government. As explained by the Ohio Supreme Court:

> [I]n general at least, when the constitution speaks of the "State," the whole State, in her political capacity, **and not her subdivisions**, is intended. That such is the natural import of the language used, no one denies. That such must be its construction, to make the constitution consistent with itself, and sensible, is very apparent.

Cass v. Dillon, 2 Ohio St. 607, 616 (1853) (emphasis added).

This Court recently stated that "the language of the separation-of-powers provision in the Constitution does not extend any protection to political subdivisions." City of Fernley v. State Dep't of Tax'n, 132 Nev. 32, 43 n.6 (2016). This determination is consistent with prior cases in which this Court has

recognized that political subdivisions are not part of one of the three departments of state government. See Univ. & Cmty. Coll. Sys. v. DR Partners, 117 Nev. 195, 203-04 (2001) ("Neither state-owned institutions, nor state departments, nor public corporations are synonymous with political subdivisions of the state."); Nunez v. City of N. Las Vegas, 116 Nev. 535, 540 (2000) ("Although municipal courts are created by the legislature pursuant to authority vested in that body by the Nevada Constitution, these courts are separate branches of their respective city governments. . . . .[T]hey are not state governmental entities."); City of Sparks v. Sparks Mun. Ct., 129 Nev. 348, 362 n.5 (2013) ("While municipal courts are included within the state constitutional judicial system, they are nonetheless primarily city entities, rather than an extension of the state.").

Because political subdivisions are not part of one of the three departments of state government, their local officers generally are not considered to be state officers who are subject to the separation-of-powers provision. See State ex rel. Mason v. Bd. of Cnty. Comm'rs, 7 Nev. 392, 396-97 (1872) (noting that the exercise of certain powers by a board of county commissioners was not limited by the doctrine of separation of powers); Lane, 104 Nev. at 437 (noting that the doctrine of separation of powers was not applicable to the exercise of certain powers by the district attorney because he was not a state constitutional officer).

Furthermore, the Nevada Constitution was modeled on the California Constitution of 1849. State ex rel. Harvey v. Second Jud. Dist. Ct., 117 Nev. 754, 761 (2001). Because Nevada's constitutional provisions were taken from California's 1849 constitutional provisions, Nevada's provisions "may be lawfully presumed to have been taken with the judicial interpretation attached." Mason, 7 Nev. at 397.

In construing the separation-of-powers provision in the California Constitution of 1849, the California Supreme Court held that the separation-of-powers provision did not apply to local governments and their officers and employees. People v. Provines, 34 Cal. 520, 523-40 (1868). In Provines, the court stated that "[w]e understand the Constitution to have been formed for the purpose of establishing a *State* Government; and we here use the term 'State Government' in contradistinction to local, or to county or municipal governments." Id. at 532. After examining the history and purpose of the separation-of-powers provision, the court concluded that "the Third Article of the Constitution means that the powers of the *State* Government, not the local governments thereafter to be created by the Legislature, shall be divided into three departments." Id. at 534. Thus, the court held that the separation-of-powers provision had no application to the functions performed by a person at the local governmental level. Id. at 523-40.

In later cases, the California Supreme Court reaffirmed that under California law, "it is settled that the separation of powers provision of the constitution, art. 3, § 1, does not apply to local governments as distinguished from departments of the state government." Mariposa County v. Merced Irrig. Dist., 196 P.2d 920, 926 (Cal. 1948). This interpretation of the separation-of-powers doctrine is followed by a majority of other jurisdictions. See, e.g., Poynter v. Walling, 177 A.2d 641, 645 (Del. Super. Ct. 1962); La Guardia v. Smith, 41 N.E.2d 153, 156 (N.Y. 1942); 16 C.J.S. Constitutional Law § 112, at 377 (1984).

Consequently, it is well settled that "a local government unit, though established under state law, funded by the state, and ultimately under state control, with jurisdiction over only a limited area, is not a 'State.'" United States ex rel. Norton Sound Health Corp. v. Bering Strait Sch. Dist., 138 F.3d 1281, 1284 (9th Cir. 1998). Furthermore, "a local government with authority over a limited area, is a different type of government unit than a state-wide agency that is part of the organized government of the state itself." Wash. State Dep't of Transp. v. Wash. Natural Gas Co., 59 F.3d 793, 800 n.5 (9th Cir. 1995). Thus, "[w]hile local subdivisions and boards created by the state may have some connection with one of the departments of the state government as defined by the Constitution, they are not 'departments of state government' within the intent and meaning of the [law]." State v. Coulon, 3 So. 2d 241, 243 (La. 1941). In the face of these basic rules of

law, courts have consistently found that cities, counties, school districts and other local governmental entities are not included within one of the three departments of state government. See, e.g., Dermott Special Sch. Dist. v. Johnson, 32 S.W.3d 477, 480-81 (Ark. 2000); Dunbar Elec. Supply, Inc. v. Sch. Bd., 690 So. 2d 1339, 1340 (Fla. Dist. Ct. App. 1997); Stokes v. Harrison, 115 So. 2d 373, 377-79 (La. 1959); Coulon, 3 So. 2d at 243.

Likewise, in the context of the Eleventh Amendment, federal courts interpreting Nevada law have consistently found that cities, counties, school districts and other local governmental entities in this state are not included within one of the three departments of state government and that these local political subdivisions are not entitled to Nevada's sovereign immunity in federal court. See, e.g., Lincoln County v. Luning, 133 U.S. 529, 530 (1890); Eason v. Clark Cnty. Sch. Dist., 303 F.3d 1137, 1144 (9th Cir. 2002); Herrera v. Russo, 106 F. Supp. 2d 1057, 1062 (D. Nev. 2000). These federal cases are important because when a federal court determines whether a political subdivision is part of state government for the purposes of the Eleventh Amendment, the federal court makes its determination based on **state law**. See Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle, 429 U.S. 274, 280-81 (1977); Austin v. State Indus. Ins. Sys., 939 F.2d 676, 678-79 (9th Cir. 1991).

After examining state law in Nevada, federal courts have found that the Nevada Gaming Control Board, the Nevada Gaming Commission, the Nevada State Industrial Insurance System, the Nevada Supreme Court and the Nevada Commission on Judicial Discipline are state agencies included within one of the three departments of state government and that these state agencies are entitled to Nevada's sovereign immunity under the Eleventh Amendment. See Carey v. Nev. Gaming Control Bd., 279 F.3d 873, 877-78 (9th Cir. 2002); Romano v. Bible, 169 F.3d 1182, 1185 (9th Cir. 1999); Austin, 939 F.2d at 678-79; O'Connor v. State, 686 F.2d 749, 750 (9th Cir. 1982); Salman v. Nev. Comm'n on Jud. Discipline, 104 F. Supp. 2d 1262, 1267 (D. Nev. 2000). By contrast, after examining state law in Nevada, federal courts have found that cities, counties and school districts in Nevada are not included within one of the three departments of state government and that these local political subdivisions are not entitled to Nevada's sovereign immunity under the Eleventh Amendment. See Lincoln County, 133 U.S. at 530; Eason, 303 F.3d at 1144; Herrera, 106 F. Supp. 2d at 1062. Thus, as viewed by federal courts that have interpreted Nevada law, local political subdivisions in this state are not included within one of the three departments of state government.

Accordingly, because local political subdivisions in Nevada are not included within one of the three departments of state government, their officers and employees also are not part of one of the three departments of state government,

and legislators who hold such positions with local governments are not serving in positions within one of the three departments of state government. Consequently, given that the separation-of-powers provision applies only to the three departments of state government, the separation-of-powers provision does not prohibit legislators from holding positions of public employment with local governments because local governments and their officers and employees are not part of one of the three departments of state government. Therefore, the district court's decision was based on a clearly erroneous interpretation and application of the separation-of-powers provision because that provision does not prohibit legislators from holding positions of public employment with county governments as deputy district attorneys.

B. Even if the separation-of-powers provision is interpreted to apply to local governments, the provision still would not prohibit legislators from holding positions of public employment as deputy district attorneys with county governments because deputy district attorneys are county employees who do not exercise sovereign functions belonging to the state executive branch when they participate in criminal prosecutions.

As discussed previously, under Nevada law, deputy district attorneys are not state officers because they do not exercise sovereign functions of the executive branch when they conduct criminal prosecutions. See Lane, 104 Nev. at 437; Webb, 330 F.3d at 1164-65. Furthermore, deputy district attorneys are not county officers because they do not exercise "policymaking authority for the office of the district attorney or the county by which the deputy district attorney is employed."

NRS 252.070(1). Consequently, under Nevada law, deputy district attorneys are county employees. As such, even if the separation-of-powers provision is interpreted to apply to local governments, the provision still would not prohibit legislators from holding positions of public employment as deputy district attorneys with county governments because deputy district attorneys are county employees who do not exercise sovereign functions belonging to the state executive branch when they participate in criminal prosecutions.

Under Nevada's separation-of-powers provision, because legislators hold elective offices that are expressly created by Article 4 of the Nevada Constitution governing the Legislative Department, legislators are "charged with the exercise of **powers** properly belonging to one of these departments," which is the Legislative Department. Nev. Const. art. 3, § 1 (emphasis added). As a result, legislators are not allowed by the separation-of-powers provision to "exercise any **functions**, appertaining to either of the others, except in the cases expressly directed or permitted in this constitution." Id. (emphasis added).

Thus, the critical issue under the separation-of-powers provision is whether legislators who hold positions of public employment with the state executive branch or with local governments exercise any "functions" appertaining to the state executive branch which cause their public employment to be constitutionally incompatible with their service as legislators in the state legislative branch. This

Court has never directly addressed this issue of constitutional law in a reported opinion. See Heller v. Legislature, 120 Nev. 456 (2004); State ex rel. Mathews v. Murray, 70 Nev. 116 (1953).

Because there is no controlling Nevada case law directly on point to resolve this issue of constitutional law, it is appropriate to consider: (1) historical evidence of the practices in the Federal Government and Congress immediately following the ratification of the Federal Constitution; (2) historical evidence of the practices in the California Legislature under similar state constitutional provisions which served as the model for the Nevada Constitution; (3) historical evidence of the practices in the Nevada Legislature since statehood; (4) legal treatises and other authorities on constitutional law; (5) case law from other jurisdictions interpreting similar state constitutional provisions; (6) common-law rules governing public officers and employees; and (7) the intent of the Framers and their underlying public policies supporting the concept of the "citizen-legislator" as the cornerstone of an effective, responsive and qualified part-time legislative body. Taking all these compelling historical factors, legal authorities and public policies into consideration, this Court should conclude that the separation-of-powers provision does not prohibit legislators from holding positions of public employment with the state executive branch or with local governments.

(1) Historical evidence.

(a) Federal Government and Congress.

Based on the Federalist Papers, federal judicial precedent and long-accepted historical practices under the United States Constitution, the Founders did not believe that the doctrine of separation of powers absolutely prohibited an officer of one department from performing functions in another department.

On many occasions, the U.S. Supreme Court has discussed how the Founders adopted a pragmatic, flexible view of the separation of powers in the Federalist Papers. See, e.g., Mistretta v. United States, 488 U.S. 361, 380-82 (1989); Nixon v. Adm'r of Gen. Servs., 433 U.S. 425, 441-43 (1977). Relying on the Federalist Papers, the Supreme Court has consistently adhered to "Madison's flexible approach to separation of powers." Mistretta, 488 U.S. at 380. In particular, Madison stated in the Federalist Papers that the separation of powers "'d[oes] not mean that these [three] departments ought to have no *partial agency* in, or no *controul* over the acts of each other.'" Id. at 380-81 (quoting The Federalist No. 47, pp. 325-326 (J. Cooke ed. 1961)).

In light of Madison's statements and other writings in the Federalist Papers, the Supreme Court has found that "the Framers did not require—and indeed rejected—the notion that the three Branches must be entirely separate and distinct." Mistretta, 488 U.S. at 380. Thus, as understood by the Framers in the

Federalist Papers, the doctrine of separation of powers did not impose a hermetic, airtight seal around each department of government. See Loving v. United States, 517 U.S. 748, 756-57 (1996). Rather, the doctrine created a pragmatic, flexible template of overlapping functions and responsibilities so that three coordinate departments could be fused into a workable government. See Mistretta, 488 U.S. at 380-81. Therefore, the Founders believed in a "pragmatic, flexible view of differentiated governmental power." Id. at 381.

Moreover, in the years immediately following the adoption of the United States Constitution, it was a common and accepted practice for judicial officers of the United States to serve simultaneously as executive officers of the United States. See Mistretta, 488 U.S. at 397-99. For example, the first Chief Justice, John Jay, served simultaneously as Chief Justice and Ambassador to England. Similarly, Oliver Ellsworth served simultaneously as Chief Justice and Minister to France. While he was Chief Justice, John Marshall served briefly as Secretary of State and was a member of the Sinking Fund Commission with responsibility for refunding the Revolutionary War debt. Id. at 398-99. Such long-accepted historical practices support the conclusion that the doctrine of separation of powers does not absolutely prohibit an officer of one department from performing functions in another department.

Finally, the Founders did not believe that, on its own, the doctrine of separation of powers would prohibit an executive officer from serving as a member of Congress. See 2 The Founders' Constitution 346-57 (Philip B. Kurland & Ralph Lerner eds., 1987). Therefore, the Founders added the Incompatibility Clause to the United States Constitution. Id. The Incompatibility Clause provides that "no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office." U.S. Const. art. I, § 6, cl. 2. The history surrounding the Incompatibility Clause supports the conclusion that the doctrine of separation of powers does not prohibit a legislator from holding a position of public employment in the executive branch.

In 1806, Congressman J. Randolph introduced a resolution into the House of Representatives which provided that "a contractor under the Government of the United States is an officer within the purview and meaning of the [Incompatibility Clause of the] Constitution, and, as such, is incapable of holding a seat in this House." 2 The Founders' Constitution 357. Congressman Randolph introduced the resolution because the Postmaster General had entered into a contract of employment with a person to be a mail carrier and, at the time, the person was also a member of the Senate. Id. at 357-62.

