IN THE SUPREME COURT OF THE STATE OF NEVADA

AIMEE HAIRR; AURORA ESPINOZA; ELIZABETH ROBBINS; LARA ALLEN; JEFFREY SMITH; and TRINA SMITH,

Petitioners,

vs.

THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA and THE HONORABLE JAMES E. WILSON, JR.

Respondents.

vs.

HELLEN QUAN LOPEZ, individually and on behalf of her minor child, C.Q; MICHELLE GORELOW, individually and on behalf of her minor children, A.G. and H.G.; ELECTRA SKRYZDLEWSKI, individually and on behalf of her minor child, L.M.; JENNIFER CARR, individually and on behalf of her minor children, W.C., A.C., and E.C.; LINDA JOHNSON, individually and on behalf of her minor child, K.J,; SARAH and BRIAN SOLOMON, individually and on behalf of their minor children, D.S. and K.S.,

Plaintiffs/Real Parties Interest.

and

DAN SCHWARTZ, NEVADA STATE TREASURER, in his official capacity,

Defendant/Real Party in Interest.

Supreme Court Case No. _____

PETITION FOR WRIT OF MANDAMUS from the First Judicial District Court, District Court Case No. 15-OC-002071-B

PETITIONER'S APPENDIX

VOLUME II

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EXHIBIT 2

EXHIBIT 2

OFFICIAL REPORT

OF THE

DEBATES AND PROCEEDINGS

IN THE

CONSTITUTIONAL CONVENTION

OF THE

State of Nevada,

ASSEMBLED AT CARSON CITY, JULY 4th, 1864,

TO

FORM A CONSTITUTION AND STATE GOVERNMENT.

ANDREW J. MARSH, OFFICIAL REPORTER.

SAN FRANCISCO:
FRANK EASTMAN, PRINTER.
1866

EXHIBIT 2

Mr. BROSNAN. It will be necessary to use the words "commencing on."

Mr. JOHNSON. No; not "commencing on." The terms of the other officers commence on Tuesday; if you say "from the first Monday," the term will commence on Tuesday, like other officers.

Mr. BROSNAN. Very well; then let it read "from the first Monday in January."

The question was taken on the amendment as modified, and it was adopted.

The question was taken on the adoption of Section 1 as amended, and it was adopted.

SECTARIAN INSTRUCTION.

The SECRETARY read Section 2, as follows:

SEC. 2. The Legislature shall provide for a uniform system of common schools, by which a school shall be established and maintained in each school district, at least six months in every year; and any school district neglecting to establish and maintain such a school, or which shall allow instruction of a sectarian character therein, may be deprived of its proportion of the interest of the public school fund during such neglect or infraction, and the Legislature may pass such laws as will tend to secure a general attendance of the children in each school district upon said public schools.

Mr. WARWICK. Will the Chairman of the committee explain a little, as to what is meant here by "sectarian?" It says that any school district "which shall allow instruction of a sectarian character therein, may be deprived of its proportion of the interest of the public school fund," etc. Does that mean that they have no right to maintain Catholic schools, for example?

Mr. COLLINS. This provision has reference only to public schools, organized under the general laws of the State. It is not to be supposed that the laws enacted under it will stand in the way of, or prevent any Catholic school from being organized or carried on; but the provision prevents the introduction of sectarianism into the public schools.

Mr. WARWICK. That is entirely proper, but it seems to me that it might better be worded a little differently. It says, "which shall allow instruction of a sectarian character *therein*"—not in the school, but in the district. I do not suppose that is the intention.

Mr. COLLINS. You will find that it has reference only to public schools, and to the appropriation of the public funds. If they permit sectarian instruction, they are deprived of the use of the public funds, so that it has direct reference to the public schools, and clearly cannot refer to anything else.

Mr. WARWICK. I would like to examine that a little more carefully.

Mr. McCLINTON. I think all the objection can be easily obviated, and leave the section substantially as it is, by making a very slight change. Suppose we say, "in the public schools of said district."

Mr. WARWICK. That is the idea, exactly. It seems to me, as it now reads—and the gentleman will correct me if I am wrong—that it is not in the school, but in the school district that shall establish or allow instruction of a sectarian character, that this penalty is to be applied. It says:

"And any school district neglecting to establish and maintain such a school, or which shall allow instruction of a sectarian character therein, may be deprived," etc.

The word "district" evidently governs the sentence, and that is where the change ought to be made, so that the prohibition of sectarian instruction may apply, not to the districts, but to the schools.

Mr. McCLINTON. I will make a motion to amend the section by striking out the word "therein," and inserting instead the words, "in the public schools of said district."

Mr. HAWLEY. I wish to inquire of the gentleman from Lander whether he imagines that the language of the section as it now stands would make any difference in regard to payments of the school-money, under the law, in a case, for instance, where, under the laws of the State, parties may have organized a Catholic school, entirely separate and distinct from the public schools? Does the gentleman think that the mere fact of the existence of that Catholic school in the district could have any possible influence in preventing the payment of the school-money under the law? In other words, I ask him whether he believes that any school district could be held responsible for the action of private parties, in organizing sectarian schools within such district?

Mr. WARWICK. No, sir; that would be manifestly unjust, and that is the reason why I want this amendment. I do not want the school district to lose on account of the establishment of a Catholic school, a Methodist, a Baptist, or any other school, and therefore I say the language should be such as will not be open to the slightest imputation of that construction.

Mr. HAWLEY. Very well: I will consent to the amendment, so far as I am concerned.

Mr. COLLINS. I wish to call the attention of the Convention one moment to the language of the section as it now stands. I desire to make any change that will be an improvement, but if the sentence is already clear, we should certainly take care to avoid tautology. Now I will read the section again, and emphasize the words as I think they ought to be, and gentlemen will see, I think, that a multiplication of those phrases is scarcely necessary, and certainly it would not sound very well. If we can secure the same sense, without a change of phraseology that would destroy the euphony of the sentence, we should certainly do so, in accordance with the laws of composition. Now let us see how it should read:

"The Legislature shall provide for a uniform system of *common schools*, by which a school shall be established and maintained in each *school district*, at least six months in every year."

The subject of the sentence is "common schools," and "a school" to be established "in each school district." These are the words

for the distribution of the school fund to school districts, during the first year of their organization, without reference to the time that a school has been held therein."

The question was taken, and the amendment was not agreed to.

PENALTY FOR NEGLECT.

The question was next stated on the amendment offered by Mr. Banks, as subsequently modified, to strike out the whole of Section 2, and insert instead the following:

"SEC. 2. The Legislature shall provide for a uniform system of common schools, by which a school shall be maintained in each school district, at least six months in every year; but no sectarian instruction shall be allowed in any public school so established."

Mr. BROSNAN. Now, sir, I move to amend that amendment, as just read, by adding thereto the following words, which I find here in the section as reported by the Committee on Education:

"And any school district neglecting to establish and maintain such a school, or which shall allow instruction of a sectarian character therein, may be deprived of its proportion of the interest of the public school fund during such neglect or infraction."

Mr. BANKS. While I do not see any obvious necessity for that, I see no objection to it, and therefore I accept the amendment.

The question was taken on the amendment as thus modified, and it was not agreed to.

The question was taken on the adoption of Section 2 as reported, and it was adopted.

THE SCHOOL FUNDS.

Section 3 was read as follows:

SEC. 3. All lands, including the 500,000 acres of land granted to the new States under an Act of Congress distributing the proceeds of the public lands among the several States of the Union, approved A. D. 1841; the sixteenth and thirty-second sections in every township, donated for the benefit of public schools, set forth in the Act of the thirty-eighth Congress, to enable the people of Nevada Territory to form a State Government; the thirty thousand acres of public lands granted by an Act of Congress, and approved July 2, 1862, for each Senator and Representative in Congress; and all lands and parcels of lands that have been or may hereafter be granted or appropriated by the United States to this State; all estates that may escheat to the State; all of such per cent. as may be granted by Congress on the sale of land; all fines collected under the penal laws of the State; all property given or bequeathed to the State for educational purposes; and all proceeds derived from any or all of said sources, shall be, and the same are hereby solemnly pledged for educational purposes, and shall not be transferred to any other fund for other uses; and the interest thereon shall, from time to time, be apportioned among the several counties, in proportion to the ascertained numbers of the persons between the ages of six and eighteen years in the different counties. And the Legislature shall provide for the sale of floating land-warrants to cover the aforesaid lands, and for the investment of all proceeds derived from any of the above-mentioned sources in United States bonds, or the bonds of this State: *provided*, that the interest only of the aforesaid proceeds shall be used for educational purposes, and any surplus interest shall be added to the principal sum; *and provided further*, that such portion of said interest as may be necessary, may be appropriated for the support of the State University.

STATE UNIVERSITY.

Mr. DUNNE. I wish to speak to the last proviso, which authorizes the appropriation of such portion of the interest on the public school fund as may be necessary for the support of a State University. I find that special provision is made in the next section for a State University, and in a subsequent section there is a provision for levying a special tax for its support. Now I am entirely in favor of taxing the State for a State University, whenever the State can afford it. I believe, however, in turning our undivided attention, in the first place, to the common school system of the State, and I do not think that the interest derived from the school fund should be taken from the common schools and applied to the purpose of building up a State University. Therefore, because there is special provision made elsewhere for a State University, and because we ought to endeavor, in the first place, to secure to our children the advantages of a good common school system, I move that this last proviso in Section 3 be stricken out.

Mr. HAWLEY. Allow me to call the gentleman's attention, and that of the Convention, to the language of that section. It only provides for the appropriation of "such portion of said interest as may be necessary."

Mr. DUNNE. I am aware of that.

The CHAIRMAN. The question is on the amendment to strike out the last proviso in the section.

Mr. HAWLEY. It does seem to me, Mr. Chairman, that this is a matter which should be left discretionary with the Legislature. I do not think there is any danger that a body of men, elected by the people, and convened here to legislate for the interests of the new State, are going so blindly to work as to appropriate at once, and exclusively, the entire sum received for interest on the public school fund to the support of a State University, leaving the common schools entirely unprovided for. The gentleman from Humboldt must be well aware that to create a State University, to build up its various departments, and fill it with professors, is a work of time. It will, of course, be the duty of the Legislature, first, to locate and rear the structure, and it does seem to me that the Legislature will, beyond any doubt or question, agree with the gentleman from Humboldt, and the rest of us, in realizing the paramount necessity of preparing the new State for a University before they build it—of placing both parents and children in such a position, in the first place, that they may be competent to avail themselves of the advantages of a University. Therefore, I trust that the amendment will not prevail.

I desire, further, to call the attention of the gentleman to another provision in Section 6—the section which authorizes the special tax, to which he has referred—a provision which he has evidently overlooked. The section prescribes that this special tax may be appropriated "for the support and maintenance of said University, *and common schools*." Now I submit

consideration, and the Chair understood the gentleman from Lyon to offer a substitute. Does he withdraw it, or insist upon it?

Mr. CROSMAN. I do not know that I understand the purport of the amendment proposed by the gentleman from Storey, (Mr. Collins.) Is it different from the report of the committee?

Mr. COLLINS. Yes, sir.

The CHAIRMAN. The Chair will state that there appears to be only a little difference in the language, but no real difference in the meaning.

Mr. DUNNE. I wish to address a remark to the gentleman from Storey. The word "interest" having been stricken out by his amendment, leaves the word "principal" alone. Now would it not be better to use the word "capital?"

The CHAIRMAN. The gentleman is not in order. That amendment will not come up until the section is reached.

Mr. DUNNE. I understood the Chair to state the question on the amendment offered by the gentleman from Storey.

The CHAIRMAN. It is the amendment to Section 4. No other section is now under consideration.

Mr. COLLINS. I will state that my amendment is—although I am more than half inclined to leave the subject entirely to the Legislature—to provide that the Legislature shall appoint a Board of Regents, and said Board of Regents shall prescribe rules and regulations for the State University.

Mr. CROSMAN. Then I do not withdraw my motion. I think this amendment is much more concise and to the purpose, providing that the Legislature shall provide for the University and Mining Department. I want the Legislature simply to provide for the University, and then let it be under the control and management of the Board of Regents, as provided by law.

Mr. LOCKWOOD. I understand that the amendment of the gentleman from Storey (Mr. Collins) provides, in the first place, that the Board of Regents shall prescribe regulations for the University, and that then the section goes on to say, that pupils shall be admitted under the rules and regulations prescribed by that Board. If that is so, it looks to me like tautology.

Mr. DUNNE. It appears to me that this matter is getting very much mixed. I move that the committee rise, and recommend that the report be recommitted to the Committee on Education.

Mr. COLLINS. I think the amendment of the gentleman from Lyon (Mr. Crosman) is very complete, and all that is required. It is only a moment's work to agree upon it, so as to be satisfactory to all.

The CHAIRMAN. Does the gentleman from Humboldt insist on his motion?

Mr. DUNNE. Yes, sir.

Mr. FRIZELL. I hope it will not prevail. They can get the section perfected in a moment.

The question was taken on the motion that the committee rise, and it was not agreed to.

Mr. COLLINS. This seems now to embrace all that is needed. I will read it:

SEC. 4. The Legislature shall provide for a State University, embracing departments for agriculture, mechanic arts, and mining, to be under the control of a Board of Regents, as may be provided for by law.

Mr. CROSMAN. I accept that.

Mr. LOCKWOOD. I desire to suggest to the gentleman to put in the first line there, the words "for the establishment of." It seems to infer that, as it is, but it will make the language clearer.

Mr. COLLINS. Very well; I will insert that, if there is no objection, and will make another slight correction.

The SECRETARY read the amendment as finally modified, as follows:

SEC. 4. The Legislature shall provide for the establishment of a State University, which shall embrace departments for agriculture, mechanic arts, and mining, to be controlled by a Board of Regents, whose duties shall be prescribed by law."

The question was taken on the adoption of the amendment, as a substitute for the section originally reported by the Committee on Education, and it was adopted.

ESTABLISHMENT OF SCHOOLS.

Section 5 was read, as follows:

SEC. 5. The Legislature shall have power to establish Normal Schools, and such different grades of schools, from the primary department to the University, as in their discretion they may see fit; and all professors in said University, or teachers in said common schools, of whatever grade, shall be required to take and subscribe to the oath as prescribed in Article XVI of this Constitution. No professor or teacher who fails to comply with the provisions of any law framed in accordance with the provisions of this section, shall be entitled to receive any portion of the public moneys set apart for school purposes.

Mr. LOCKWOOD. I do not desire to delay action, but just to take the sense of the Convention. I move to strike out in the second line the words "normal schools." The Legislature is authorized to establish all grades of schools, and it is not necessary to mention normal schools specially.

The question was taken, and the amendment was not agreed to.

The question was taken on the adoption of the section as read, and it was adopted.

SPECIAL SCHOOL TAX.

Section 6 was read, as follows:

SEC. 6. The Legislature shall provide a special tax of one-half of one mill on the dollar of all taxable property in the State, in addition to the other means provided for the support and maintenance of said University and common schools: *provided*, that at the end of ten years they may reduce said tax to one quarter of one mill on each dollar of taxable property.

Mr. CHAPIN. Before this section is adopted I would like to suggest whether it is not desirable to make one alteration. There seems to be provision made in a previous part of the article

for a school fund, which may be entirely ample, and I would like to alter this language, where it says the Legislature shall provide a special tax of one-half of one mill on the dollar. I move to strike out the word "shall," and insert, "may in its discretion."

The question was taken, and the amendment was agreed to.

Mr. DUNNE. What is the use, now, of the proviso at the end of the section?

Mr. CHAPIN. I move to strike out the proviso also.

Mr. DUNNE. I want that word "shall" put in again, and I hope it will be.

Mr. COLLINS. I regret that it has been stricken out, for I am confident the Board of Regents will have great difficulty in getting funds. It is always the case that institutions of this character are embarrassed for the want of funds and I hope the committee will reconsider that amendment.

Mr. FRIZELL. There is no doubt that if any funds shall be needed for the State University, or for the support of normal or other schools, they will be provided. There will be American citizens in the Legislature, and if the money is needed, and they may in their discretion appropriate it, the Legislature will vote the required amount of money. There can be no doubt about that. On the contrary, it appears that there is ample provision made by this article, both for the schools and the University, and consequently it may be that no special tax will be needed. Now which horn of the dilemma is it best for us to take? I say we had better leave it to the discretion of the Legislature, because it is certain that the tax will be levied, if it is needed.

Mr. CHAPIN. I hope my amendment will be adopted striking out the proviso. Every gentleman knows that the hearts of our people are set on the common schools; and who can doubt that the Legislature, representing such a people, will levy a tax if there shall be any occasion for it? But I do not believe in compelling the Legislature to burden us with a tax, unless it shall be really needed; therefore I trust that the proviso will be stricken out.