In debating the resolution, many Congressmen indicated that the Incompatibility Clause was the only provision in the Constitution which prohibited

dual officeholding and that, based on the long-accepted meaning of the term "office," a person who held a contract of employment with the executive branch was not an officer of the United States and was not prohibited from serving simultaneously as a member of Congress. Id. After the debate, the House soundly rejected the resolution because many members believed the resolution banning members of Congress from employment with the executive branch contained an interpretation of the Incompatibility Clause which expanded the meaning of the provision well beyond its plain terms. Id.

Shortly thereafter, in 1808, Congress passed a federal law which prohibited an executive officer of the United States from entering into a contract of employment with a member of Congress. Id. at 371. A version of that federal law remains in effect. 18 U.S.C. § 431; 2 Op. U.S. Att'y Gen. 38 (1826) (explaining that the federal law prohibited all contracts of employment between officers of the executive branch and members of Congress).

Based on this historical evidence, it is quite instructive that, a mere 19 years after the United States Constitution was drafted, many members of the House of Representatives expressed the opinion that the Federal Constitution did not prohibit a person who held a contract of employment with the executive branch from serving simultaneously as a member of Congress. This historical evidence

supports the legal conclusion that the doctrine of separation of powers does not prohibit an officer of one department from being employed in another department.

(b) California Legislature.

As discussed previously, because the Framers of the Nevada Constitution modeled its provisions on the California Constitution of 1849, it is appropriate to consider historical evidence and case law from California when interpreting analogous provisions of the Nevada Constitution. Harvey, 117 Nev. at 763. No California court has ever held that the separation-of-powers provision in the California Constitution prohibits a legislator from being a state executive branch employee. Furthermore, the historical evidence from California establishes that during California's first 67 years of statehood, it was a common and accepted practice for California Legislators to hold positions as state executive branch employees until 1916, when the California Constitution was amended to expressly prohibit legislators from being state executive branch employees. See Chenoweth v. Chambers, 164 P. 428, 430 (Cal. Dist. Ct. App. 1917) (explaining that the constitutional amendment "was intended to reach a practice in state administration of many years' standing.").

At the general election held in California on November 7, 1916, one of the ballot questions was Amendment No. 6, which was an initiative measure to amend Cal. Const. art. 4, § 19, to read as follows:

> No senator or member of the assembly shall, during the term for which he shall have been elected, hold or accept any office, trust, or employment under this state; *provided*, that this provision shall not apply to any office filled by election by the people.

1916 Cal. Stat. 54.[2]

In the weeks leading up to the 1916 general election, the proposed constitutional amendment was described in several California newspapers. In an article dated October 28, 1916, the San Francisco Chronicle reported that:

> Some thirty-five or forty legislators in the employ of the State in various capacities are anxiously awaiting the result of the November election, for if the electorate should adopt amendment six on the ballot, known as the ineligibility to office measure, State Controller John S. Chambers probably will refuse to draw warrants in favor of legislators then in the employ of the State.

Measure Alarms Legislators on 'Side' Payroll, S.F. Chron., Oct. 28, 1916, at 5 (*Leg.'s Amicus Br. Exs.* at 00009).

In another article dated October 28, 1916, the Sacramento Bee reported that many California Legislators were employed at that time by executive branch agencies, including the State Lunacy Commission, State Motor Vehicles Department, State Labor Commissioner, State Pharmacy Commission, State

[2] As a result of subsequent constitutional amendments, the substance of the 1916 constitutional amendment is now found in Cal. Const. art. 4, § 13, which provides: "A member of the Legislature may not, during the term for which the member is elected, hold any office or employment under the State other than an elective office."

Pharmacy Board, State Railroad Commission, Folsom State Prison and State Inheritance Tax Commission. Chambers Studies Amendment No. 6: Proposal to Make Legislature Members Ineligible to State Jobs is Perplexing, Sacramento Bee, Oct. 28, 1916, at 9 (*Leg.'s Amicus Br. Exs.* at 00011).

On the ballot at the 1916 general election, the ballot arguments relating to the proposed constitutional amendment stated that "some of our most efficient officials have been men holding appointments under the state, [while] at the same time being members of the legislature." Amendments to Constitution and Proposed Statutes with Arguments Respecting the Same to be Submitted to the Electors of the State of California at the General Election on Tuesday, November 7, 1916 (Cal. State Archives 1916) (*Leg.'s Amicus Br. Exs.* at 00013). Those arguments also stated that:

> Here and there the state, by reason of such a law, will actually suffer, as it frequently happens that the most highly specialized man for work in connection with a certain department of state is a member of the legislature. There are instances of that sort today, where, by the enactment of such a law, the state will lose the services of especially qualified and conscientious officials.
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> * * *
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> Another argument advanced by the proponents of this measure is that members of the legislature who are appointed to state offices receive two salaries, but the records will show that leaves of absence are invariably obtained by such appointees during sessions of the legislature and the actual time of the legislative session is generally about eighty days every two years.

Id.

Shortly after the constitutional amendment was adopted, the California Court of Appeal was called upon to interpret whether the amendment applied to legislators whose terms began before the effective date of the amendment. Chenoweth v. Chambers, 164 P. 428 (Cal. Dist. Ct. App. 1917). The court held that the amendment was intended to apply to those legislators. Id. at 434. In reaching its holding, the court noted that the constitutional amendment "was intended to reach a practice in state administration of many years' standing and which the people believed should be presently eradicated." Id. at 430.

Taken together, these historical accounts establish that before the California Constitution was amended in 1916, California Legislators routinely held positions as state executive branch employees. This is notable because, at that time, the separation-of-powers provision in the California Constitution was nearly identical to the separation-of-powers provision in the Nevada Constitution. Thus, the historical evidence in California supports the legal conclusion that, in the absence of a specific constitutional amendment expressly banning legislators from public employment, the separation-of-powers provision does not prohibit a legislator from holding a position as a state executive branch employee.

(c) Nevada Legislature.

For many decades, state and local government employees have served simultaneously as members of the Nevada Legislature. Affidavit of Guy L. Rocha,

Former Assistant Administrator for Archives and Records of the Division of State Library and Archives of the Department of Cultural Affairs of the State of Nevada (Apr. 29, 2004) (*Leg.'s Amicus Br. Exs.* at 00001-00003). Although there are no official records specifically detailing the occupations of legislators who served in the Legislature during the 1800s and early 1900s, the records that are available indicate that state and local government employees have been serving in the Legislature since at least 1903. Id. The earliest known examples of local government employees who served as members of the Legislature are Mark Richards Averill, who was a member of the Assembly in 1903, and Ruth Averill, who was a member of the Assembly in 1921. Id. The earliest known examples of state executive branch employees who served as members of the Legislature are August C. Frohlich, who was a member of the Assembly in 1931, and Harry E. Hazard, who was a member of the Assembly in 1939. Id.

Based on research conducted by the Legislative Counsel Bureau covering the period from 1967 to 2019, state and local government employees have served as members of the Legislature during each regular session convened over the past 50-plus years. See Nevada Legislative Manual (LCB 1967-2019); Affidavit of Donald O. Williams, Former Research Director of the Research Division of the Legislative Counsel Bureau of the State of Nevada (Apr. 28, 2004) (*Leg.'s Amicus Br. Exs.* at 00004-00005).

Thus, the historical evidence from the Nevada Legislature supports the legal conclusion that the separation-of-powers provision does not prohibit a legislator from holding a position as a state executive branch employee or a local government employee. Under well-established rules of constitutional construction, this historical evidence represents a long-standing interpretation of the separation-of-powers provision by the Legislature which must be given great weight.

When interpreting a constitutional provision, this Court "looks to the Legislature's contemporaneous actions in interpreting constitutional language to carry out the intent of the framers of Nevada's Constitution." Halverson v. Miller, 124 Nev. 484, 488-89 (2008). Because the Legislature's interpretation of a constitutional provision is "likely reflective of the mindset of the framers," such a construction "is a safe guide to its proper interpretation and creates a strong presumption that the interpretation was proper." Id. (internal quotation marks omitted); Hendel v. Weaver, 77 Nev. 16, 20 (1961); State ex rel. Herr v. Laxalt, 84 Nev. 382, 387 (1968); Tam v. Colton, 94 Nev. 452, 458 (1978).

Furthermore, when the Legislature's construction is consistently followed over a considerable period of time, that construction is treated as a long-standing interpretation of the constitutional provision, and such an interpretation is given great weight and deference by this Court, especially when the constitutional provision involves legislative operations or procedures. State ex rel. Coffin v.

Howell, 26 Nev. 93, 104-05 (1901); State ex rel. Torreyson v. Grey, 21 Nev. 378, 387-90 (1893) (Bigelow, J., concurring); State ex rel. Cardwell v. Glenn, 18 Nev. 34, 43-46 (1883). As a result, "[a] long continued and contemporaneous construction placed by the coordinate branch of government upon a matter of procedure in such coordinate branch of government should be given great weight." Howell, 26 Nev. at 104.

The weight given to the Legislature's construction of a constitutional provision involving legislative operations or procedures is of particular force when the meaning of the constitutional provision is subject to any uncertainty, ambiguity or doubt. See, e.g., Nev. Mining Ass'n v. Erdoes, 117 Nev. 531, 539-40 (2001). Under such circumstances, this Court has stated that "although the [interpretation] of the legislature is not final, its decision upon this point is to be treated by the courts with the consideration which is due to a co-ordinate department of the state government, and in case of a reasonable doubt as to the meaning of the words, the construction given to them by the legislature ought to prevail." Dayton Gold & Silver Mining Co. v. Seawell, 11 Nev. 394, 399-400 (1876).

This Court has also stated that when the meaning of a constitutional provision involving legislative operations or procedures is subject to any uncertainty, ambiguity or doubt, the Legislature may rely on an opinion of LCB Legal which interprets the constitutional provision, and "the Legislature is entitled to deference

in its counseled selection of this interpretation." Nev. Mining Ass'n, 117 Nev. at 540. For example, when the meaning of the term "midnight Pacific standard time," as formerly used in the constitutional provision limiting legislative sessions to 120 days, was subject to uncertainty, ambiguity and doubt following the 2001 regular session, this Court explained that the Legislature's interpretation of the constitutional provision was entitled to deference because "[i]n choosing this interpretation, the Legislature acted on Legislative Counsel's opinion that this is a reasonable construction of the provision. We agree that it is, and the Legislature is entitled to deference in its counseled selection of this interpretation." Id.

With regard to state and local government employees serving as legislators, the Legislature has chosen to follow LCB Legal's long-standing interpretation of the separation-of-powers provision for decades, and it has acted on LCB Legal's opinion that this is a reasonable construction of the separation-of-powers provision. (*Plumlee App. V1:198-230; Molen App. V1:184-216.*) As a result, "the Legislature is entitled to deference in its counseled selection of this interpretation." Nev. Mining Ass'n, 117 Nev. at 540.

Therefore, under the rules of constitutional construction, the Legislature's long-standing interpretation of the separation-of-powers provision "should be given great weight." Howell, 26 Nev. at 104 ("A long continued and contemporaneous construction placed by the coordinate branch of government

upon a matter of procedure in such coordinate branch of government should be given great weight."). Furthermore, to the extent there is any ambiguity, uncertainty or doubt concerning the interpretation of the separation-of-powers provision, the interpretation given to it by the Legislature "ought to prevail." Dayton Gold & Silver Mining, 11 Nev. at 400 ("[I]n case of a reasonable doubt as to the meaning of the words, the construction given to them by the legislature ought to prevail.").

(2) Case law from other jurisdictions.

Several courts from other jurisdictions have decided cases involving the legal issue of whether a state constitutional separation-of-powers provision prohibits legislators from being state or local government employees. However, the cases from the other jurisdictions are in conflict on this issue.

In State ex rel. Barney v. Hawkins, 257 P. 411, 412 (Mont. 1927), an action was brought to enjoin the state from paying Grant Reed his salary as an auditor for the state board of railroad commissioners while he served as a member of the state legislature. The complaint alleged that Reed was violating the separation-of-powers provision in the state constitution because he was occupying a position in the executive branch of state government at the same time that he was serving as a member of the state legislature. Id. at 412. At the time, the separation-of-powers provision in the Montana Constitution provided that "no person or collection of

persons charged with the exercise of powers properly belonging to one of these departments shall exercise any powers properly belonging to either of the others." Id. at 413. The complaint also alleged that Reed was violating Section 7 of Article 5 of the Montana Constitution, which provided that "[n]o senator or representative shall, during the term for which he shall have been elected, be appointed to any civil office under the State." Id. The Montana Supreme Court framed the issue it was deciding as follows:

> The only question for us to decide is—is the position of auditor, held by Grant Reed, a civil office(?); for, if it be a civil office, he is holding it unlawfully; and, if it be not a civil office, he is not an officer, but only an employee, subject to the direction of others, and he has no power in connection with his position, and is not exercising any powers belonging to the executive or judicial department of the state government. In the latter event, Article IV of the Constitution [separation of powers] is not involved.

Id.

After considering voluminous case law concerning the definition of a "civil office," including cases from Nevada that will be discussed below, the Montana Supreme Court determined that Reed was not exercising any portion of the sovereign power of state government when he was acting as an auditor for the board of railroad commissioners and that, therefore, Reed did not occupy a civil office. Id. at 418. Rather, the court found that Reed was simply an employee "holding a position of employment, terminable at the pleasure of the employing power, the Board of Railroad Commissioners." Id. Thus, because Reed did not

occupy a civil office, the court concluded that he had "no powers properly belonging to the judicial or executive department of the state government, for he is wholly subject to the power of the board, and, having no powers, he can exercise none; and, therefore, his appointment was not violative of Article IV of the Constitution [separation of powers]." Id.

The reasoning of the Montana Supreme Court was followed by the New Mexico Court of Appeals in State ex rel. Stratton v. Roswell Ind. Schools, 806 P.2d 1085, 1094-95 (N.M. Ct. App. 1991). In Stratton, the Attorney General argued that two members of the state legislature were violating the separation-of-powers provision in the state constitution because the legislators also occupied positions as a teacher and an administrator in local public school districts. Id. at 1088. At the time, the separation-of-powers provision in the New Mexico Constitution was identical to the separation-of-powers provision interpreted by the Montana Supreme Court in Hawkins: "no person or collection of persons charged with the exercise of powers properly belonging to one of these departments, shall exercise any powers properly belonging to either of the others[.]" Id. at 1094.