Mr. COLLINS. The committee had in view the difficulties which every new State has encountered in the establishment of State Universities and the maintaining of the common school interest. Now this section contemplates that the Board of Regents will set aside the proceeds of this tax of one half mill upon a dollar for the special purpose of creating a fund, to be allowed to accumulate until there shall be money sufficient to lay the foundation of an institution such as the wants of the State may demand. Having the proceeds of the thirty thousand acres for each member of Congress, which will be ninety thousand acres for this State, they may set that apart as a permanent fund for the support and maintenance of professors in the University. If this matter of the special tax is left to the Legislature, what will be the result? That body will be under a pressure, a terrible pressure I have no doubt, which will impel them to postpone the tax from year to year; whereas, if the tax were levied at once, a small tax that nobody would really feel, it would go on gradually accumulating into a fund of some magnitude, until five, ten, or twenty years hence, as the case may be, it will become sufficient in the aggregate to lay the foundation of an institution that will be a benefit and an honor to the State. I hope we shall not neglect to provide for an important matter like this, while we are still in an embryo state. I do not believe that the Legislature is likely to be as earnest in this matter of education as gentlemen appear to anticipate. The Legislature of last winter demonstrated the fact that it did not possess that degree of earnestness on the subject that I had hoped existed. I trust, therefore, that we shall make such provisions in our Constitution that men coming into our State may come with a full conviction and assurance that a proper foundation has been laid for affording the means of instruction to their children as they grow up, without the necessity of sending them to other States to be educated.

The question was taken on Mr. Chapin's amendment to strike out the proviso, and it was agreed to.

The question was then taken on the adoption of the section as amended, and it was adopted.

THE BOARD OF REGENTS.

Section 7 was read, as follows:

SEC. 7. The Governor, Secretary of State, and the Superintendent of Public Instruction, shall for the first four years, and until their successors are elected and qualified, be a Board of Regents to control and manage the affairs of the University, and the funds of the same, under such regulations as may be provided by law; but the Legislature shall, at the expiration of that time, provide for the election of a Board of Regents, and define their duties.

Mr. CHAPIN. I move that the section be adopted as read.

Mr. NOURSE. I suggest that the words "at the expiration of that time," do not come in at the right place. It seems to me that they should be inserted after the words "Board of Regents," where they first occur, so as to read: "but the Legislature shall provide for the election of a Board of Regents at the expiration of that time, and define their duties." As it is now, it would seem to imply that the period for any action of the Legislature will not arrive until the expiration of that time.

The CHAIRMAN. Does the gentleman make any motion?

Mr. NOURSE. I will move that the language be transposed so that the words "at the expiration of that time," shall come next after the word "Regents," where it last occurs in the section.

The Secretary read the section as proposed to be amended.

Mr. STURTEVANT. I hope the gentleman will bear in mind that the mines are not to be taxed for the support of that school.

The question was taken on the adoption of the amendment proposed by Mr. Brosnan, to strike out the word "two," and it was agreed to.

The question was then taken on the adoption of the section, as amended, and it was adopted.

THE SPECIAL TAX—AGAIN.

Mr. DUNNE. I believe we have now passed through the whole article, and I move a reconsideration of the action of the committee by which the word "shall," and the proviso in regard to a special tax were stricken out of Section 6.

Mr. WARWICK. I will ask the gentleman if he voted in the affirmative on those questions.

Mr. BANKS. I voted in the affirmative, and I will make the motion to reconsider.

[Mr. COLLINS in the chair.]

Mr. HAWLEY. I most sincerely trust that the reconsideration will prevail, and that we shall make it mandatory on the Legislature to provide this special tax. I have read carefully the last published report of the Superintendent of Public Instruction of the State of California, the thirteenth Annual Report, and he lays particular stress upon the difficulty with which the Legislature of California has been prevailed upon to make sufficient appropriations for educational purposes. And at this very day, petitions are in circulation, and have been for some time past, throughout the whole of the State of California, for the purpose of receiving signatures praying the Legislature to impose upon the whole of the taxable property of that State, a tax of five mills on the dollar for educational purposes, instead of one-half of one mill, as we propose in this section. Now if the State of California can afford to pay a tax of five mills, I think the State of Nevada can certainly afford to pay one-half of one mill; and this Convention, taking into consideration its solemn duty towards the rising generation, should at least make it mandatory on the Legislature to impose a tax of that amount.

Time will not permit, nor is it necessary that I should recapitulate the arguments which have already been urged to show that among the first and the highest duties of the State, is the duty of educating the rising generation. Nobody will dispute that proposition, and I submit it to the good sense of the members of the Convention, with only the remark that they will reflect honor upon themselves and upon the new State, by making this provision mandatory, whereas if we shall leave it discretionary with the Legislature, which may be influenced by men in private life, or holding subordinate positions, to withhold the educational appropriations, or take only half-way measures from year to year, neglecting to do its whole duty, we shall be doing injustice to the rising generation, and a discredit to ourselves, if I may be permitted to use that remark in regard to the action of the Convention. Therefore I hope that the mandatory features of this section, as reported, will be allowed to remain unchanged.

Mr. DUNNE. The principal argument advanced in favor of striking out the mandatory language in this section was, that the Legislature would levy a tax, if necessary, without any question, and therefore it was not necessary to make the provision mandatory—that if the people of the United States, and of Nevada in particular, were firmly impressed with the necessity of any one thing in the general policy of government, it was the necessity of fostering and protecting the common school system. Now this State University is a departure from the general common school system, and it is exactly because it is such a departure that the Legislature may be unwilling to levy this tax, however necessary it may be. There is no doubt that the Legislature would readily levy a tax for the support of the common schools, but there has always been a great prejudice in the minds of many men against applying any portion of the public money to the establishment or maintenance of anything of the character of a college or university. Every possible argument has been advanced to defeat such appropriations, and devote the whole of the public funds to the common schools. Men would say, "Let us give the money to the education of the people, in their common schools, and allow those who want these new-fangled higher grades of learning to pay for such institutions themselves."

That is the reason why I think it may be sought to evade this tax, unless we make it mandatory. If it is left optional with the Legislature, then those who would cavil at such a tax would have an opportunity to work upon the members, and influence them to prevent the levying of the tax by saying that the measure would be objectionable to the people, and they would gain popularity by opposing it. At the same time, if the subject were left to the people, I think it would pass without question. It is a small tax, of only five cents on each one hundred dollars, but it will go on silently growing and accumulating, without attracting much attention, until at the end of five or six years, perhaps, without any one having sensibly felt it, a fund will have accumulated sufficient to establish the University, or at least to start it upon a substantial basis. After it shall once have been set going, I have no doubt that it will be an object of so much advantage to the State that all men will feel an interest, and take pride in it, and there will be no difficulty in regard to obtaining appropriations for it. The amount of the tax proposed is very small, being only one-tenth of what is now being asked for in California, and I sincerely hope that the reconsideration will

prevail, and the section be allowed to stand as originally reported.

[Mr. CHAPIN in the chair.]

Mr. COLLINS. One reason why I would urge the propriety of the reconsideration, and letting the provision stand just as it did in the Constitution adopted last year, is, that we are operating under the law of Congress, ceding or donating three ninety thousand acres for an Agricultural College, and by the terms of that act our mining department cannot receive or enjoy the advantages of that donation; but the fund derived therefrom must be set aside for certain specified objects. Now I ask where are we going to acquire the funds for our mining department? The only fund that we can have is that which will accumulate from year to year from this tax. That is what we must rely upon to supply and sustain this important department from which we hope to derive such great benefits and advantages in the future. I want the action of the Convention reconsidered, because I feel the absolute importance of the matter. We are situated here, far removed from the great seats of learning in the Atlantic States, and unless we make provision at an early day, by which the rising generation of our youths, soon to grow up and develop into manhood, can receive the advantages of education at our own hands, we shall be obliged to spend fifty times the amount that this contemplated institution would cost us, to educate our children at arms' length. It will be the greatest economy we can adopt to devise means and mature plans by which children can be educated in our midst, so that they may have an education corresponding with surrounding life; and in these departments of our State University we shall be able to provide the means by which they can acquire maintenance and good standing, and secure their own advancement.

While we are engaged in laying the foundations of a great and mighty State, do not let us be niggardly in such a matter, and by want of a comprehensive foresight on our part, in regard to the great wants of the future, force children to leave the State to acquire education. More than that, by such a course we discourage the immigration of that most valuable class which regards education as the very foundation of the State. We say to them —"Do not come here with your half-grown up boys, to dwell among, and unite your fortunes with us, because if you do, in a few years you will have to send your boys to the Atlantic States, or over the Sierras to California, to acquire an education, which we engaged here to-day in laying the foundations of a great State, are unwilling to provide for, by requiring the small tax of a half a mill on the dollar to be levied on the taxable property of the State." I trust that those gentlemen who voted for the amendment will look at the consequences, and vote for the reconsideration.

Mr. BANKS. I really hope that this amendment will be reconsidered. Many men feel that education is something that can be done without, or delayed for a time. Private interests may be in the way, or the times may be dull, and in the Legislature men will agree that for that particular year they will make the taxes light by omitting this tax, hoping, perhaps, that the subject will be attended to the next year, when the times shall be better; and thus the matter will be postponed and neglected from year to year. That is the way it has been in California, and in other States in the Union. The cause of education has been thrust aside for other interests. I hope that no gentleman will vote finally on this subject without first considering that the real issue is this: Shall we, or shall we not, have established here a permanent educational institution, which is indispensably necessary for the permanent prosperity and for the credit of our proposed State?

Mr. BROSNAN. I will merely add a word. The Legislature shall establish the institution—we have determined upon that. Now, if gentlemen are afraid to say that the Legislature shall make this provision, and divide the fund between the University and the common schools; if they think it is too much, and that the funds are ample without a special tax, then I submit that they are not acting prudently about it, unless they reconsider, because they say the Legislature will do this thing—that we need not adopt this provision, because the Legislature is abundantly able without it—and if that is the case, the Legislature may see fit to make the tax even larger than we intend. Therefore, I say that on the ground of caution they should vote to reconsider, because here is a tax provided for which cannot prove to be burdensome.

Mr. FRIZELL. I hope the vote will be reconsidered. I am willing to concede to the opinions of the array of able and good men who are in favor of the reconsideration, and to adopt the reasons which have been assigned by them. The present occupant of the chair (Mr Chapin) will bear me witness that from the beginning I have been willing to leave anything doubtful or difficult which has arisen from time to time to the Legislature, but yielding to the arguments of good men, whom I know to have the cause of education at heart, I am willing to reconsider.

Mr. NOURSE. I am rather inclined to oppose the motion to reconsider. If the section as proposed by the committee agrees with the section as printed in the old Constitution, and I believe it does substantially, then this tax is a matter to be divided between the University and the common schools, and I am opposed to raising money by a State tax for the support of the common schools, for the reason that, as all experience shows, money to be expended economically, and to the best advantage, should be raised in such a manner as to be brought close home to all the people who are to expend it. If the people have to tax themselves for the money they expend, they will take better

care of it than they will of the money which they receive from land grants, or otherwise. I have been led to believe, for this reason, that the better policy is to provide that the neighborhood which raises the money shall expend it.

Then comes this question of the college. Sir, I do not anticipate as much advantage from a State College as other gentlemen seem to. It is true that we appear to have peculiar facilities here for a mining college—more probably than in any other place in the world—and if everything here proposed was going to that, I would be strongly in favor of it. But when we come to speak about establishing a college in general, in which the ordinary branches of a collegiate education are taught, I must say, while I would be very glad to see it prosper, that I have but little faith in it. It is too easy to reach other regions, where grass grows, to be trodden under the feet of the pupils, and trees to wave over their heads, and where they do not have to drink in alkali, like the bitter waters of Marah. I do not think, therefore, that a college here would be likely to flourish much. Still, I would like to establish and encourage a mining department, and I think the establishment of such a department is essential, and would be of great advantage to the State, and no doubt it would be well patronized. If the money proposed to be raised by this tax were to go to the mining department exclusively, and not, as I understand it is, to the care of the same men who have charge of the funds for the agricultural department, for which I think this Territory is no proper place, I should be glad to vote for the tax.

Mr. WARWICK. As our time is getting very short, believing that this subject has been fully ventilated, I call for the question.

The question was taken on the motion to reconsider, and it was agreed to.

THE TAX FOR COMMON SCHOOLS.

Mr. NOURSE. I now move to amend Section 6 by striking out the words "and common schools." I understand that the common schools are otherwise abundantly supplied, getting the advantage of all the land grants, and so on. I make the motion mainly for the sake of hearing how they are provided for.

Mr. HAWLEY. Until within the past year the manner in which the school fund was obtained from taxes, has been by the payment of all the taxes assessed in each county, including the tax for school purposes, from which the Territory received its share, and when the Territory had received such share, each county drew its proportion of the school money. That law was repealed at the last session of the Legislature, and now each county levies its own tax for a school fund. Douglas County has this year a school tax of fifteen cents on each one hundred dollars. Now we propose to levy this special State tax, because we think the people may not for some time obtain any benefit or advantage from the school fund derived from the sale of lands set apart for that fund. In addition to that, we expect that each county will levy a tax sufficient for its own local institutions, and if that is not sufficient to support the common schools, a portion of this State tax of one-half of one mill on the dollar may be appropriated. We expect, moreover, that there will be a balance left which will go towards creating a sinking fund for the benefit of the University, and we do not wish to go along with that at any snail's pace. While we do not desire to impose an onerous tax, which would cause the people to cry out under the burden, yet we do propose to make such provisions as will secure to the State such an institution as is best fitted to prepare its pupils for the duties of life.

Mr. WARWICK. Is it contemplated to set apart any portion of the tax for the purposes of the University?

Mr. HAWLEY. The section provides that the tax shall be levied "for the support and maintenance of said University and common schools."

Mr. WARWICK. Exactly. But that University being in the future, and the schools in the present, would it not be better, I suggest, to set aside some portion of it specially for the purposes of the University?

Mr. HAWLEY. I do not think so. I have already expressed my views on that subject. The first duty of the State, in my opinion, is to support the common schools, and if the fund for that purpose is not sufficient, as a consequence, persons interested will have to contribute to make up the deficiency, as they do at the present time. But if, on the other hand, there shall be more than is necessary, then we leave it discretionary with the Legislature to set apart such surplus as may remain, for the purpose of an endowment of the University. That is the system which we propose to inaugurate.

Mr. WARWICK. As the gentleman from Douglas is School Superintendent of his own county, he must be aware that the wants of any school district are only circumscribed by its means. For instance, a very plain schoolhouse, and the commonest desks, will suffice, as long as the district is so circumscribed as to be unable to afford anything better; but if its means are increased, it must have a better school-house, and more elegant desks, and a larger number and better class of teachers. I admit that these things improve the schools very much, and are desirable, but unless we provide for specially setting apart a small portion of the tax to that object, we shall have no fund at all for the University.

Mr. HAWLEY. Allow me to say that that is left discretionary with the Legislature. The committee did not propose to legislate as to what disposition shall be made of every dime.

Mr. WARWICK. Then I understand that the Legislature has discretionary power to make such use of the fund as it may see fit.

Mr. COLLINS. I have faith to believe that the Legislature, having the fund in its care, will be disposed to use it to the best possible advantage. Our worthy chairman (Mr Chapin) has suggested that the words "mining department" be substituted for "common schools," proposing to have it read —"for the support and maintenance of said University and mining department thereof." That might, perhaps, devote this fund more directly and exclusively to the use of the mining department: but I am willing to leave the whole matter open to the Legislature, allowing that body, at any and all times, to be governed by the exigencies of the case. If the common schools are languishing, and there are no other funds to sustain them, of course they should not be permitted to suffer for the benefit of the University. They should receive the first care of the State, and next after them the University, and such branches thereof as the Legislature shall conceive to be most important for immediate development. I prefer to leave it all to the Legislature.

Mr. WARWICK. I attach great importance to the mining department clause in the provision for the establishment of this academy, college, or whatever it may be called, for the reason that I am satisfied there is more in it than gentlemen suppose, who have not examined the subject. I had occasion to investigate it to some extent while I was in California. There is a little college at a place in Europe named Freyburg, one department of which is devoted to the exclusive study of the subject of mines and mining; and that little college now has its students distributed in all parts of the world, wherever mining pursuits are carried on, and their services are in great request. And inasmuch as there is no portion of the world where there are such advantages for a school of that character as in Nevada, I imagine that it would be a paying institution and an honor to the State, and therefore I would like to see it encouraged in its infancy. I have no question but that it will be successful after it has once been fairly started.

Mr. NOURSE. I would like to modify my motion, because I do not wish to be placed in the position of an opponent of the common schools, when there is no one a more ardent friend than I am of our common school system. But I find that everything else is provided for, except this poor lone mining department, which really seems to be the most important of all, and therefore I propose to devote to that this half-mill tax, which I think will be none too large for the object. I propose to withdraw my former amendment, and, instead, to amend that portion of the section so as to read —"for the support and maintenance of the mining department of said University." It seems to me that is the only interest which is not already provided for, and it is the most important one.

The question was stated on Mr. Nourse's amendment as modified.

Mr. DUNNE. I prefer to leave the section as it is, and I differ with the mover of the amendment now pending, in the proposition which he advanced a short time ago, namely: that it was not, in his opinion, right policy to levy a State tax for the support of the common schools. In his able argument he stated as his reason, that he thought a school fund would be most effective, or that the most good would result from it, if it were to be raised from the immediate vicinity in which it is to be applied. But, sir, I think, in a country like the proposed State of Nevada, there is something due to those living in the outside portions of the country. When people go to those outermost regions, becoming the pioneers of civilization, enduring the hardships inseparable from a life in such a country, taking their families there, and endeavoring to build it up, I believe that some little consideration is due to them, and for that reason I say that a general school tax should be imposed, and the money derived therefrom divided all over the State in proportion to the number of the children in each locality. And the reason for it, in my mind, is this: that the more populous portions of the State ought to contribute somewhat towards the support of education in the outside places.