Like the Montana Supreme Court, the New Mexico Court of Appeals determined that a violation of the separation-of-powers provision could occur only if the members of the legislature were invested in their positions as school teacher and school administrator with sovereign power that properly belonged to another

branch of government. Id. Because only public officers exercised sovereign power, the court determined that the separation-of-powers provision "applies [only] to public officers, not employees, in the different branches of government." Id. at 1095. After considering the nature of the public school positions, the court concluded that "[p]ublic school instructors and administrators are not 'public officials.' They do not establish policy for the local school districts or for the state department of education." Id. at 1094. Instead, "[a] school teacher employed by a common school district is [an] 'employee' not [an] 'officer', and the relationship between school teacher and school board is contractual only." Id. at 1095 (citing Brown v. Bowling, 240 P.2d 846, 849 (N.M. 1952)). Therefore, because the school teacher and school administrator were not public officers, but simply public employees, the court held that they were not barred by the separation-of-powers provision from being members of the legislature. Id.

The Colorado Supreme Court has also adopted this view. Hudson v. Annear, 75 P.2d 587, 588-89 (Colo. 1938) (holding that a position as chief field deputy for the state income tax department was not a civil office, but a position of public employment, and that therefore a legislator could occupy such a position without violating Colorado's separation-of-powers provision). See also Jenkins v. Bishop, 589 P.2d 770, 771-72 (Utah 1978) (Crockett, J., concurring in a memorandum per curiam opinion and arguing that Utah's separation-of-powers provision would not

prohibit a legislator from also being a public school teacher); State v. Osloond, 805 P.2d 263, 264-67 (Wash. Ct. App. 1991) (holding that a legislator who served as a judge pro tempore in a criminal case did not violate the principle of separation of powers as recognized in Washington, which does not have an express separation-of-powers provision in its constitution).

In stark contrast to the foregoing court decisions are several court decisions from Indiana, Oregon and Nebraska. The court decisions from Indiana and Oregon are especially notable because the language in the separation-of-powers provisions of those states more closely resembles the language in Nevada's separation-of-powers provision.

In State ex rel. Black v. Burch, 80 N.E.2d 294 (Ind. 1948), actions were brought to prevent the state from paying four members of the state legislature salaries that they had earned while occupying positions with various state commissions and boards in the executive branch of government. After reviewing the relevant statutes relating to these positions, the court held that the legislators' positions in the executive branch "are not public offices, nor do they in their respective positions, perform any official functions in carrying out their duties in these respective jobs; they were acting merely as employees of the respective commission or boards by whom they were hired." Id. at 299. In other words, "[i]n performing their respective jobs, none of these [legislators] were vested with any

functions pertaining to sovereignty." Id. Having determined that the legislators occupied positions of public employment, rather than public offices, the court's next task was to determine whether such public employment in another branch of state government violated Indiana's separation-of-powers provision, which provided at the time that "no person, charged with official duties under one of these departments[,] shall exercise any of the functions of another[.]" Id. The court framed the issue as follows: "[I]t now becomes necessary for this Court to determine what is the meaning of the phrase 'any of the functions of another,' as set out in the above quoted section of the Constitution." Id.

In interpreting the use of the term "functions," the court noted that the term "power" had been used instead of the term "functions" in the original draft of the separation-of-powers provision. Id. at 302. However, the term "functions" was inserted in the final version of the provision that was adopted by the drafters of the constitution. Id. The court then stated that "[i]t would seem to us that these two words are interchangeable but, if there is any distinction, the term 'functions' would denote a broader field of activities than the word 'power.'" Id. The court also quoted extensively from the decision in Saint v. Allen, 126 So. 548 (La. 1930), in which the Louisiana Supreme Court held that a member of the state legislature was prohibited from being employed by the executive department of state government pursuant to the separation-of-powers provision in the Louisiana

Constitution, which provided at the time that "[no] person or collection of persons holding office in one of [the departments], shall exercise power properly belonging to either of the others[.]" Saint, 126 So. at 550. In particular, the Louisiana Supreme Court held that:

> It is not necessary, to constitute a violation of the article, that a person should hold office in two departments of government. It is sufficient if he is an officer in one department and at the same time is employed to perform duties, or exercise power, belonging to another department. The words "exercise power," speaking officially, mean perform duties or functions.

Id. at 555.

Based on the Saint case and other court decisions, the Indiana Supreme Court in Burch concluded that:

> In view of the fact that it is obvious that the purpose of all these separation of powers provisions of Federal and State Constitutions is to rid each of the separate departments of government from any control or influence by either of the other departments, and that this object can be obtained only if § 1 of Art. 3 of the Indiana Constitution is read exactly as it is written, we are constrained to follow the New York and Louisiana cases above cited. If persons charged with official duties in one department may be employed to perform duties, official or otherwise, in another department the door is opened to influence and control by the employing department. We also think that these two cases are logical in holding that an employee of an officer, even though he be performing a duty not involving the exercise of sovereignty, may be and is, executing one of the functions of that public office, and this applies to the cases before us.

80 N.E.2d at 302.

The reasoning of the Indiana Supreme Court was followed by the Oregon Supreme Court in Monaghan v. School Dist. No. 1, 315 P.2d 797 (Or. 1957), *superseded by* Or. Const. art. XV, § 8. In that case, the court was asked "to determine whether or not [a state legislator, Mr. Monaghan,] is eligible for employment as a teacher in the public schools of this state while he holds a position as a member of the [state] House of Representatives." Id. at 799. At that time, the separation-of-powers provision in the Oregon Constitution provided that "no person charged with official duties under one of these departments, shall exercise any of the functions of another[.]" Id. at 800. Mr. Monaghan argued that the term "official duties" was synonymous with the term "functions," and that therefore the separation-of-powers provision applied only to a person holding a public office in more than one department of state government and not to a person merely occupying a position of public employment. Id. at 801. The court flatly rejected this argument:

> It is not difficult to define the word "official duties." As a general rule, and as we think the phrase is used in the section of the constitution, they are the duties or obligations imposed by law on a public officer. 67 C.J.S. Officers § 110, p. 396; 28 C.J.S. Duty, p. 597. There can be no doubt that Mr. Monaghan, as a legislator, is "charged with official duties." But the exercise of the "functions" of a department of government gives to the word "functions" a broader sweep and more comprehensive meaning than "official duties." It contemplates a wider range of the exercise of functions including and beyond those which may be comprehended in the "official duties" of any one officer.

> It may appear to some as a construction of extreme precaution, but we think that it expresses the considered judgment and deliberation of the Oregon Convention to give greater force to the concepts of separation by thus barring any official in one department of government of the opportunity to serve any other department, even as an employee. Thus, to use the language of O'Donoghue v. United States, supra [289 U.S. 516], in a sense, his role as a teacher subjugates the department of his employment to the possibility of being "controlled by, or subjected, *directly or indirectly*, to the coercive influence of" the other department wherein he has official duties and vice versa. (Emphasis supplied.) In the Burch case, supra [80 N.E.2d 294, 302], when considering the word "functions" in its similar setting in the Indiana Constitution, the court observed that the term "functions" denotes a broader field of activities than the word "power."
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> Our conclusion is that the word "functions" embodies a definite meaning with no contradiction of the phrase "official duties," that is, he who exercises the functions of another department of government may be either an official or an employee.

Id. at 802-04. Although acknowledging that a public school teacher was not a public officer, the court concluded, nevertheless, that a public school teacher was a public employee who was exercising one of the functions of the executive department of state government. Id. at 804-06. Therefore, the court held that Mr. Monaghan could not be employed as a public school teacher while he held a position as a member of the state legislature. Id.; see also Jenkins, 589 P.2d at 773-77 (Ellett, C.J., concurring and dissenting in a memorandum per curiam opinion and arguing that Utah's separation-of-powers provision would prohibit a legislator from also being a public school teacher).

After the decision in Monaghan, the Oregon Constitution was amended to permit legislators to be employed by the State Board of Higher Education or to be a member of any school board or an employee thereof. In re Sawyer, 594 P.2d 805, 808 & n.7 (Or. 1979). However, the amendment did not apply to other branches of state government. Id. In Sawyer, the Oregon Supreme Court was asked whether the state's separation-of-powers provision prohibited a judge from being regularly employed as a part-time professor at a state-funded college. The court answered in the affirmative, stating that:

> It is true that Judge Sawyer is not a full-time teacher. In our opinion, however, a part-time teacher regularly employed for compensation by a state-funded college to perform the duties of a teacher also performs "functions" of the executive department of government within the meaning of Article III, § 1, as construed by this court in Monaghan.

Id. at 809. The court noted, however, that "[w]e do not undertake to decide in this case whether the same result would necessarily follow in the event that a judge should occasionally, but not regularly, lecture at a state-funded college, but without other responsibilities as a teacher." Id. at 809 n.8.

Finally, in State ex rel. Spire v. Conway, 472 N.W.2d 403 (Neb. 1991), the Attorney General brought an action claiming that the separation-of-powers provision of the Nebraska Constitution prohibited a person from occupying a position as an assistant professor at a state-funded college while simultaneously serving as a member of the state legislature. At the time, Nebraska's separation-of-

powers provision provided that "no person or collection of persons being one of these departments, shall exercise any power properly belonging to either of the others." Id. at 404.

Unlike most other courts, the Nebraska Supreme Court determined that, under certain circumstances, an assistant professor at a public college could be considered to be holding a public office. Id. at 406-07. However, despite this determination, the court found that the public officer-public employee distinction was not "determinative of the [separation-of-powers] issue now under consideration, for article II does not speak in terms of officers or employees; it speaks of persons 'being one of' the branches of government." Id. at 408. Rather, the court found that "[t]he unusual expression 'being one of these departments' is not clear; accordingly, construction is necessary. One thing that is clear, however, is that 'being one of these departments' is not intended to be synonymous with 'exercising any power of' a branch." Id. at 409.

After considering the text and history of the Nebraska Constitution, the court determined that the provision should be construed to read, "no person or collection of persons being [a member of] one of these departments." Id. at 412. Based on this construction, the court held that the separation-of-powers provision "prohibits one who exercises the power of one branch--that is, an officer in the broader sense of the word--from being a member--that is, either an officer or employee--of

another branch." Id. The court then applied this construction to conclude that an assistant professor at a state college is a member of the executive branch and that a legislator, therefore, could not occupy such a position during his term in the legislature. Id. at 414-16. Specifically, the court held that:

> Although we have neither been directed to nor found any case explicitly stating that the state colleges are part of the executive branch, there are but three branches, and the state colleges clearly are not part of the judicial or legislative branches.
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> * * *
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> The Board of Regents of the University of Nebraska performs a function for the university which is identical to that of the Board of Trustees of the Nebraska State Colleges. While the Board of Regents is an "independent body charged with the power and responsibility to manage and operate the University," it is, nevertheless, an administrative or executive agency of the state. As the regents are part of the executive branch, so, too, are the trustees.
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> Since the Board of Trustees, which governs the state colleges, is part of the executive branch, those who work for those colleges likewise are members of that branch. Respondent, as an assistant professor at the college, is thus a member of the executive branch within the meaning of article II.
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> * * *
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> Respondent is therefore a member of one branch of government, the executive, exercising the powers of another, the legislative, and, as a consequence, is in violation of article II of the state Constitution.

Id. at 414-15 (citations omitted).

This Court should reject the reasoning of the courts of Indiana, Oregon and Nebraska. Instead, this Court should follow the reasoning of the courts of Montana, New Mexico and Colorado and conclude that the separation-of-powers

provision does not prohibit legislators from holding positions as state executive branch employees or local government employees. This reasonable interpretation of the separation-of-powers provision is supported by the text and structure of the Nevada Constitution and by the concept of the "citizen-legislator," which is a concept that is the cornerstone of an effective, responsive and qualified part-time legislative body.

(3) Interpretation of Nevada's separation-of-powers provision.

It is a fundamental rule of constitutional construction that the Nevada Constitution must be interpreted in its entirety and that each part of the Constitution must be given effect. State ex rel. Herr v. Laxalt, 84 Nev. 382, 386 (1968). Therefore, the separation-of-powers provision in the Nevada Constitution cannot be read in isolation, but rather must be construed in accordance with the Nevada Constitution as a whole. Thus, the meaning of the phrases "no persons charged with the exercise of powers properly belonging to one of these departments" and "shall exercise any functions, appertaining to either of the others" cannot be based on a bare reading of the separation-of-powers provision alone. Rather, these phrases must be read in light of the other parts of the Nevada Constitution which specifically enumerate the persons who are to be charged with exercising the powers and functions of state government. As stated by this Court:

> [Article 3, Section 1] divides the state government into three great departments, and directs that "no person charged with the exercise of

> powers properly belonging to one of these departments shall exercise any functions appertaining to either of the others, except in the cases herein expressly directed or permitted." As will be noticed, it is the state government as created by the constitution which is divided into departments. **These departments are each charged by other parts of the constitution with certain duties and functions, and it is to these that the prohibition just quoted refers**.

Sawyer v. Dooley, 21 Nev. 390, 396 (1893) (emphasis added).

According to this Court, the prohibition in Article 3, Section 1 applies only to persons who are charged by other parts of the Nevada Constitution with exercising powers or duties belonging to one of the three departments of state government. In other words, for the purposes of the separation-of-powers provision, the officers who are prohibited from exercising functions appertaining to another department of state government are limited to those officers in the legislative, executive and judicial departments who are expressly given powers and duties under the Nevada Constitution.

This construction of the separation-of-powers provision in the Nevada Constitution is consistent with the Utah Supreme Court's construction of an identical separation-of-powers provision in Section 1 of Article V of the Utah Constitution. As to that provision, the Utah Supreme Court has held:

> [T]he prohibition of section 1, is directed to a "person" charged with the exercise of powers properly belonging to the "executive department." The Constitution further specifies in Article VII, Section 1, the persons of whom the Executive Department shall consist. Thus it is the "persons" specified in Article VII, Section 1, who are charged with the exercise of powers belonging to the Executive Department, who are

> prohibited from exercising any functions appertaining to the legislative and judicial departments.