Now I represent, in part, what might be considered an outside place, and perhaps it may be said that I am open to the charge of being interested: but I explain my position in this way: That such a system works no injustice to the parents of children living in the populous counties, because they draw the same amount of money in proportion to the number of their children that is distributed to the children living in those outskirts of civilization; and the application of the rule is simply that the large capitalists of the metropolis, who have no children, and therefore derive no benefit to their families, or individually, pay their proportion for the education of the children of the whole State. What the capitalist pays goes to the general fund, and is thence distributed, and it works for the interest and advantage of the largely populated communities also, for the reason that they draw from the fund in proportion to the number of children they have, and hence they suffer no injustice. And it works no injury to the capitalist, because under the theory of our government he should be made to pay for the protection of his property, and I suppose it will not be disputed that there are no better means of affording such protection than the support of good common schools. Therefore he cannot complain—or if he does we should pay no attention to his complaints, but continue to levy a small tax upon his wealth, for the support and encouragement of public instruction.

For the reasons which I have stated, I should like to see the section left as it is, so as to permit this fund to remain in the treasury, to be divided among the educational institutions of the State, then leaving its particular disposition to the Legislature. If, upon the recommenda-

EXHIBIT 3

APPENDIX

TO

JOURNALS OF SENATE

OF THE

FIRST SESSION OF THE LEGISLATURE

OF THE

STATE OF NEVADA.

CARSON CITY:
JOHN CHURCH, STATE PRINTER.

FIRST ANNUAL MESSAGE

OF

H. G. BLASDEL,

GOVERNOR OF THE STATE OF NEVADA.

You are required to provide for organizing and disciplining the militia of the State; the encouragement of volunteer corps, and the safe keeping of the public arms. The struggle in which the Mother Government is now so nobly contending—the vast expenditures she is making to maintain an unimpaired nationality—the possibility, remote, I trust, of disturbance within our State borders, will admonish and stimulate you to make provision for the preservation of peace and good order, such as the abundant materials at hand afford.

Our isolation and the difficulty of obtaining speedy assistance in the event of trouble, our proximity to Indian tribes not always friendly, are cogent reasons for giving this subject your deliberate consideration. Our people will organize and discipline themselves, if a convenient plan is made and the necessary arms furnished. There must be system, or there will be a lack of efficiency. Expenditures in this behalf will be cheerfully approved by the people, knowing, as they do, that the most effectual mode of avoiding a disturbance is ample means for its suppression.

The fundamental law of the State imposes upon you the duty of providing for a uniform system of common schools, and the founding of a State University. By the bounty of the Federal Government, and the authority invested in the legislative department to levy a special tax for educational purposes, there exists the nucleus for placing the acquirement of a practical education within the reach of every child of the State. The advantages accruing to the body politic, arising from an educated, well-informed thinking population, must be obvious to these into whose hands our people have confided the law-making power. Universal education is no longer an experiment of doubtful policy. Its general diffusion has been found promotive of piety, good order and a becoming regard for the constituted authorities. It induces the citizen to respect himself, and thus command the respect of others. Under that liberal and enlightened system of government which prevades all our institutions, and which guarantees to every citizen, however humble his station in life; a voice in the management and direction of State affairs, too much importance cannot be attached to a judicious inauguration of that system, which is to have such an important bearing upon the future prosperity and reputation of the State. I conjure you, therefore, to give your early and earnest attention to this subject; and by the wisdom of your enactments relating thereto, to lay broad and deep the foundation of that superstructure, on which shall rest the future moral, social and political well-being of our people. Although the General Government has made princely donations of lands which ours has appropriated to educational purposes, the experience of other States, to which the same liberality has been extended, should teach us that the children of the present generation are not likely to receive the full benefit thereof, without further Congressional legislation. The uniform construction of these grants by the Department at Washington, has been that the State cannot convey title to any specific tracts, until the public lands shall have been surveyed, and the selections made by the State, recognized by Federal authority. This will be the work of many years, with such meager appropriations as will probably be made for that object. It is not only highly important for the purposes for which we have dedicated these lands, but for the general prosperity of the State, that our citizens should early become the owners of the soil which they cultivate, and on which they expend large sums in the erection of houses, mills, places of business and manufactories. Nothing tends more to the prosperity and

EXHIBIT 4

SECOND REVISED PROPOSED REGULATION OF

THE STATE TREASURER

LCB File No. R061-15

October 9, 2015

EXPLANATION – Matter in ***italics*** is new; matter in brackets [~~omitted material~~] is material to be omitted.

AUTHORITY: §§1-4, section 15 of Senate Bill No. 302, chapter 332, Statutes of Nevada 2015, at page 1831; §§5-7, 9, 12 and 13, sections 7 and 15 of Senate Bill No. 302, chapter 332, Statutes of Nevada 2015, at pages 1826 and 1831; §§8 and 11, sections 9 and 15 of Senate Bill No. 302, chapter 332, Statutes of Nevada 2015, at pages 1828 and 1831; §10, sections 7, 8, 12 and 15 of Senate Bill No. 302, chapter 332, Statutes of Nevada 2015, at pages 1826, 1827, 1830 and 1831; §§14 and 16, sections 10 and 15 of Senate Bill No. 302, chapter 332, Statutes of Nevada 2015, at pages 1829 and 1831; §§15 and 19, sections 7, 8 and 15 of Senate Bill No. 302, chapter 332, Statutes of Nevada 2015, at pages 1826, 1827 and 1831; §§17 and 18, sections 11 and 15 of Senate Bill No. 302, chapter 332, Statutes of Nevada 2015, at pages 1829 and 1831.

A REGULATION relating to education; prescribing the requirements and procedures for applying to establish and establishing an education savings account; establishing the Committee to Review Payments to determine whether certain expenditures of money from an education savings account are authorized; requiring certain examinations administered to a child for whom an education savings account has been established to be selected from a list prescribed by the Department of Education; prescribing the procedure by which an agreement to establish an education savings account may be terminated; requiring the annual audit of certain education savings accounts; establishing the requirements to become a participating entity; prescribing the procedure by which the State Treasurer may terminate the participation of an entity under certain circumstances; requiring certain participating entities to post a bond or provide certain documentation to the State Treasurer; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law allows the parents of a child who is required by law to attend public school and who has been enrolled in a public school for not less than 100 consecutive school days without interruption to establish an education savings account for the child by entering into an agreement with the State Treasurer. (Section 7 of Senate Bill No. 302, chapter 332, Statutes of Nevada 2015, p. 1826) If a parent enters into such an agreement, a grant of money on behalf of the child must be deposited into the education savings account. (Section 8 of Senate Bill No.

302, chapter 332, Statutes of Nevada 2015, p. 1827) The parent may use money in the education savings account to pay certain expenses to enable the child to receive instruction from a participating entity, including tuition at a private school, a program of distance education or a college or university. (Section 9 of Senate Bill No. 302, chapter 332, Statutes of Nevada 2015, at p. 1828) **Section 8** of this regulation clarifies the expenses that are considered tuition. If an expense is considered tuition or is another expense authorized in statute, a parent may use money from an education savings account to pay the expense. (Section 9 of Senate Bill No. 302, chapter 332, Statutes of Nevada 2015, at p. 1828)

Existing law requires the State Treasurer to freeze an education savings account during any break in the school year. (Section 7 of Senate Bill No. 302, chapter 332, Statutes of Nevada 2015, p. 1826) **Section 7** of this regulation provides that any period of 15 or more consecutive days that are not school days will be considered a "break in the school year."

Section 9 of this regulation requires a parent who wishes to establish an education savings account on behalf of his or her child to submit an application to the State Treasurer during the open enrollment period prescribed by the State Treasurer. **Section 9** provides that the State Treasurer will approve an application made on behalf of any eligible child who has been enrolled in a public school and in one or more qualifying courses at a public school for the 100 school days immediately preceding the date on which the application is received; and (2) unless the State Treasurer authorizes a waiver for extraordinary circumstances, has not been absent from the public school for more than 15 consecutive school days during that period of 100 school days. **Section 9** defines the term "qualifying course" to mean any course offered by a public school to pupils who are enrolled in the public school for credit toward promotion to the next grade or graduation.

Section 10 of this regulation allows a parent whose application has been approved to enter into an agreement with the State Treasurer and establish an education savings account. **Section 10** also prescribes the dates on which the State Treasurer will deposit grants of money into education savings accounts. Additionally, **section 10** states that the State Treasurer will provide a memorandum to each parent who establishes an education savings account that sets forth the procedures to be followed by a parent when making payments from the education savings account. **Section 10** further provides that the State Treasurer will annually provide to the Department a list of children for whom an Education Savings Account has been established. **Section 11** of this regulation establishes the Committee to Review Payments and authorizes the State Treasurer to submit a request to the Committee for a determination on whether an expenditure of money from an education savings account is authorized.

Existing law requires a participating entity to ensure that each child on whose behalf a grant of money has been deposited into an education savings account takes certain examinations. (Section 12 of Senate Bill No. 302, chapter 332, Statutes of Nevada 2015, p. 1830) **Section 10** requires such examinations to be included on a list of examinations prescribed by the Department of Education.

Existing law provides for the early termination of an agreement to establish an education savings account before the account is scheduled to expire or be renewed. If an agreement is terminated early, existing law prohibits the child from receiving instruction from a public school,

other than instruction that is authorized under the agreement, until the end of the period for which the last deposit was made into the education savings account. (Section 7 of Senate Bill No. 302, chapter 332, Statutes of Nevada 2015, p. 1826) **Section 12** of this regulation authorizes a parent to terminate an agreement by providing written notice to the State Treasurer. If a parent provides such notice by not later than the last business day of the calendar quarter for which the most recent deposit was made into the education savings account, **section 12** authorizes the child to enroll in a public school on the first school day of the next calendar quarter. **Section 13** of this regulation provides that, if the State Treasurer reasonably believes that a child for whom an education savings account has been established no longer resides in this State, the State Treasurer will freeze the account and ask the parent of the child for proof that the child resides in this State. If a parent fails to provide such proof, **section 13** provides that the State Treasurer will dissolve the account.

Existing law requires an education savings account to be audited randomly each year by a certified or licensed public accountant. If the State Treasurer determines that there has been a violation of law, regulation or the agreement pursuant to which the account was established or a substantial misuse of funds, the State Treasurer is authorized to freeze or dissolve the account. (Section 10 of Senate Bill No. 302, chapter 332, Statutes of Nevada 2015, p. 1829) **Section 14** of this regulation provides for the annual random audit of 10 percent of the education savings accounts in existence on January 1 of that calendar year. If 5 percent or more of the audits reveal a violation of law, regulation or the agreement or a substantial misuse of funds, **section 14** requires all education savings accounts to be audited.

Section 15 of this regulation provides that: (1) the State Treasurer will quarterly provide to the Department of Education notice of all agreements that have been terminated; and (2) any money remaining in an education savings account when an agreement is terminated or expires reverts to the State General Fund and must be transferred to the Fund within 10 days after the termination or expiration.

Existing law provides that an education savings account may only be maintained at a financial management firm qualified by the State Treasurer. (Section 7 of Senate Bill No. 302, chapter 332, Statutes of Nevada 2015, p. 1826) **Section 16** of this regulation provides that the State Treasurer will enter into a contract with one or more financial management firms that meet certain qualifications to manage education savings accounts.

Existing law provides that a private school, a college or university, a program of distance education, a tutor or an accredited tutoring facility or the parent of a child can become eligible to receive money from an education savings account by applying to the State Treasurer. (Section 11 of Senate Bill No. 302, chapter 332, Statutes of Nevada 2015, p. 1829) **Section 17** of this regulation requires an application submitted by any entity other than the parent of a child to include proof that the entity is qualified to receive such money.

Existing law authorizes the State Treasurer to refuse to allow a participating entity that receives money from an education savings account to continue receiving such money if the entity has failed to provide any educational services required by law to the child for whom the entity receives such money. (Section 11 of Senate Bill No. 302, chapter 332, Statutes of Nevada 2015, p. 1829) **Section 17** provides that, if the State Treasurer determines that a participating entity

may have failed to provide such educational services, the State Treasurer will conduct an investigation. If the investigation reveals that the participating entity has failed to provide such services, **section 17** provides that the State Treasurer may, after providing notice and the opportunity for a hearing, terminate the entity's participation in the program.

Existing law authorizes the State Treasurer to require a participating entity that is reasonably expected to receive more than $50,000 in payments from education savings accounts during any school year to: (1) post a surety bond in an amount equal to the amount the entity receives from education savings accounts; or (2) provide evidence that the entity has unencumbered assets sufficient to pay an amount equal to the amount that it receives from education savings accounts. (Section 11 of Senate Bill No. 302, chapter 332, Statutes of Nevada 2015, p. 1829) **Section 18** of this regulation provides that such a reasonable expectation will exist and a participating entity will be required to comply with those requirements if more than 10 agreements authorize the entity to receive money from an education savings account.

Section 1. Chapter 385 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 18, inclusive, of this regulation.

Sec. 2. ***The provisions of sections 2 to 18, inclusive, of this regulation may be cited as the Education Savings Account Regulations.***

Sec. 3. ***1. The purposes of sections 2 to 18, inclusive, of this regulation are to:***

(a) Award grants of money made available pursuant to section 8 of Senate Bill No. 302, chapter 332, Statutes of Nevada 2015, at page 1827, on behalf of children who qualify for such grants so that the parents of such children have choices concerning the education of the children; and

(b) Make the grants of money described in paragraph (a) available to be awarded on behalf of the largest number of children allowable under sections 2 to 15, inclusive, of Senate Bill No. 302, chapter 332, Statutes of Nevada 2015, at pages 1826-31.

2. For the accomplishment of these purposes, the provisions of sections 2 to 18, inclusive, of this regulation must be broadly and liberally construed.

Sec. 4. *As used in sections 2 to 18, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 5 and 6 of this regulation have the meanings ascribed to them in those sections.*

Sec. 5. *"Agreement" means a written agreement between a parent and the State Treasurer to establish an education savings account entered into pursuant to section 7 of Senate Bill No. 302, chapter 332, Statutes of Nevada 2015, at page 1826.*

Sec. 6. *"School day" means any day, including a partial day, during which a school offers instruction to pupils at the school.*

Sec. 7. *For the purpose of carrying out the provisions of section 7 of Senate Bill No. 302, chapter 332, Statutes of Nevada 2015, at page 1826, the State Treasurer will construe the term "break in the school year" to mean 15 or more consecutive days that are not school days.*

Sec. 8. *For the purpose of carrying out the provisions of sections 2 to 15, inclusive, of Senate Bill No. 302, chapter 332, Statutes of Nevada 2015, at pages 1826-31, the State Treasurer will construe the term "tuition" to include only the cost of enrolling a child in a school or program of distance education that is a participating entity, except that the term does not include:*

1. An application fee, entrance fee, parking fee, technology fee, athletic fee, studio fee, laboratory fee or any fee or surcharge imposed in connection with a specific course, whether or not the fee or surcharge is imposed on all children enrolled in the participating entity or the course; or

2. A charge imposed for books, supplies or room and board, whether or not the charge is imposed on all children enrolled in the participating entity.

Sec. 9. *1. A parent who wishes to establish an education savings account on behalf of his or her child must submit an application to the State Treasurer on a form made available by the State Treasurer during the open enrollment period established pursuant to subsection 2.*

2. At least one time each year, the State Treasurer will establish an open enrollment period during which the State Treasurer will accept applications to establish an education savings account. The State Treasurer will announce the dates of the open enrollment period during the fourth quarter of the calendar year immediately preceding the school year for which the open enrollment period applies.

3. The State Treasurer will review each application submitted pursuant to subsection 1 and, not later than 30 days after the date on which the application is received, notify the applicant by certified mail or electronic communication whether the application has been approved or denied. If the application is denied, the notification must include, without limitation, the reasons for the denial.

4. Except as otherwise provided in subsection 5, the State Treasurer will approve an application submitted on behalf of a child required by NRS 392.040 to attend public school if the applicant submits proof that the child was enrolled in a public school and in one or more qualifying courses at the public school for the 100 school days immediately preceding the date on which the application is received, including, without limitation, any school day that the child was not required to attend a qualifying course. The State Treasurer will not approve an application submitted on behalf of a child who has participated only in after-school extracurricular activities at a public school.

5. Except as otherwise provided in subsection 6, the State Treasurer will not approve an application submitted on behalf of a child if, during the 100 school days immediately

preceding the date on which the application is received, the child was absent from the public school in which the child was enrolled for more than 15 consecutive school days, including, without limitation, any school day that the child was not required to attend a qualifying course.

6. An applicant may apply in writing to the State Treasurer for a waiver of the provisions of subsection 5. Upon a showing that an absence of more than 15 consecutive school days was caused by extraordinary circumstances, which may include, without limitation, the death of a family member of the child or a serious medical condition, the State Treasurer may grant the waiver.

7. As used in this section, "qualifying course" means a course that is offered to pupils who are enrolled in the public school for which the pupils may receive credit toward promotion to the next grade or graduation from high school, including, without limitation, a course that is offered as an elective.