State v. Gallion, 572 P.2d 683, 687 (Utah 1977); accord Robinson v. State, 20 P.3d 396, 399-400 (Utah 2001).

Consequently, a constitutional officer is an officer of the legislative, executive or judicial department who is "charged with the exercise of powers properly belonging to one of these departments." Nev. Const. art. 3, § 1; see also People v. Provines, 34 Cal. 520 (1868). No other person may exercise the powers given to a constitutional officer by the Nevada Constitution. As a result, when the Nevada Constitution grants powers to a particular constitutional officer, "their exercise and discharge by any other officer or department are forbidden by a necessary and unavoidable implication. Every positive delegation of power to one officer or department implies a negation of its exercise by any other officer, department, or person." King v. Bd. of Regents, 65 Nev. 533, 556 (1948) (quoting State ex rel. Crawford v. Hastings, 10 Wis. 525, 531 (1860)). Thus, the constitutional powers of each department may be exercised only by the constitutional officers from that department to whom the powers have been assigned.

Even though it is only the constitutional officers of each department who may exercise the constitutional powers given to that department, the Framers realized that each department would also be charged with the exercise of certain nonconstitutional functions. Accordingly, the Framers provided for the creation by

statute of nonconstitutional officers who could be charged by the Legislature with the exercise of nonconstitutional functions. See Nev. Const. art. 15, §§ 2, 3, 10 and 11. As observed by this Court:

> [T]he framers of the constitution decided for themselves that the officers named [in the constitution] were necessary and should be elected by the people; but they left it to the legislature to decide as to the necessity of additional ones, whether state, county, or township. . . . The duty of deciding as to the necessity of any office, other than those named in the constitution, is placed upon the legislature[.]

State ex rel. Perry v. Arrington, 18 Nev. 412, 417-18 (1884). As a result, the Nevada Constitution recognizes two distinct types of offices, "one which is created by the constitution itself, and the other which is created by statute." State ex rel. Josephs v. Douglass, 33 Nev. 82, 93 (1910) (quoting People v. Bollam, 54 N.E. 1032, 1033 (Ill. 1899)).

Like the framers of other state constitutions, the Framers of the Nevada Constitution could have simply stated that a constitutional officer shall not exercise any "powers" appertaining to another department of state government. However, the Framers of the Nevada Constitution provided that a constitutional officer shall not exercise any "functions" appertaining to another department of state government. The Framers used the term "functions" because they realized that, in each department of state government, the functions of the department would be performed by constitutional officers **and** by nonconstitutional officers. Thus, had the Framers used only the term "powers" in Article 3, Section 1, the separation-of-

powers provision would have been too restrictive in its meaning, for it may have been construed simply to mean that a constitutional officer in one department could not exercise the powers entrusted to the constitutional officers in another department. To avoid this restrictive construction, the Framers used the term "functions" to ensure that a constitutional officer in one department could not perform the **sovereign functions** entrusted to both constitutional officers **and** nonconstitutional officers in another department.

Therefore, by using the term "functions," the Framers intended to prohibit a constitutional officer in one department from holding constitutional offices or nonconstitutional offices in another department, because persons holding constitutional or nonconstitutional offices in another department exercise the **sovereign functions** of state government. Because public employees do not exercise the sovereign functions of state government, the Framers did not intend to prohibit a constitutional officer from holding a position of public employment in another department of state government. This conclusion is based on a well-established body of case law which holds that public officers are the only persons who exercise the sovereign functions of state government and that public employees do not exercise such sovereign functions.

In State ex rel. Kendall v. Cole, 38 Nev. 215 (1915), this Court discussed extensively the attributes of a public office, and this Court also cited numerous

cases that had been decided in other jurisdictions well before the Nevada Constitution was drafted in 1864. See Bradford v. Justices of Inferior Ct., 33 Ga. 332 (1862); Shelby v. Alcorn, 36 Miss. 273 (1858); see also Annotation, Offices Within Constitutional or Statutory Provisions Against Holding Two Offices, 1917A L.R.A. 231 (1917). From these cases, this Court concluded that the single most important characteristic of a public office is that the person who holds such a position is "clothed with some portion of the sovereign functions of government." Cole, 38 Nev. at 229 (quoting Attorney-General v. McCaughey, 43 A. 646 (R.I. 1899)). In later cases, this Court expressed a similar view:

> The nature of a public office as distinguished from mere employment is the subject of a considerable body of authority, and many criteria of determination are suggested by the courts. Upon one point at least the authorities uniformly appear to concur. A public office is distinguishable from other forms of employment in that its holder has by the sovereign been invested with some portion of the sovereign functions of government.

State ex rel. Mathews v. Murray, 70 Nev. 116, 120-21 (1953) (citation omitted). Simply put, "the sovereign function of government is not delegated to a mere employee." Eads v. City of Boulder City, 94 Nev. 735, 737 (1978).

Thus, in each department of state government, only two types of persons are empowered to exercise the sovereign functions of that department, those who hold constitutional offices and those who hold nonconstitutional offices. This is how the Framers of the Nevada Constitution understood the structure and organizational

framework of each department of state government, and this is why the Framers used the word "functions" in Article 3, Section 1—to prohibit a constitutional officer in one department of state government from holding any other **public office** that was empowered, either by the constitution or statute, to exercise the sovereign functions of another department of state government. Because public employees do not exercise the sovereign functions of state government, a broader construction of the term "functions" to include public employees would not be consistent with the manner in which the sovereign functions of government are exercised in Nevada.

Moreover, a broader construction of the term "functions" to include public employees would run counter to "the constituency concept of our legislature in this state, which can accurately be described as a citizens' legislature." Stratton, 806 P.2d at 1093. The Framers of the Nevada Constitution realized that "[i]n a sparsely populated state . . . it would prove difficult, if not impossible, to have a conflict-free legislature." Id. In addition, any potential conflicts of interests experienced by a legislator who is also a public employee in another branch of state government are no greater than those conflicts experienced by other members of the Legislature. As stated by Justice Crockett of the Utah Supreme Court:

> In our democratic system, the legislature is intended to represent the people: that is, to be made up from the general public representing a wide spectrum of the citizenry. It is not to be doubted that legislators

> from the ranks of education are affected by the interests of that calling. But all other legislators also have interests. No one lives in a vacuum.

Jenkins, 589 P.2d at 771 (Crockett, J., concurring).

Finally, it is clear that the Framers intended the Nevada Legislature to be a part-time legislative body. In particular, the Framers provided for biennial legislative sessions in Article 4, Section 2 of the Nevada Constitution, and they originally limited those biennial sessions to 60 days in Article 4, Section 29. Although Article 4, Section 29 was repealed in 1958, the fact that the citizens of Nevada voted in 1998 to limit biennial sessions to 120 days is a clear indication that the citizens of Nevada, like the Framers, want the Nevada Legislature to be a part-time legislative body.

The economic reality of a part-time Legislature is that most legislators must continue to be employed in other occupations on a full-time or part-time basis during their terms of legislative service. This is as true today as it was when the Nevada Constitution was originally adopted. Given this economic reality, it is likely that the Framers fully expected that public employees, like other citizens, would be members of the Legislature, especially since some of the most qualified and dedicated citizens of the community often occupy positions of government employment. As stated by Chief Justice Hastings of the Nebraska Supreme Court in his dissent in Conway:

> A senatorial position in the Nebraska Legislature is a part-time position. Therefore, it is not uncommon for senators to have additional sources of income and careers. An uncompromising interpretation of the separation of powers would inhibit the ability of a part-time legislature to attract qualified members.

472 N.W.2d at 417 (Hastings, C.J., dissenting). Therefore, construing the term "functions" in Article 3, Section 1 to prohibit a member of the Nevada Legislature from occupying a position of public employment would not comport with the concept of the "citizen-legislator" that was undoubtedly envisioned by the Framers of the Nevada Constitution.

Based on this construction of the separation-of-powers provision, if a legislator holds another position in state government, the deciding issue under the Nevada Constitution should be whether the other position is a public office or a position of public employment. If the other position is a public office, then the legislator would be prohibited by the separation-of-powers provision from holding the public office. However, if the other position is merely a position of public employment, then the legislator would not be prohibited by the separation-of-powers provision from holding the position of public employment.

As discussed previously, this Court has addressed the distinction between a public officer and a public employee on many occasions. See State ex rel. Kendall v. Cole, 38 Nev. 215 (1915); State ex rel. Mathews v. Murray, 70 Nev. 116 (1953); Mullen v. Clark Cnty., 89 Nev. 308 (1973); Eads v. City of Boulder City, 94 Nev.

735, 737 (1978). As recently as 2013, this Court reaffirmed that "as is clear from our jurisprudence, officers are fundamentally different from employees." City of Sparks v. Sparks Mun. Ct., 129 Nev. 348, 361 (2013). In one of its more recent cases on the issue, this Court restated the two fundamental principles that distinguish a public officer from a public employee. Univ. & Cmty. Coll. Sys. v. DR Partners, 117 Nev. 195, 200-06 (2001) (holding that, for the purposes of the Open Meeting Law, the position of community college president is not a public office).

The first fundamental principle is that a public officer must serve in a position created by law, not one created by mere administrative authority and discretion. Id. The second fundamental principle is that the duties of a public officer must be fixed by law and must involve an exercise of the sovereign functions of the state, such as formulating state policy. Id. Both fundamental principles must be satisfied before a person is deemed a public officer. See Mullen v. Clark Cnty., 89 Nev. 308, 311 (1973). Thus, if a position is created by mere administrative authority and discretion or if the person serving in the position is subordinate and responsible to higher-ranking policymakers, the person is not a public officer but is simply a public employee. These fundamental principles are best illustrated by the cases of State ex rel. Mathews v. Murray, 70 Nev. 116 (1953), and Univ. & Cmty. Coll. Sys. v. DR Partners, 117 Nev. 195 (2001).

In Mathews, the defendant accepted the position of Director of the Drivers License Division of the Public Service Commission of Nevada. 70 Nev. at 120. The Attorney General brought an original action in quo warranto in this Court to oust the defendant from that position because when the defendant accepted his position in the executive branch he was also serving as a State Senator. Id. The Attorney General argued that the defendant acted in violation of the separation-of-powers provision of the Nevada Constitution. Id. Before this Court could determine the constitutional issue, it needed to have jurisdiction over the original action in quo warranto. Id. Because an original action in quo warranto could lie only if the defendant's position in the executive branch was a public office, the issue before this Court was whether the position of Director of the Drivers License Division was a public office or a position of public employment. Id. This Court held that the Director's position was a position of public employment, not a public office, and thus this Court dismissed the original action for lack of jurisdiction without reaching the constitutional issue. Id. at 124.

In concluding that the Director's position was a position of public employment, this Court reviewed the statutes controlling the state department under which the Drivers License Division operated. Id. at 122. This Court found that the position of Director of the Drivers License Division was created by administrative authority and discretion, not by statute, and that the position was

wholly subordinate and responsible to the administrator of the department. Id. at 122-23. In this regard, this Court stated:

> Nowhere in either act is any reference made to the "drivers license division" of the department or to a director thereof. Nowhere are duties imposed or authority granted save to the department and to its administrator. It appears clear that the position of director was created not by the act but by the administrator and may as easily by him be discontinued or destroyed. It appears clear that the duties of the position are fixed not by law but by the administrator and may as easily by him be modified from time to time. No tenure attaches to the position save as may be fixed from time to time by the administrator. The director, then, is wholly subordinate and responsible to the administrator. It cannot, then, be said that that position has been created by law; or that the duties which attach to it have been prescribed by law; or that, subject only to the provisions of law, the holder of such position is independent in his exercise of such duties. It cannot, then, be said that he has been invested with any portion of the sovereign functions of the government.

Id. at 122-23.

In DR Partners, this Court was asked to determine whether the position of community college president was a public office for the purposes of the Open Meeting Law, which is codified in chapter 241 of NRS. Although the Open Meeting Law does not define the term "public office" or "public officer," this Court found that the definition of "public officer" in chapter 281 of NRS was applicable because "[t]he Legislature's statutory definition of a 'public officer' incorporates the fundamental criteria we applied in Mathews and Kendall, and is in harmony with those cases, as we subsequently confirmed in Mullen v. Clark County." 117 Nev. at 201.

When this Court applied the fundamental criteria from Mathews and Kendall and the statutory definition from chapter 281 of NRS to the position of community college president, this Court concluded that the position of community college president was not a public office. DR Partners, 117 Nev. at 202-06. In reaching this conclusion, this Court first found that the position of community college president is not created by the Nevada Constitution or statute, but is created by administrative authority and discretion of the Board of Regents. Id. Second, this Court found that a community college president does not exercise any of the sovereign functions of the state. Id. Instead, a community college president is wholly subordinate to the Board of Regents and simply implements policies made by higher-ranking state officials. Id. As explained by this Court:

> The community college president holds an important position, but the sovereign functions of higher education repose in the Board of Regents, and to a lesser degree in the chancellor, and not at all in the community college president.
>
> * * *
>
> Because the president is wholly subordinate and responsible to the Board, and can only implement policies established by the Board, we conclude that the community college president does not meet the statutory requisites of a public officer set forth in NRS 281.005(1)(b).

Id. at 205-06.

Accordingly, state executive branch employees and local government employees are not public officers because they do not exercise any sovereign functions appertaining to the executive branch of state government. As a result,

the separation-of-powers provision does not prohibit legislators from holding positions of public employment because persons who hold such positions of public employment do not exercise any sovereign functions appertaining to the state executive branch. Therefore, even if the separation-of-powers provision is interpreted to apply to local governments, the provision still would not prohibit legislators from holding positions of public employment as deputy district attorneys with county governments because deputy district attorneys are county employees who do not exercise sovereign functions belonging to the state executive branch when they participate in criminal prosecutions.

CONCLUSION

Based on the foregoing, the Legislature asks this Court to issue a writ to Respondents, the Eighth Judicial District Court and the Honorable Richard Scotti, District Judge, reversing and vacating the district court's decision in these cases because the decision was based on a clearly erroneous interpretation and application of constitutional and statutory law.

DATED: This **19th** day of March, 2021.

By: /s/ Kevin C. Powers

KEVIN C. POWERS, General Counsel
Nevada Bar No. 6781
LEGISLATIVE COUNSEL BUREAU, LEGAL DIVISION
401 S. Carson St.
Carson City, NV 89701
Tel: (775) 684-6830; Fax: (775) 684-6761; Email: kpowers@lcb.state.nv.us
Attorneys for Legislature of the State of Nevada

CERTIFICATE OF COMPLIANCE

1. We hereby certify that this amicus curiae brief complies with the formatting requirements of NRAP 21(d), NRAP 32(a)(4) and NRAP 32(c)(2), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Office Word 2010 in 14-point font and Times New Roman type.

2. We hereby certify that, except as explained below, this amicus curiae brief complies with the type-volume limitations of NRAP 21(d) and NRAP 32(a)(7) because, excluding the parts of this brief exempted by NRAP 32(a)(7)(C), this brief is proportionately spaced, has a typeface of 14 points or more, and contains **13,836** words, which exceeds the type-volume limitation of 7,000 words. **We hereby certify that this brief complies with the Court's order entered on March 15, 2021, which granted, in part, the Legislature's motion to exceed the type-volume limitation for this brief pursuant to NRAP 21(d) and NRAP 32(a)(7)(D).**

3. We hereby certify that we have read this amicus curiae brief, and to the best of our knowledge, information and belief, it is not frivolous or interposed for any improper purpose. We further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1),

which requires every assertion in this brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. We understand that we may be subject to sanctions in the event that this brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED: This **19th** day of March, 2021.

By: /s/ Kevin C. Powers

KEVIN C. POWERS
General Counsel
Nevada Bar No. 6781
LEGISLATIVE COUNSEL BUREAU, LEGAL DIVISION
401 S. Carson St.
Carson City, NV 89701
Tel: (775) 684-6830; Fax: (775) 684-6761
Email: kpowers@lcb.state.nv.us
Attorneys for Legislature of the State of Nevada

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Nevada Legislative Counsel Bureau, Legal Division, and that on the **19th** day of March, 2021, pursuant to NRAP 25 and NEFCR 9, I filed and served a true and correct copy of Nevada Legislature's Amicus Curiae Brief Supporting Reversal of the District Court's Interpretation and Application of the Separation-of-Powers Provision in Article 3, Section 1 of the Nevada Constitution, by means of the Nevada Supreme Court's electronic filing system, directed to:

STEVEN B. WOLFSON
Clark County District Attorney
ALEXANDER CHEN
Chief Deputy District Attorney
OFFICE OF THE CLARK COUNTY DISTRICT ATTORNEY
200 Lewis Ave.
Las Vegas, NV 89155
Alexander.Chen@clarkcountyda.com
Attorneys for Petitioner
State of Nevada

AARON D. FORD
Attorney General
OFFICE OF THE ATTORNEY GENERAL
100 N. Carson St.
Carson City, NV 89701
Attorneys for Petitioner
State of Nevada

CRAIG A. MUELLER, ESQ.
CRAIG MUELLER & ASSOCIATES
723 S. Seventh St.
Las Vegas, NV 89101
receptionist@craigmuellerlaw.com
Attorneys for Real Party in Interest Matthew Haney Molen and Real Party in Interest Jennifer Lynn Plumlee

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

INDEX OF LEGISLATURE'S EXHIBITS

AFFIDAVIT OF GUY L. ROCHA
ASSISTANT ADMINISTRATOR FOR ARCHIVES AND RECORDS
DIVISION OF STATE LIBRARY AND ARCHIVES
DEPARTMENT OF CULTURAL AFFAIRS

STATE OF NEVADA)
) ss:
CARSON CITY)

I, Guy L. Rocha, being first duly sworn, state that I have personal knowledge and am competent to testify to the following:

1. I am the Assistant Administrator for Archives and Records of the Division of State Library and Archives of the Department of Cultural Affairs of the State of Nevada.

2. Based on my research, I have not found any official records specifically detailing the occupations of state legislators who served in the Nevada Legislature during the 1800s and early 1900s. Information concerning the occupations of state legislators who served in the Nevada Legislature during this period must be obtained from Nevada newspapers that are indexed and from other historical records.

3. The earliest known example that I have been able to find of a state legislator who held a position as a state executive department employee while serving simultaneously as a member of the Nevada Legislature is Assemblyman August C. Frohlich. Mr. Frohlich was elected to the Nevada Assembly in November 1930. During the 1931 Legislative Session, Mr. Frohlich operated the Commercial Soap Company in Reno. After the 1931 Legislative Session, Mr. Frohlich sold his interest in the Commercial Soap Company. During his legislative term, Mr. Frohlich was appointed on February 26, 1932, as a purchasing agent for the State Mental Hospital located in Sparks. The appointment was made by Dr. George R. Smith, the Superintendent of the State Mental Hospital. Mr. Frohlich held his position of state employment until October 1, 1932. I have not found any evidence in Nevada newspapers of an official resignation by Mr. Frohlich from his

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seat in the Nevada Assembly before or after Mr. Frohlich accepted his position with the State Mental Hospital. During his legislative term, Mr. Frohlich also was a local candidate in Reno for a seat on the School District Board of Trustees, but he lost at the election held on April 2, 1932. At the general election held on November 8, 1932, Mr. Frohlich was again a local candidate in Reno, and this time he was elected to the Office of Justice of the Peace.

4. Another early example that I have been able to find of a state legislator who held a position as a state executive department employee while serving simultaneously as a member of the Nevada Legislature is Assemblyman Harry E. "Hap" Hazard. Mr. Hazard was elected to the Nevada Assembly in November 1938 while working for the Las Vegas Review-Journal. After the 1939 Legislative Session, Mr. Hazard was appointed by the State Tax Commission as the supervisor of the Liquor Division of the State Tax Commission effective April 16, 1939. Mr. Hazard relocated from Las Vegas to Carson City where Mr. Hazard worked in the Executive Department during the remainder of his legislative term. I have not found any evidence in Nevada newspapers of an official resignation by Mr. Hazard from his seat in the Nevada Assembly before or after Mr. Hazard accepted his position with the State Tax Commission. Mr. Hazard was not a member of the Nevada Legislature during the 1941, 1943 and 1945 Legislative Sessions. In 1946, Mr. Hazard was again elected to the Nevada Assembly. During the 1947 Legislative Session, Mr. Hazard served as the Speaker of the Assembly. While a member of the 1947 Legislature, Mr. Hazard also served as a member of the Board of the Clark County Housing Authority, a local government agency.

5. The earliest known example that I have been able to find of a state legislator who held a position as a local government employee while serving simultaneously as a member of the Nevada Legislature is Assemblyman Mark Richards Averill. Mr. Averill served in the Nevada Assembly during the 1903 Legislative Session, and Mr. Averill also served as the clerk of a local school

district during his legislative term. Another early example is Mr. Averill's daughter, Ruth Averill, who served in the Nevada Assembly during the 1921 Legislative Session. Ruth Averill was a primary school teacher during her legislative term.

DATED this 29th day of April, 2004.

GUY L. ROCHA

Subscribed and sworn to before me this 29th day of April, 2004.

Notary Public in and for the State of Nevada

KAREN KADE
NOTARY PUBLIC - NEVADA
Appt. Recorded in CARSON CITY
No.93-2272-3 My Appt. Exp. Jan. 10, 2005

00003

AFFIDAVIT OF DONALD O. WILLIAMS
RESEARCH DIRECTOR
RESEARCH DIVISION OF THE LEGISLATIVE COUNSEL BUREAU

STATE OF NEVADA)
) ss:
CARSON CITY)

I, Donald O. Williams, being first duly sworn, state that I have personal knowledge and am competent to testify to the following:

1. I am the Research Director of the Research Division of the Legislative Counsel Bureau of the State of Nevada.

2. Based on research conducted by the Research Division of the Legislative Counsel Bureau, beginning with the 1967 Session of the Nevada Legislature, public employees have served as members of the Nevada Legislature during each Regular Session convened over the past 37 years. The following table indicates the number of state legislators who held positions as public employees while serving simultaneously as members of the Nevada Legislature during each Regular Session convened since 1967:

Year of Legislative Session:	Number of state legislators who held positions as public employees:
1967	2
1969	1
1971	2
1973	7
1975	4
1977	7
1979	6
1981	5
1983	7
1985	9
1987	12
1989	13
1991	13
1993	12
1995	10

Year of Legislative Session:	Number of state legislators who held positions as public employees:
1997	12
1999	14
2001	13
2003	14

DATED this 28th day of April, 2004.

DONALD O. WILLIAMS

Subscribed and sworn to before me this 28th day of April, 2004.

Notary Public in and for the State of Nevada

EVELYN BENTON
NOTARY PUBLIC - NEVADA
Appt. Recorded in CARSON CITY
No.02-79243-3 My Appt. Exp. Dec. 12, 2006

OFFICE OF THE SECRETARY OF STATE

DEAN HELLER
Secretary of State

March 25, 2004

The Honorable Brian Sandoval
Nevada Attorney General
100 N. Carson Street
Carson City, Nevada 89701

Dear Attorney General Sandoval,

On March 1, 2004, you issued an opinion to my office, wherein you found that Article 3, Section 1 of the Nevada Constitution bars any employee from serving in the executive branch of government and simultaneously serving as a member of the Nevada State Legislature. Based on that opinion, I hereby request that, as my counsel, you bring an action on my behalf to compel the Legislature to follow the Nevada Constitution, and receive a determination from the Nevada Supreme Court concerning whether the separation of powers doctrine also bars local government employees from simultaneously serving in the Legislature.

As you are aware, there are currently several members of the Nevada State Legislature that are also serving as state executive branch employees, county government employees or city government employees. Based on your opinion, it appears that many or all of these members may be violating the separation of powers doctrine contained in the Nevada Constitution. Because the Legislature has delegated to me the power under NRS 293.124 to enforce all "state and federal laws relating to elections in this state," I believe that action should be taken to require the Legislature to compel its members to serve consistent with the Constitution. In addition, it is imperative that the state of the law be clarified prior to May 3, 2004 when candidate filing begins for the 2004 election.

As we have discussed, I believe that you can proceed on my behalf in one of two ways. The first option would be to petition the Nevada Supreme Court for a writ of mandamus to compel the State Legislature to unseat any member who is currently violating the Constitution. As part of that action, the Supreme Court would be required to determine which legislators are improperly serving in dual positions, including local positions if the court so determines that dual service involving local government employees is prohibited. A second option would be to proceed under NRS 29.010 to reach agreement with the Legislature that a controversy exists and request the Nevada Supreme Court's ruling in the same manner as option one. Because time is of the essence with candidate filing "around the corner," I request that you only proceed under NRS 29.010 if you are able to obtain the Legislature's agreement by March 31, 2004 to proceed in this manner.

ONE HUNDRED ONE NORTH CARSON STREET, SUITE THREE
CARSON CITY, NEVADA 89701-4786
(775) 684-5708 • FAX (775) 684-5717

Because this matter involves compliance with the provisions of the Nevada Constitution, and as set forth above we have little time for appeals or other post judgment relief, I am requesting you bring the above referenced petition in the Nevada Supreme Court; if you determine an alternate legal strategy is appropriate, please consult with me before proceeding on my behalf. Indeed, as we discussed, the Nevada Supreme Court has original jurisdiction to issue writs of mandamus pursuant to the Nevada Constitution Article 6, Section 4 as well as Nevada Revised Statutes Section 34.150, et seq.

Please do not hesitate to contact me if you have any questions or require additional information.

Respectfully,

Dean Heller

DEAN HELLER
Secretary of State

ONE HUNDRED ONE NORTH CARSON STREET, SUITE THREE
CARSON CITY, NEVADA 89701-4786
(775) 684-5708 • FAX (775) 684-5717

1865 SAN FRANCISCO, CAL., SATURDAY, OCTOBER 28, 1916 XXX VOL. CIX, NO.

San Francisco Chronicle

LEADING NEWSPAPER of the PACIFIC COAST

KENHAYN AND FERDINAND IN DEATH GRAPPL

Illinois Girl to Wed Japanese Will Start for Orient Today

Miss Marie P. Cox of Evanston, Ill., who sails for Japan today to become the bride of Tokyo Yamada, a Japanese dentist of Osaka, whom she met when he was a student at Northwestern University.

Miss Marie P. Cox of Evanston, Ill., to Be Married at Osaka to Dr. Tokyo Yamada

When the Pacific Mail liner Venezuela sails her course today toward the land of the rising sun, the most excited passenger on board will be Miss Marie P. Cox of Evanston, Ill., who is bound for Osaka to be married to the man of her choice, Dr. Tokyo Yamada, a Japanese dentist, who is said to be one of the most successful in Japan.

The wedding will take place on Miss Cox's arrival and will be celebrated with all the dignity and ceremony of the ancient customs of Japan. The romance of the pretty American girl and her husband-to-be began a year and a half ago when Dr. Yamada was a student of dentistry at Northwestern University, Chicago.

Miss Cox is a stenographer, although she was educated as a teacher, a vocation which, she says, she may take up in her new home in order to keep busy.

She arrived here several days ago in company with Miss Mitsuki Matsuda, wife of the secretary of the Chicago Japanese Y. M. C. A., who is returning to Tokio after eight years to visit her people. Both have been living quietly in a Japanese hotel at 22 Fourth Park.

"I first met Dr. Yamada at the dental clinic at Northwestern University," said Miss Cox last night. "I had been practicing to be one of the doctors on humanity, and found him through the courtesy of Dr. Yamada.