Sec. 10. *1. If the State Treasurer approves an application submitted pursuant to section 9 of this regulation, the State Treasurer will enter into an agreement with the parent who submitted the application. After a parent enters into an agreement with the State Treasurer, the parent may open an education savings account at a financial management firm with which the State Treasurer has entered into a contract pursuant to section 16 of this regulation.*

2. The State Treasurer will:

(a) Deposit money into each education savings account in equal quarterly installments on the dates on which the Superintendent of Public Instruction apportions the State Distributive School Account in the State General Fund pursuant to NRS 387.124.

(b) Provide each parent who establishes an education savings account on behalf of his or her child with a memorandum outlining the procedures to follow in making payments from the account.

(c) Annually provide the Department with a list of children on behalf of whom education savings accounts have been established on the date prescribed by the Department.

3. An examination administered to satisfy the requirements of section 12 of Senate Bill No. 302, chapter 332, Statutes of Nevada 2015, at page 1830 must be included on the list of examinations prescribed by the Department for that purpose.

Sec. 11. *1. There is hereby created the Committee to Review Payments consisting of seven members as follows:*

(a) The State Treasurer or his or her designee;

(b) Two voting members appointed by the State Treasurer who are parents of children on behalf of whom an education savings account has been established and who reside in Clark County;

(c) One voting member appointed by the State Treasurer who is the parent of a child on behalf of whom an education savings account has been established and who resides in Washoe County;

(d) One voting member appointed by the State Treasurer who is the parent of a child on behalf of whom an education savings account has been established and who resides in a county other than Clark County or Washoe County; and

(e) Two nonvoting advisory members appointed by the State Treasurer who are educators or administrators at a participating entity, other than the parent of a child.

2. The members of the Committee serve at the pleasure of the State Treasurer. A member of the Committee serves for a term of 1 year and may be reappointed.

3. The State Treasurer or his or her designee will serve as the Chair of the Committee and will vote only in the case of a tie.

4. The State Treasurer may request the Committee to determine whether an expenditure of money from an education savings account is authorized pursuant to section 9 of Senate Bill No. 302, chapter 332, Statutes of Nevada 2015, at page 1828.

5. The Committee shall:

(a) Meet at the call of the Chair upon the receipt of a request to determine whether an expenditure of money from an education savings account submitted to the Committee by the State Treasurer pursuant to subsection 4 is authorized pursuant to section 9 of Senate Bill No. 302, chapter 332, Statutes of Nevada 2015, at page 1828.

(b) Comply with the provisions of chapter 241 of NRS.

6. As used in this section, "administrator" means the person who directs or manages the affairs of a private school, as defined in NRS 394.103.

Sec. 12. *1. The parent of a child on behalf of whom an education savings account has been established may terminate an agreement with the State Treasurer at any time by providing written notice by certified mail to the State Treasurer.*

2. If an agreement is terminated pursuant to subsection 1, the child on behalf of whom the education savings account was established may enroll in a public school on the first day after the expiration of the quarter for which the last deposit was made into the education savings account of the child.

Sec. 13. *If the State Treasurer reasonably believes that a child on behalf of whom an education savings account has been established no longer resides in this State, the State Treasurer will freeze the education savings account and send a written notice by certified mail to the parent of the child requesting the parent to submit proof that the child resides in this State. If the parent:*

1. Provides satisfactory proof by not later than 15 business days after the date on which the notice is received, the State Treasurer will remove the freeze on the education savings account.

2. Fails to provide satisfactory proof by not later than 15 days after the date of the notice, the State Treasurer will terminate the agreement pursuant to which the education savings account was established and dissolve the education savings account.

Sec. 14. *1. Each calendar year, the State Treasurer will randomly select not fewer than 10 percent of the education savings accounts in existence on January 1 of that year to be audited.*

2. The State Treasurer will cause an audit to be conducted of each education savings account then in existence if 5 percent or more of the audits conducted pursuant to subsection 1 indicate any of the following irregularities:

(a) Failure to comply with an agreement pursuant to which an education savings account was established, sections 2 to 15, inclusive, of Senate Bill No. 302, chapter 332, Statutes of Nevada 2015, at pages 1826-31, or sections 2 to 18, inclusive, of this regulation; or

(b) A substantial misuse of money in an education savings account.

3. If the State Treasurer determines, based on an audit conducted pursuant to subsection 1 or 2, or for any other reason, that an irregularity described in subsection 2 has occurred, the State Treasurer will:

(a) Freeze the education savings account; and

(b) Send to the parent of the child on behalf of whom the education savings account was established by certified mail written notice of the reason that the account is frozen and the manner in which to petition for reconsideration as set forth in subsections 4 and 5.

4. A parent who receives notice that the State Treasurer has placed a freeze on an education savings account pursuant to subsection 3 may submit a petition for reconsideration by providing to the State Treasurer, not later than 5 business days after receiving the notice, a written explanation of the reasons that the parent believes the determination of the State Treasurer was incorrect. If the State Treasurer does not receive such a petition within that time, the State Treasurer will dissolve the education savings account and terminate the agreement pursuant to which the account was established.

5. Upon receipt of a petition pursuant to subsection 4, the State Treasurer will review the written explanation included in the petition and determine whether an irregularity described in subsection 2 occurred. Not later than 5 business days after receiving the petition, the State Treasurer will notify the parent of the determination. If the State Treasurer determines that:

(a) An irregularity occurred, the State Treasurer will dissolve the education savings account and terminate the agreement pursuant to which the education savings account was established.

(b) No irregularity occurred, the State Treasurer will remove the freeze on the education savings account.

Sec. 15. *1. Each calendar quarter, the State Treasurer will provide to the Department a list of each child for whom an agreement pursuant to which an education savings account was established has been terminated for any reason.*

2. If any money remains in an education savings account after the agreement pursuant to which the account was established is terminated or expires, the money in the account reverts and must be transferred to the State General Fund by the State Treasurer by not later than 10 days after the date of the termination or expiration.

Sec. 16. *1. The State Treasurer will enter into a contract to manage education savings accounts with one or more financial management firms. Any such firm must:*

(a) Be authorized to accept deposits under the laws of this State or the United States; and

(b) Insure the accounts that it maintains with the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund or a private insurer approved pursuant to NRS 678.755.

2. A contract entered into pursuant to subsection 1 must include a provision allowing the State Treasurer to terminate the contract if:

(a) The financial management firm fails to comply with applicable law or the provisions of the contract; or

(b) The State Treasurer determines that the financial management firm is not performing adequately.

3. A financial management firm with whom the State Treasurer enters into a contract pursuant to subsection 1 shall maintain and manage education savings accounts in compliance with generally accepted accounting principles.

Sec. 17. *1. To become a participating entity, an entity must submit an application to the State Treasurer on a form made available by the State Treasurer.*

2. Each applicant, other than the parent of a child, must submit proof that the applicant is eligible to become a participating entity pursuant to section 11 of Senate Bill No. 302, chapter 332, Statutes of Nevada 2015, at page 1829. If an applicant is a tutor or tutoring facility, such proof must include, without limitation, proof that the applicant is accredited by a state, regional or national accrediting agency.

3. If the State Treasurer:

(a) Approves an application submitted pursuant to this section, the State Treasurer will provide notice to the applicant through written or electronic communication to the person designated on the application.

(b) Does not approve an application submitted pursuant to this section, the State Treasurer will provide notice to the applicant by certified mail to the person designated on the application.

4. If the State Treasurer determines, based on the results of the examinations administered pursuant to section 12 of Senate Bill No. 302, chapter 332, Statutes of Nevada 2015, at page 1830, or for any other reason, that a participating entity that accepts payments from the educational savings account of a child may have failed to provide an educational service required by law to the child, the State Treasurer will conduct an investigation. If, after conducting an investigation, the State Treasurer determines that the participating entity has failed to provide an educational service required by law to the child, the State Treasurer may, after providing notice and the opportunity for a hearing, refuse to allow the entity to continue as a participating entity.

Sec. 18. *1. If the State Treasurer reasonably expects that a participating entity will receive, from payments made from education savings accounts, an amount that exceeds $50,000 for a school year, the State Treasurer will:*

(a) Determine the amount reasonably expected to be paid to such a participating entity from education savings accounts during the school year; and

(b) Provide notice to the participating entity of the amount determined pursuant to paragraph (a) and the requirements set forth in subsection 2.

2. A participating entity that receives a notice pursuant to subsection 1 shall, not more than 10 business days after the next deposit of money into education savings accounts pursuant to section 10 of this regulation:

(a) Post a surety bond in an amount equal to the amount determined by the State Treasurer pursuant to subsection 1; or

(b) Provide to the State Treasurer documentation of a financial audit demonstrating that the participating entity has unencumbered assets sufficient to pay the State Treasurer an amount equal to the amount determined by the State Treasurer pursuant to subsection 1.