"Our romance began right there. Dr. Yamada was graduated in June, 1915, and a little later returned to Japan, where he had been graduated from a dental college before coming to America. He proposed before leaving, and I accepted him without my parents or friends knowing anything about it. In fact, no one here knows that I am going to Japan to marry Dr. Yamada, and while I do not regret my decision, I don't want them to know it. I started for Japan once before, but had to return home, and even then my family did not learn of my plans.

"Dr. Yamada's family, he has written me, is building a beautiful American bungalow for us, fearing I may not like the Japanese houses.

"The only thing that worries me is whether I can find something to do. I have been told that Dr. Yamada is wealthy, although he never mentioned that to me, and that's all he ever wants me to do. I will have no housework, but I will teach the Japanese children to speak English if I can find nothing else to do. I am sure I am going to be very happy, although today, with the long ocean voyage before me, I surrendered to the blues and cried a long time."

Miss Cox, who is 22 years old, is a sterling brunette and is not at all reserved. She declined to give any information as to her family, saying she did not want them to learn of her plans.

Strike of Cat Women In Paris Spreading

PARIS, October 27, 9.25 P. M.—A strike of street car employes which began in the suburbs of Paris yesterday, is reported to be spreading to the central districts. The strike has not yet resulted in the stoppage of the service. The intransigeants said the strike is due to the high prices of food and the insufficient wages paid the employes, especially the women, of whom there are [illegible]

Continued on Page 3, Column 3

Proof That Women Mean Business in Politics

Society Leaders break tradition that Politics is too "dirty" for white hands, and have taken the stump.

HUGHES IS CHEERED BY THRONGS AT ROCHESTER

Nominee Makes Short Work of Wilson's Argument in the Latter's Speech at Cincinnati

SAYS THE PRESENT PROSPERITY IS FALSE

Anti-Dumping Provision of Underwood Revenue Bill Is Declared to Be Worse Than Useless

Special Dispatch to The Chronicle.

ROCHESTER, N. Y., October 27.—Charles E. Hughes did not take a single trick tonight in his reply to President Wilson's speech yesterday at Cincinnati, in which the President hooted at the Republican warnings against European trade competition after the war as "silly imaginings." About 1000 men and women crowded into Old Convention Hall not only expectated Hughes' logic, but enjoyed the run he had at Wilson's expense. The Republican candidate did assume reminiscing in derogation of Wilson's scoffing.

SHIFTING WILSON ATTITUDE

The shifting Wilson attitude on preparedness caused Hughes, in the defense of the Democratic party, to recall the case of stealing a copper bottle. He had two defenses, one that he did not take the bottle, and the other that it had a hole in it.

The anti-dumping clause attached to the Underwood bill, Hughes said, "holds the palm for legislative phrasing." He called it one of the "masterpieces of revenue legislation," and branding it not only as farcical, "but worse than useless."

PARTY GETS A SCARE

These two features were the principal points in a speech which wound up a successful tour through the central-western part of the State, always a Republican stronghold. Enthusiastic audiences greeted him at Utica, Auburn, the home of William H. Seward, at Geneva and at Rochester.

Hughes declared in his speech at Utica that he would "leave to the Secretary of War his difficulties in the effort to extricate himself from the entanglements suggestions which were reported to have been made by him in a recent utterance."

STANDS UPON PEACE, NOT WAR

It was Hughes' first speech of the day. "It is said that a vote for me means a vote for war," Hughes declared. "That is a misrepresentation as to fact and as to imputation. "A vote for me is a vote for lasting peace, because it is a vote for maintaining the honor of the country, for maintaining both the self-respect and esteem of all of the nations of the earth.

"I am amazed at the charge that is thus brought in the 70th of the series of attacks which Republicans have made with respect to our neighboring country of Mexico. If there was ever a policy unmasking in safety, a policy which was the opposite of a policy for the conservation of peace, it was the policy which, put there, surrendered it. Indeed, it could, in view of the [illegible] of action taken, be called a policy of all.

"I refer to the Secretary of War

Continued on Page 3, Column 2

Diver Deutschland Reported Nearing The Virginia Coast

NORFOLK (Va.), October 27.—The German undersea merchantman Deutschland, according to reports in circulation in Norfolk and Baltimore tonight, is due at the Virginia capes in the next few hours, en route to Baltimore.

It is declared she sailed from Bremen two weeks ago and successfully eluded all British patrol boats safely.

It was reported tonight that the Deutschland passed in the capes shortly after nightfall and proceeded up the bay, but this could not be confirmed.

ABOLISH HEALTH BOARD ADVISE SURVEY EXPERTS

Centralization of Authority in Single Commissioner Recommended

...Abolition of the Board of Health, as at present constituted, and the centralization of authority and responsibility in a single commissioner, is the leading suggestion of the municipal research survey of San Francisco in regard to public health.

The survey finds that the present members of the Board are doing fairly well, but that the system is bad in that it is wide open to political influence, which, it is stated, has done...been exercised in the past and may be again in the future.

OPPOSES PUBLICITY

Another drastic recommendation...

...are shown by how devices change their theories, is that suggesting that fumigation of private residences after cases of scarlet fever and diphtheria be abandoned. The writer of this part of the survey, who is himself a physician, admits that health officers in several cities have quietly abandoned this fumigating without disadvantage to the community.

Further single recommendations the Bureau suggested are: Publicity and education, accounts and records, with bureaus of food inspection, sanitary inspection, medical service, school hygiene and laboratories.

An unusual amount of red tape is found in the records of the Board, which it is suggested be cut out, and in regard to that the adoption of the single commissioner of health plan would aid in this result.

ADVICE FREELY FOLLOWED

An insert in the report states that the Board of Health has already followed the recommendations of the survey in the matters of vaccination, hospital records, form of certificates and uniform system of dietaries.

Part time service of physicians in the health department service is recommended. Sanitary inspectors in uniform are advised, as is a fog signaling ordinance.

The report contains the following on public health expenditures in San Francisco:

"The health department was allowed $280,000 for the fiscal year 1916-17. The report finds that on

(Continued on Page 3, Column 4)

French Liner on Fire Makes Harbor of Fayal in Azores

Steamer Chicago, With Blazing Cargo and 265 Passengers on Board, Wins Race With Death

LONDON, October 27.—The French Line steamer Chicago has arrived at Fayal, Azores island, according to Lloyd's. The utmost is being done to extinguish the fire aboard.

NEW YORK, October 27.—Lloyd's ship news from London received here today stated that the French liner Chicago, which left Hoboken [illegible] the fire is not serious and that the passengers on board are in no immediate danger.

The Chicago carries only cement and

Mackensen Captures Hirsova Roumanian Army Seizes Two Valleys

Petain Is Surrounding Vaux

Desperate Pursuit Is Kept Up on Rear and Flank of Routed Army in Dobrudja

French Commander Leaves Shattered Fortress in Pocket in Drive on Verdun Front

LONDON, October 28, 2:02 A. M.—The German troops on the Transylvania front have reached Campolung, twenty miles within the Roumanian border, says a Petrograd dispatch to the Chronicle.

By ARTHUR S. DRAPER

Special Correspondence of The Chronicle in London

LONDON, October 27.—The defeated Russo-Roumanian army in the Dobrudja is still in flight before Mackensen. Though the invading forces apparently have made no effort as yet to throw troops across the Danube at Cernavoda, they are continuing without pause the pursuit of the enemy forces to the north.

The Roumanians and Russians have been driven north of Hirsova and Cogealac, positions on the Danube and Black sea coast respectively, about thirty miles north of the Constanza-Cernavoda railroad line. That the enemy is in hot retreat is indicated by the fact that Mackensen's advanced columns are already in Hirsova.

CUMBERLAND UNSHATTERED IN TRANSYLVANIA

Meanwhile, on the Transylvanian front, the attention is mainly directed...

...causing a more threatening aspect for King Ferdinand's troops.

Although Falkenhayn's forces have been held in check, and even thrust back at some places, in several vital sectors they are smashing ahead relentlessly.

On the western frontier of Moldavia the Roumanians have rallied and formed a new line; in the passes of Southern Transylvania the Teutons appear to be still holding the upper hand and extending long tentacles into the enemy's country that seriously menace the key points of Western Roumania.

ROUMANIANS CAPTURE VILLAGE AND RESORTS

In the Tritzina and Oituz valleys the Roumanians captured today the village of Dalna and the Tarcarot and Sagina, nine miles northwest and southwest respectively of Dalna. In the Uzul valley the Roumanians also pushed forward, occupying...

...homes on the Teutons. Elsewhere in the eastern section of the battle front the fiercest attacks of Falkenhayn's troops were rolled back by the iron stand of the Roumanians and their Russian allies.

In the valley of the Jiul the Roumanians have withdrawn to the southern exit of the Vulcan pass. South of Kronstadt they have also been compelled to fall back. Here the Teutons have now reached Azuga, five miles south of Predeal and west toward the Roumanian border.

HOW WAR'S OUTLOOK IS VIEWED BRIEFLY BY ENGINEER

South of Tarcarot pass, the Germans claim progress in the direction of Campolung, but there is little doubt that the Roumanians have the situation at that point well in hand.

In the extreme northern end of the front, to the south of Hermannstadt, the Allied forces failed to hold the enemy, and have thrown back and seized a dominating position near Cheia Pursel.

The successful Roumanian operations in the Uzul and Tritzina valleys are important in their possible effects. The Uzul, Oituz and Tritzina sectors are simply linked up in the present fighting. Success in one is very likely to bring victory in all three. Here, too, the Roumanians are showing a better front than elsewhere, and apparently are better equipped with guns and ammunition.

Cupid Is Outdone In Contest With Imp of Divorce

Marriages Performed	39
Divorce Suits Filed	17

These cold, unsympathetic figures...

SEA BAT... FOUGHT ENGLI... CHANN...

British Claim Two ... Destroyers Sunk; One Warship Is M... and One Agrou...

ONE EMPTY TRANS... ALSO SENT TO B...

Berlin Denies Loss; 15 Enemy Craft, In... 2 or 3 Fighters, ... or Damaged

LONDON, October 27. ... men torpedo-boat ... attempted to raid ... cross-channel transport ... night, but the attempt fail... official statement issued ... Admiralty today. ... German destroyers were ... the others were driven o...

ONE BRITISH SHIP MISSING; ONE ...

One British torpedo-boa... the Flirt, is missing ... statement adds, and ... rivaper, the Nubian, was ... torpedo and ran agro... members of the crew o... were saved.

The German destroyers ... in sinking one empty tra... Gouga. The crew was a... The British Admiralty ... tement follows:

"During last night the ... tempted a raid with ten ... on our cross-channel tra... vice. The attempt failed

BRITISH TROOPSH... SUNK; CREW SAV...

"One empty transport, ... was sunk. The whole ... was saved.

"Two of the enemy ... were sunk and the ... driven off.

"H. M. torpedo-boat Flirt, Lieutenant Richard R. N., is missing, and it may be lost, but also ... have been saved.

"H. M. torpedo-boat ... blan, Commander Montag R. N., was disabled by ... and taken in tow, but, ... bad weather, the tow par... grounded."

14 ENEMY SHIPS SUNK, SAYS BERLI...

BERLIN, October 27 (... October 28, 12:40 A. M. ... driven outpost, steamer a... three torpedo-boat destro... pedo-boats were sunk or ... a German torpedo-boat ... Thursday night in the ... and seven Belgians as ... ition issued here. The three ... boats received safety ... without any loss.

The communication says ... "Fifty of our torpedo b... from a distance by The ... through the streets of ...

Continued on Page 6, C...

Bullets Fly in Battle With Jitney Bandits

Policeman F. J. Kerr Exchanges Shots With Four Robbers

After holding up and robbing Patrick Brannan, proprietor of a saloon at Turrall-ninth and Folsom streets, and two patrons early this morning, four armed bandits escaped in a jitney, but not before a dozen shots were exchanged between them and Policeman F. J. Kerr. None of the shots took effect. The robbers, each of whom wore a white mask, sped out Folsom street and disappeared [illegible] The automobile, a Buick touring car, bearing [illegible] was found in front of 131 Fair [illegible] street last evening. A quantity of police [illegible] up the chase soon after the hold-up, but no [illegible] of the bandits was found.

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LIP GAPING"
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dumb appeal to God
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quivering, sensitive
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GIVE LITTLE

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life or even of losing

least of all so vast
a one as ours, is

the productive forces of manhood are at the same moment shaped into social order. The only thorough preparedness is that exemplified by Christ, the preparedness of character based upon life with God.

WARRING NATIONS TEACH US

"Would that our peace today were like rivers and our righteousness as the waves of the sea. Then we would be indeed an ensign to the nations. But how different a case it is. The nations now at war have as much to teach us as we have to teach them. They rebuke our worship of comfort and money by the daily offering upon a reeking altar of life and treasure; they declare to us that intoxicating liquor, which is so freely and carelessly drunk in our land, is a national menace to be dispensed with at the cost of lowered revenue, but with the gain of heightened virility; they teach us that food is the staff of physical life, not an invitation to daintiness and gluttony; they rebuke our spiritual poverty by the splendor of their spiritual eagerness which, out of their tragedy, brings new visions from God and breeds new virtues in men; they shame our self-indulgence by a degree of self-sacrifice that is royal.

"Whatever apology or explanation may be made, at home or abroad, for the world confusion, it is none the less an outcome and a revelation of unchristian principles that have dominated the life of Western Christendom and of which both the church and the nations have need to repent.

GREED USURPS THRONE

"Greed of possessions, of honor or pleasure have literally dethroned God from his supreme place among men. The sole cure is to exalt God.

"Thus far the church has been only strong enough to see and covet, not strong enough to consummate her ideal. Her own disunion dims her hopes and hinders her progress. A divided church is powerless to create an undivided world.

"History makes plain to us that man's extremity is God's opportunity. Beneath every pall of tragedy lies hidden the glory of God—new visions of faith, new counsels of virtue—to be revealed and discovered by those who look not at the things which are seen, but at things which are not seen, and wrestle with God for a blessing."

Hermon Van Luven Is Buried on Birthday

Late Banker's Funeral Is Held From the Masonic Temple

On what would have been his forty-eighth birthday, had he lived, the funeral of the late Hermon Van Luven, cashier and secretary of the Union Trust Company, was held yesterday from the Masonic Temple, at Oak street and Van Ness avenue.

The services were conducted by California Lodge, No. 1, F. and A. M., of which Van Luven was a member and formerly treasurer. Jesse M. Whited, master of the lodge, officiated, assisted by Acting Senior Warden Harry L. Dewey and Junior Warden Ralmon F. Conlisk.

San Francisco Lodge, No. 3, B. P. O. E.; Islam Temple of the Mystic Shrine, and the Scottish Rite bodies were represented. The interment was private.

RE-ELECT JAMES M. SEAWELL, Judge of the Superior Court. His many years of efficient service entitle him to re-election. Advt.

would be elected President of the United States. Julius Pincus, Portland hop man, took the Wilson end at even money.

Sheville, a few days ago, backed Hughes to the extent of $10,000 at odds of 10 to 8 in favor of the Republican nominee, so this makes $11,500 posted by him.

MEASURE ALARMS LEGISLATORS ON 'SIDE' PAYROLL

Amendment No. 6 Would Endanger Double Pay if It Carried at Election

SACRAMENTO, October 27.—Some thirty-five or forty legislators in the employ of the State in various capacities are anxiously awaiting the result of the November election, for if the electorate should adopt amendment six on the ballot, known as the ineligibility to office measure, State Controller John S. Chambers probably will refuse to draw warrants in favor of legislators then in the employ of the State. The act is construed to mean that resignations as legislators either before or after election will not be able to circumvent its intent.

Section 19 of the act reads: "No Senator or Assemblyman shall, during the term for which he shall have been elected, hold or accept any office, trust or employment under the State; provided, that this provision shall not apply to any office filled by election by the people."

There are a number of Senators and Assemblymen whose terms expire on January 1, 1917, and it is possible that they might agree to work for the State a month and three-quarters gratis in order to hold their positions, but there are also a number of legislators who will either be re-elected or are holdover Senators.

Company Sues Former President for $7500

Services of Attorney J. L. Taugher Subject of Dispute

The controversy between John L. Taugher, an attorney of this city, and the Moore Filter Company of Portland, Me., was renewed yesterday by the filing in the United States District Court of a suit by the company against Taugher for $7500.

It is alleged that Taugher, while president and director of the company in 1913, had the directors vote to pay him $12,500 for his services, although he was entitled to only $5000.

In a suit in the Federal Court three months ago Taugher was awarded $18,500 for legal services for the company. The company gave notice of appeal.

largest Roumanian seaport, and of the Danube bridgehead, Czernavoda, brings the Dobrudja movement of October 19 to October 25 to a glorious end and the result is a decisive blow to the Roumanian campaign.

"The victorious advance of the allied German, Bulgarian and Turkish troops came at the end of September to a standstill before the strong hostile main positions of Toprai-Sari, Txopadin and Rachova. It was necessary, therefore, to rearrange the positions of our artillery and to organize the reserves and this caused long delay because of the peculiar nature of the Dobrudja war theater.

RUSSIANS HOLD CENTER

"The main hostile positions in the east began at Beslaghiol and ended in the west on the Danube. This position had been strongly fortified prior to the outbreak of the war. Toprai-Sari and Txopadin were constructed like fortresses. They had strong forces as garrisons and were armed with heavy artillery.

"The Russians held the center while the Roumanians had to defend both wings. The general line of the central allies stretched south of the hostile main position from Tatlageacu and Amuzacea Cavaclan and Enigea to the west of Bairu.

"The attack began on the morning of October 19. The weather being bright, the artillery was better able to measure the distances and its fire was more efficient. The right wing of the enemy after two hours of artillery fire and tenacious fighting was thrown from the first positions. On the evening of the first day of the battle the following line had been reached: The heights 33, 70 and 71, southwest of Tuzla, and the heights south of Mura-Tanu-Burun, south of Toprai-Sari. Farther to the west the enemy on this day was detained by uninterrupted attacks which forced him from several points of support.

TUZLA OCCUPIED

"On October 20 the battle was continued with the utmost energy. The fighting for Toprai-Sari especially was violent and the enemy had evacuated the district south of Tuzla. Tuzla itself was occupied without any fighting. In the evening the right wing

The Turkish troops showed great bravery and took prisoner more than 1500 Russians.

"On October 21 the battle concentrated around Toprai-Sari and Txopadin, which were the keys to the situation. Masked artillery and infantry attacks of the central allies against the position south of Toprai-Sari forced the enemy to yield at midday.

"Field Marshal von Mackensen, with his staff, observed from Height 90 the retreat of the hostile masses as they streamed backward and under the influence of our most efficient artillery fire at many places their retirement was turned into a mad flight.

"After the fall of Toprai-Sari and Txopadin, the main resistance of the enemy seemed to have been broken. On the evening of this hot battle day the central allied troops stood along a line from Techirghel-Mulciova, north of Toprai-Sari-Txopadin-Sapata, to Razal. The pursuit was continued, and our artillery during the night was brought ahead into the new positions.

WARSHIPS ENTER FRAY

"On October 23, seven Russian warships tried to operate from the sea between Constanza and Tuzla against the right wing of the central allies, but the ships were not successful, since they were forced by counter measures to keep a long distance away from the coast.

"No time was left to the defeated enemy for the defense of Constanza if he wanted to save himself. Reinforced by German and Bulgarian infantry, the Bulgarian cavalry captured the Roumanian support, and on the same evening the right wing of the pursuing troops reached Islamtepe and Kalarup.

"On October 23, the defeated enemy once more tried to concentrate his forces near Medjidia. Fresh Russian forces were thrown into the engagement as soon as they arrived. These troops were routed in the same quick procession, and in the evening Medjidie was captured after a hard struggle. To the west we occupied the heights northeast of Rachova.

"Army aeroplanes contributed much to our success by excellent reconnoitering.

00009

"The Royal Tiara," a Felix Boyd Story, Will Begin in The Bee

THE SACRAMENTO BEE

SACRAMENTO, CAL., SATURDAY EVENING, OCTOBER 28, 1916 —32 PAGES

...nce Loaf Can Be Sold ...r 10 Cents With a Profit for All—Riverside Baker

...October 28.—John R. Newberry, a baker here, declared ... to-day that a twenty-four-ounce loaf of bread can be ... cents with a profit to all concerned.

GOOD PROFIT FOR BAKERS.

Bay Bakers Defend Increased Cost

...ment concludes that "anybody who knows merchandising ... the basis of these costs a retail price of ... cents per loaf ... inevitable as long as flour remains at its present figure."

ROAD WORK IS TO START NOV. 1ST.

County Engineer Will Be Instructed to Begin Surveying on That Date

BONDS MAY BRING RECORD RETURN

If Sold Before December 20th They Will Command Higher Price Than Similar Issues

Active work of surveying for the complete system of highways in Sacramento County, as provided for in the bond issue a few weeks ago, will begin within the next few days.

At a conference yesterday afternoon between the County Supervisors, F. B. McKevitt, Chairman of the County Highway Commission; J. C. Havely, representing the Good Roads Association; District Attorney Bradford, County Auditor Lincoln Williams, and County Treasurer Frank K. Christophel, arrangements were made to advance $12,000 out of the general fund of the county so that survey work may begin at once. The money will be paid back into the general fund when the bonds are sold some time around the first of the year.

Will Call Meeting.

Following a decision to advance the funds, Chairman McKevitt announced that he will call a meeting of the Highway Commission for Tuesday, October 31st, and County Engineer R. M. Morton will be instructed to begin work on November 1st, the day following.

Morton will at once organize his staff of surveyors and they will be put into the field with the hope of getting far enough along so that contracts may be let during the Winter months for road work to begin in the early Spring. There will be at least two surveying gangs with possibly three or four. Surveys will be made in both the Fourth and Fifth Supervisorial Districts.

Record Price.

J. C. Havely, speaking for President Peltier of the Good Roads Association, told the Supervisors that if the bonds were printed and the sale set for December 15th to 20th, the bonds would bring the highest price ever paid in the State of California for similar bonds. He said that President Peltier had made inquiries among bond men and it was the opinion of all that the sale should take place around December 15th to 20th, and that the premium offered would be exceedingly high. Peltier estimated that the premium would run in the neighborhood of $30,000.

Following the conference, the Supervisors passed a resolution ordering bids to be submitted on November 5th for the printing of the bonds. The Supervisors hope to have the bonds printed in time to advertise their sale for December 15th to 20th.

To Draw Coin as Needed.

Under an opinion rendered by District Attorney Bradford the Supervisors authorized the County Highway Commission to draw on the general funds as needed up to a total of $12,000. The money used by the Highway Commission will be divided equally between the road funds of the Fourth and Fifth Supervisorial Districts and will be refunded out of the premium to be paid when the bonds are sold.

ENGLAND MAY EASE UP ON BLACKLIST

Reply to Restrictive Trade Measure Received by the State Department; To Be Published Later

SOME FIRMS ARE ALREADY OFF LIST

Points Raised by Reply Expected to Result in Further Diplomatic Representations

WASHINGTON, October 28.—Great Britain's note in reply to American representations against the commercial blacklist was received to-day at the State Department. Arrangements regarding its publication will be made later.

It is understood to reiterate the contention for the right to blacklist, but offers methods of relief to Americans in certain circumstances.

Answers American Note.

The British note is in reply to the American note of July 28th, which denounced the blacklist as "an arbitrary interference with neutral trade," and "inconsistent" with true justness, sincere amity and impartial fairness which should characterize dealings of friendly governments with one another." The names of some American firms already have been taken from the blacklist; and the British note is understood to offer means of removing others.

Terms of Reply.

The British note is understood to take the line of argument it is unprecedented for a neutral to claim that a belligerent should in effect compel its subjects to trade with the enemy, and that it violates no law for the British Government to prevent its subjects from doing so. While the British Government admits the rights of all persons in neutral countries to engage in legitimate commercial transactions, it argues that such a right does not limit the right of other governments to restrict the activities of their own Nationals.

Point at Issue.

The point at issue in the controversy is whether the nationality or the domicile of the owner of goods gives character as neutral or belligerent. Previously, Great Britain and the United States have argued that domicile was decisive regardless of nationality. The continental European position has been that nationality was decisive. In the previous negotiations over the blacklist England took a position between the two theories.

The subject probably will be carried on in further diplomatic correspondence.

MINISTERS OPPOSED PARADE

General Protest of Clergymen Caused Last-Minute Hitch in "Johnson Unanimous Club" Tour

OFFICERS ADMIT NOW THAT DATE WAS BAD

Plans Now Being Laid for Automobile Pageant Through This City Next Saturday Night

Ministerial opposition has proven an effective obstacle to the automobile tour of Sacramento County, which was to have been made to-morrow and next Sunday by the Johnson Make It Unanimous Club.

The contention that politics and religion do not mix has received recognition by the committee in charge of the tour, so the medium whereby many persons had planned to get into personal touch with hundreds of voters in neighboring communities has been abandoned.

Langford's Statement.

While various reasons for the action are ascribed, Rev. S. Fraser Langford, pastor of the First Baptist Church, to-day made the unequivocal statement that he was one of several clergymen in this city who had protested against the tour. He said:

"I protested, and most emphatically, against the tour. And I am prepared to protest again if necessary.

"I know that other ministers, one of them in an outside town, took similar action.

"I don't believe the tour would have been good politics. I was against it for this reason and also particularly because I don't believe politics should be intruded upon the day of worship.

Churches for Johnson.

"I understand the purpose of the tour is in the interests of [illegible] also. No? Well, that was my understanding.

"Practically all of the religious voters of this county are going to vote for Johnson, and they would have resented the intrusion of any political demonstration on Sunday.

"I am convinced I share the general opinion of clergymen and churchgoers in Sacramento."

Harrison's Protest.

There were other protestants besides himself, according to the Rev. William E. Harrison, pastor of the Westminster Presbyterian Church. He said:

"I called at Governor Johnson's headquarters when I learned of the proposed tour to register a protest. I gave my card to the Secretary then and told her the church-going voters in this county would vote for the Governor and that it would be an insult to hold such a political parade on the Sabbath. I do not think it would be at all proper. And it would be unnecessary.

"There were other ministers who protested, several from the outside, but I don't care to disclose their identity."

Bills' Change of Heart.

Charles B. Bills, President and Manager of the Pioneer Fruit Company, after apparent enthusiasm for the project only a few days ago, informed the committee, of which he is Chairman, that he did not favor the tour and it would have to be

(Continued on page five)

Blue Sky ... Califor... Many

Report of Commis... Wildcat Schemers ... Than a Milli... Were Deni... Depa...

FIGURES showing ... hundreds of thous... lege of securing ... motion schemes, are ... State Commission of ... Johnson to-day, by C... Department in dealing ... the report.

In the first twelv... 1915, to September 1, ... is shown by Commission ... of stocks of bonds of ... by the Blue Sky Law ... bought up by the publ...

California Business ...

During the same time, by the report, California ... second place among all the ... the Union in the number ... tions doing business within ... aries, sixth in the amount ... invested in corporate enter... also sixth in the amount ... earnings, being exceeded ... two instances only by the ... New York, New Jersey, ... setts, Pennsylvania and Il...

Commission's Big ...

In the value of stocks ... approved issues, the busi... department since it was ... has averaged approximately ... million dollars per day, ... holidays included, the C... having authorized the ...

USED BY ... LARS IS ... LIEF

...ack Bedroom of ...me and Are ...eved to Have ...ged Men

...In one case com... on the part of ... a gun and in another ... lieved to have drugged ... rated with astound... Thursday morning ... Street and in 206 ... The two crimes within a few minutes ... are believed to ... work of two men. The ... Mary Sickle, 206 ... than a block away ... Street, where Steve... ... other Southern ... live and were ap... a robbery at...

... Over Bed.

...he sleeps in a front ...fant son, was awak... morning and saw ... over her bed. They ... covers away and ... about the mattress ...

...one of the burglars ... the little child and ... started to ask that her ... tured, the other ... the muzzle of a ... her throat and warned ... Just about that ... the frightened ... and ran out of the ... a few seconds ... their search for ...

... Value Taken.

...was taken, and as ... in her bed she ... the adjoining room ... money. Within a few ... the house. The po... of the affair in the ...

...ch the two men were ...ved to have been ... house at 1915 Fourth ... of $20 or $30 in ... The burglars also ... of checks and some ... but they threw ... apparently fear... ...red with it in their ...

AMENDMENT TO TAX LAW IS UPHELD

Superior Judge Sturtevant Decides Corporations Protesting Collections by State Cannot Recover

SAN FRANCISCO, October 28. Superior Judge George A. Sturtevant of this city in a decision handed down here to-day, decided that corporations protesting the collection of taxes by the State during the last four years can not recover them, and that the amendment to the tax laws, passed by the Legislature four years ago, is constitutional.

Wells Fargo Suit.

Judge Sturtevant's decision was handed down in the action of the Wells, Fargo Express Company against the State, which sought to collect approximately $50,000 in taxes, which the plaintiff has paid under protest during the last four years and which it alleged the State had no right to collect.

Judge Sturtevant held the company could not recover the taxes paid and the State had the right to so collect them.

Assistant Attorney General Raymond Benjamin, who handled the case for the State, said to-day Judge Sturtevant's decision was one of the most important handed down in years. He said that substantially $9,000,000 in taxes collected by the State from corporations doing an interstate business was affected.

FORMER SOLICITOR ADMITS EMBEZZLEMENT

H. Brewster, former insurance solicitor who was employed by Waters, Crouch and Waters, yesterday afternoon pleaded guilty to petty embezzlement. Justice of the Peace Shirley was called in to hear the case by Police Judge J. J. Henderson, who stated that he did not care to preside.

Sentence was suspended in the case, as Brewster has promised to make good the $97 which he misappropriated.

STOCKYARDS TO BE BUILT HERE

$30,000 Plant Planned for West Sacramento; Work to Start in Thirty Days

Stockyards with buildings to cost $30,000 are projected for West Sacramento, and will be in operation early next year, according to J. W. ..., who has been engaged in planning the details for several months. A lease for the property was signed to-day.

Work is to be begun on the yard grading and buildings within ...

PROHIBITION ...

LOS ANGELES COUNTERFEITER ...

Gas Bombs, With ... Smell, Exploded i... Union Restaur...

SAN FRANCISCO, Oct... One of the horrors ... warfare, namely, g... are becoming a dail... of the strike of th... and culinary workers ... of the largest confectio... light lunch establishme... hundreds of ... ... was compelled hurriedly ... ceful and sickening odor ...

Investigation disclose... this glass cell ... ... had been dropped on ... the floor, spreading ... throughout the room ... ... day several small ... had been dropped ... hour.

One of the biggest ... also cleared yesterday ... an attempt to "bomb" ... spoiled by the pickers ... accidentally dropped the ... package on the sidewalk ... her way in. Those who ... "bombed" cafe found ... successful in others the... ed to finish their ... the liquid having ... chairs and made itself ... eral hours were require... the air of the unfortuna... Not one suspect has ... tioned so far.

Girls, Ghosts and Witches Are Y. ... Halloween ...

Witches and ghosts ... traditional role in the ... lowe'en parties given ...

—brock of Vine Street
r her aunt, Mrs. Mary
ncoln, Neb.

League of the Wesley
ntertained at the home
. Warner last evening.
ns were enjoyed. About
were present.

ency committee of the
rs Association will
p. m. Tuesday at the
Chairman, J. C. Van
nial Heights.

Stahl entertained the
Club at her home last
occasion was marked
nds of the members be-
as guests of the even-

G CLASS
PENS MONDAY NIGHT

October 23.—The
class will convene at the
h School on Monday
a course opened last
nly a few of the women
d for the class knew of

local Women have
the class. Sessions
every Monday evening.

Oak Park Parlor, Native Sons.

Rev. W. B. Re[illegible] has been called to fill the pulpit [illegible] South Methodist Church at Wheatland.

Albert Steen, Fred Steen and William Collins bagged a score of cottontails in a hunting trip to Franklin yesterday.

START McFARLAND CLUB.

OAK PARK, October 25.—Friends of Ray D. McFarland, candidate for the Assembly, met at Red Men's Hall last evening and organized a McFarland Non-partisan Club. The following officers were elected: John Orr, President; R. E. O'Neill, Vice President; Gordon Oliver, Secretary; Dr. Henry Buckman, Treasurer. The Membership Committee appointed consists of N. D. Hopton, Cliff Yost, George Uhl, D. H. Holdridge, Manuel Cassell, John Gabelsih, R. G. Currier, F. H. Honston, J. H. Silva and J. O. Schreck.

GHOST DANCE TO-NIGHT.

RIVERBANK (Yolo Co.), October 25.—The ghost dance to be given by the Riverbank Improvement Club will be held to-night. A jitney service from Washington will be maintained.

TION IS WHEREVER ITTED TO VOTE

League's Attitude Men Who Oppose Laws Getting Nowhere

use of Representatives in 914, Representative Hob- ome, speaking for the League, declared the ition forces of the Na- make prohibition the ssue of the next election, gain a two-thirds ma- two houses of Congress, an administration which he open nor under- cover ten this reform."

15, the national office of oon League issued an of- ment from Washington to that the United prohibi- of the country would g other things, any can- President "who advocates tate's Rights policy of h the liquor traffic."

ng candidates for Presi- Woodrow Wilson and ang Hughes. Neither of prohibitionist, but each his attitude. President Wil- lared openly he is against or rather he has refused answer to a question that his view, and that he has rious times so expressed

hibition Is Losing.

last Fall a prohibition to the State Constitution ted by a majority larger

CHAMBERS STUDIES AMENDMENT NO. 6

Proposal to Make Legislature Members Ineligible to State Jobs Is Perplexing

State Controller John S. Chambers is investigating the effect on the jobs of a score or more of State Senators and Assemblymen, should Amendment No. 6 on the ballot carry at the election next month.

The Proposed Measure.

This is the measure proposed to prohibit members of the Legislature holding positions of public trust during the term of their office. Section 19 reads as follows:

"No Senator or Assemblyman shall, during the term for which he shall have been elected, hold or accept any office, trust or employment under the State; provided, that this provision shall not apply to any office filled by election by the people.

Controller Chambers said today that his attention has been called to the possibilities of the proposed amendment and that he is now considering it, although it will be impossible to state the policy of his office in the matter of drawing warrants, in the event that the measure is adopted, until he has had opportunity to study the provision of the law more fully.

The passage of the law would most inconvenience the held-over Senators and Assemblymen, although legislators whose terms expire January 1, 1917, and who are not seeking re-election would be affected considerably.

Those Affected.

Among those who will be inconvenienced by the passage of the law are the following: Senator E. S. Birdsall of Auburn, Secretary of State Lunacy Commission; Senator E. J. Tyrrell of Oakland, attorney for the same Commission; Assemblyman Frank H. Mouser of Los Angeles, Inspector for the State Motor Vehicle Department; Senator Henry W. Lyon of Los Angeles, Assistant Labor Commissioner; Assemblyman Lee P. Gebhart of Sacramento, who is with the State Pharmacy Commission; Assemblyman Harry A. Encell of Berkeley, Examiner for the State Railroad Commission; Assemblyman Charles Godsil of San Francisco, of the State Pharmacy Board; Assemblyman Walter W. Chenoweth of Sacramento, head auditor at the Folsom State Prison; Assemblyman A. E. Shartell of Alturas, attorney for the State Inheritance Tax Commission.

MEETING CALLED FOR IRRIGATION DISTRICT

After adopting resolutions endorsing the Granville irrigation project the Sacramento Realty Board yesterday called a meeting of residents of the Cosumnes District in an endeavor to assist in the forming of an irrigation district under the Wright Act. The meeting of representatives of the district, located southeast of Sacramento, will be held in the office of D. W. Carmichael at 4 o'clock Monday afternoon.

Followed Discussion.

The resolutions followed discussions of the formation of irrigation districts in El Dorado, Amador and Sacramento Counties and from a business standpoint ation project shown to that is under the provisi Wright Act. The propose district will include ab acres. It is believed the toward its formation will at the meeting Monday.

RESTA OUT, AITK WINS AUTO

NEW YORK, October Aitken won the gold trop lile race at the Sheep track here to-day. His 56.37.65. Galvin was 56.45.31. Wilcox third, th

Dario Resta dropped out after breaking all speed for fifty miles. His time an average of 109.55 mil A broken crank shaft car.

Aitken's average of 102 hour is a new American seven seconds behind record.

DISCHARGED SA FIRES BULLET IN

SAN FRANCISCO, Oct W. Kent, Assistant Secr milk company, rallied nett, one of his travelli off the road and inform

ADVERTISEMENTS

Hon. Gill Wilson

Amendments to Constitution

and

Proposed Statutes

with

Arguments Respecting the Same

To be Submitted to the Electors of the State of California at the General Election on

TUESDAY, NOVEMBER 7, 1916

Index, ballot titles with numbers, and conclusions appear in last pages
Proposed changes in provisions are printed in black-faced type
Provisions proposed to be repealed are printed in italics

INELIGIBILITY TO OFFICE.

6

Initiative measure amending Section 19 of Article IV of Constitution. Declares that no Senator or Member of Assembly shall, during the term for which he shall have been elected, hold or accept any office, trust, or employment under this State; provided that this provision shall not apply to any office filled by election by the people.

YES	
NO	

The electors of the State of California present to the secretary of state this petition, and request that a proposed amendment to section nineteen of article four of the Constitution of the State of California, as hereinafter set forth, be submitted to the people of the State of California for their approval or rejection, at the next ensuing general election, or as provided by law. The proposed amendment is as follows:

The people of the State of California do enact as follows:

Section nineteen of article four of the Constitution of the State of California is hereby amended to read as follows:

PROPOSED AMENDMENT.

Section 19. No senator or member of assembly shall, during the term for which he shall have been elected, hold or accept any office, trust, or employment under this state; provided, that this provision shall not apply to any office filled by election by the people.

Section nineteen of article four, proposed to be amended, now reads as follows:

EXISTING PROVISIONS.

Section 19. No senator or member of assembly shall, during the term for which he shall have been elected, *be appointed to any civil office of profit* under this state *which shall have been created, or the emoluments of which have been increased, during such term*, except such offices as may be filled by election by the people.

ARGUMENTS IN FAVOR OF INELIGIBILITY TO OFFICE AMENDMENT.

It has always been the aim of any republican form of government to remove the legislative branch of the government from the control of the executive branch. It is evident that where a member of the legislature is holding a paid position in the executive department of the state that the separation which should exist between these two branches of the government is at an end. The American theory has always been that those who execute the laws should not be the same individuals as those who make the laws, yet one who is both an assemblyman and a member of the executive department is in just that position. It would not be an edifying spectacle, nor would it make for civic decency, to see such an individual introducing a bill in his legislative capacity which would increase the pay he would receive in his executive capacity.

There is another reason why this measure should pass. We should remember that a legislator who is holding a position on the state pay roll is too apt to allow the wishes of the one responsible for his appointment to dictate the manner in which his vote shall be cast. A man in such a position, is, to say the least, not in that independent frame of mind which should be possessed by the ideal legislator.

There can be no doubt that a vote "Yes" on this measure will tend materially to raise the standard of the California legislature of the future.

RICHMOND P. BENTON,
Assemblyman Sixty-sixth District.

While some of our most efficient officials have been men holding appointment under the state, at the same time being members of the legislature, the practice is one which some day may be subjected to abuse. The proposed law to render a member of the legislature ineligible to any office under the state, other than an elective office, during the term for which he shall have been elected, is therefore in the interest of good government and should be adopted.

Once such a law is written into our statutes, we eliminate the incentive which a legislator may have to favor a law creating a position to which later he may contemplate appointment.

The legislator should have no selfish interest in connection with the enactment of any law or the creation of any office. The proposed law without doubt will very largely eliminate the possible selfish considerations.

Here and there the state, by reason of such a law, will actually suffer, as it frequently happens that the most highly specialized man for work in connection with a certain department of state is a member of the legislature. There are instances of that sort today, where, by the enactment of such a law, the state will lose the services of especially qualified and conscientious officials.

To my mind, however, the advantages from the proposed law wholly outweigh the disadvantages, and the net result of such a law will be beneficial alike to the legislature and to the public.

DR. JOHN R. HAYNES.

ARGUMENT AGAINST INELIGIBILITY TO OFFICE AMENDMENT.

To pass this constitutional amendment is in effect to say that every governor and member of the state legislature is dishonest and without integrity or character, because those who urge its adoption are loud in their cries that it will prevent the governor from bartering for legislative votes by appointing senators and assemblymen who favor administration measures to state offices, and that it will further destroy the incentive for members of the legislature to vote with the governor in the hope of obtaining a state position in reward thereof. It is certainly a sad commentary on the integrity of our governors and legislators by thus stigmatizing executive and legislative service. And even if this amendment should pass, could not the governor, were he so lacking in integrity and unmindful of the obligations of his high office, secure the same legislative votes by appointing relatives or political friends of such servile members of the legislature who would sell their honor and barter the trust reposed in them by their constituents? Its adoption must inevitably fail in the accomplishment of any purpose except to close other avenues of political service to legislators.

Do you realize that under this amendment a senator or assemblyman could not take a civil service examination for a state position?

In many instances it makes for efficiency to appoint upon commissions members of the legislature who have given careful study to the needs, aims and objects of a commission created or a law enacted.

Another argument advanced by the proponents of this measure is that members of the legislature who are appointed to state offices receive two salaries, but the records will show that leaves of absence are invariably obtained by such appointees during sessions of the legislature and the actual time of the legislative session is generally about eighty days every two years. Thus the people lose nothing, while the incumbent of a state position who is a member of the state legislature is better fitted through his legislative experience for the discharge of his duties.

The American people love fair play; they like to reward efficient and faithful public service by promotion, yet the adoption of this proposed measure would render every member of the legislature ineligible for promotion to higher positions and graver duties and responsibilities, however efficient and meritorious his services in the legislature may have been.

THOS. P. WHITE,
Presiding Judge, Police Court, Los Angeles.