3. For the purposes of this section and section 11 of Senate Bill No. 302, chapter 332, Statutes of Nevada 2015, at page 1829, a participating entity will be deemed by the State Treasurer to be reasonably expected to receive more than $50,000 in a school year from education savings accounts if, at the beginning of the school year, 10 or more agreements authorize the participating entity to receive money from an education savings account.

Sec. 19. Notwithstanding the provisions of section 10 of this regulation, the State Treasurer will begin making deposits of money into education savings accounts pursuant to subsection 2 of section 10 of this regulation on or before May 1, 2016.

EXHIBIT 5

STATE OF NEVADA

OFFICE OF THE STATE TREASURER

NOTICE OF WORKSHOP

Education Savings Account - SB 302

Conducted On

July 17, 2015 at 9:00 AM

Transcribed By: Always On Time

That's what is going to be what's best for my family. The bill is trying to make it easier for families and that—if they didn't count the kindergarteners, that would make it harder for my family. So, I would ask that you consider counting kindergarten, thank you.

SENATOR HAMMOND: This is Senator Hammond. If I could interject just for a second, Treasurer Schwartz. I just want to say that that—the intent of the bill, actually from the very beginning was to allow for kindergarten—people coming into kindergarten to choose. So, these are students who are not yet on the rolls. I believe Section 7 said something to effect of, if you look at the bill it says, anything that's required—kindergarten of course is not required to get into—you know, to start your schooling. So, it's always been my intent to make sure that coming into school that parents be able to make that choice so that the student can start at the school they would like to be at, or the educational system they would like to have delivered to them or anything like that. They could start from fresh. That's my perspective. That's sort of what we've always talked about. That—that being said, I'll go ahead and turn it back over to you.

DEANNE LATERNO: Deanne Laterno, I'm a 21 year Clark County resident. I have three girls and we were an eight year private school parent and because of some zoning issues, that's

EXHIBIT 6

Nevada Department of Education

Office of Career Readiness, Adult Learning & Education Options

NEVADA PRIVATE SCHOOLS

End of First School Month **2014-2015 School Year**

TOTAL STATE ENROLLMENT BY GRADE

Grade	Male	Female	Totals
Kindergarten	1,381	1,235	2,616
Grade 1	945	981	1,926
Grade 2	880	919	1,799
Grade 3	772	853	1,625
Grade 4	755	794	1,549
Grade 5	756	761	1,517
Grade 6	761	739	1,500
Grade 7	690	729	1,419
Grade 8	639	690	1,329
Grade 9	621	580	1,201
Grade 10	564	592	1,156
Grade 11	553	518	1,071
Grade 12	517	497	1,014
[1]Ungraded	331	182	513
Totals	**10,165**	**10,070**	**20,235**

[1]Ungraded refers to multiple grade grouping.

TOTAL STATE ENROLLMENT BY COUNTY

County	Male	Female	Totals
Carson City	209	249	458
Churchill	34	41	75
Clark	7,789	7,844	15,633
Douglas	80	96	176
Elko	31	26	57
Esmeralda	0	0	0
Eureka	0	0	0
Humboldt	0	0	0
Lander	0	0	0
Lincoln	0	0	0
Lyon	57	14	71
Mineral	0	0	0
Nye	73	71	144
Pershing	0	0	0
Storey	0	0	0
Washoe	1,892	1,729	3,621
White Pine	0	0	0
Totals	**10,165**	**10,070**	**20,235**

EXHIBIT 6

NEVADA DEPARTMENT OF EDUCATION **Office of Career Readiness, Adult Learning & Education Options**

Nevada Private Schools, 2014-2015 School Year

Male Enrollment

District	K	1	2	3	4	5	6	7	8	9	10	11	12	Ungraded	Totals
Carson	20	15	25	13	18	14	22	20	26	21	14	9	10	0	227
Churchill	11	7	2	4	3	1	4	1	1	0	0	0	0	0	34
Clark	1,098	765	736	644	635	604	619	522	476	476	413	421	380	0	7,789
Douglas	7	13	4	5	1	6	4	11	11	1	3	7	7	0	80
Elko	4	2	1	1	2	3	1	8	2	1	2	2	2	0	31
Lyon	4	4	1	2	0	0	4	1	1	2	10	13	15	0	57
Nye	10	9	4	6	6	5	4	3	8	8	4	3	3	0	73
Washoe	245	130	107	97	90	123	103	124	114	112	118	98	100	331	1892
Totals	1,399	945	880	772	755	756	761	690	639	621	564	553	517	331	10,183

Female Enrollment

District	K	1	2	3	4	5	6	7	8	9	10	11	12	Ungraded	Totals
Carson	21	17	16	22	22	26	24	25	18	20	17	14	7	0	249
Churchill	3	5	5	7	5	6	5	3	2	0	0	0	0	0	41
Clark	969	820	771	691	637	581	593	561	547	442	451	398	383	0	7,844
Douglas	19	9	9	9	10	8	6	10	4	0	3	3	6	0	96
Elko	4	4	1	2	0	2	2	4	1	3	2	1	0	0	26
Lyon	3	6	0	1	0	1	1	0	0	1	0	1	0	0	14
Nye	9	10	7	12	6	9	5	2	4	2	1	3	1	0	71
Washoe	207	110	110	109	114	128	103	124	114	112	118	98	100	182	1,729
Totals	1,235	981	919	853	794	761	739	729	690	580	592	518	497	182	10,070

EXHIBIT 6

EXHIBIT 6

	Total Enrollment														
District	K	1	2	3	4	5	6	7	8	9	10	11	12	Ungraded	Totals
Carson	41	32	41	35	40	40	46	45	44	41	31	23	17	0	476
Churchill	14	12	7	11	8	7	9	4	3	0	0	0	0	0	75
Clark	2,067	1,585	1,507	1,335	1,272	1,185	1,212	1,083	1,023	918	864	819	763	0	15,633
Douglas	26	22	13	14	11	14	10	21	15	1	6	10	13	0	176
Elko	8	6	2	3	2	5	3	12	3	4	4	3	2	0	57
Lyon	7	10	1	3	0	1	5	1	1	3	10	14	15	0	71
Nye	19	19	11	18	12	14	9	5	12	10	5	6	4	0	144
Washoe	452	240	217	206	204	251	206	248	228	224	236	196	200	513	3,621
Totals	2,634	1,926	1,799	1,625	1,549	1,517	1,500	1,419	1,329	1,201	1,156	1,071	1,014	513	20,253

Ungraded for Private Schools refers to multiple grade grouping

EXHIBIT 6

EXHIBIT 6

NEVADA DEPARTMENT OF EDUCATION **Office of Career Readiness, Adult Learning & Education Options**

PRIVATE SCHOOLS

Ten Year Enrollment Comparisons

End of First School Month

School Year	Kindergarten	Grades 1-6	Grades7-12	[1]Ungraded	Totals	Percent Gain/ Loss over Prior Year	Public School Enrollment	Private School to Public School Enrollment	
2005-2006	3,519	9,657	6,074	464	19,714	2.93%	413,252	4.77%	
2006-2007	3,518	10,227	6,547	570	20,862	5.82%	426,436	4.89%	
2007-2008	3,450	10,566	6,978	588	21,582	3.45%	433,885	4.97%	
2008-2009	3,280	10,232	6,944	591	21,047	-2.47%	437,433	4.81%	
2009-2010	2,914	10,032	6,972	592	20,510	-2.55%	432,383	4.74%	
2010-2011*	1,910	5,920	5,489	579	13,898	-32.23%	433,277	3.20%	*Incomplete #
2011-2012	2,960	10,032	6,842	566	20,400	-.54%	424,000	4.81%	Corrected 11/2012
						2011-12 compared to 2009-10			
2012-2013	2,963	9,844	6,735	569	20,283	-0.99%	445,737	4.55%	
2013-2014	2,813	10,033	7,072	456	20,374	0.49%	451,805	4.50%	
2014-2015	2,666	9,916	7,190	513	20,253	-0.99%	459,152	4.41%	

EXHIBIT 6

EXHIBIT 6

Number of Schools Licensed by Nevada DOE

Licensed by County	Carson	Churchill	Clark	Douglas	Elko	Lyon	Nye	Washoe	Total
Exempt Private	3	2	45	4	1	2	1	16	74
Private (non-exempt)	1	0	57	1	0	1	2	19	81
									155

Number of School Accredited by Outside Agencies

Accredited by County	Carson	Churchill	Clark	Douglas	Elko	Lyon	Nye	Washoe	Total
Exempt Private	1	0	19	0	0	0	0	7	27
Private (non-exempt)	0	0	18	0	0	0	1	2	21
									48

Number of Teachers Employed

	Carson	Churchill	Clark	Douglas	Elko	Lyon	Nye	Washoe	Total
Exempt Private	23	9	527	11	8	8	11	145	742
Private (non-exempt)	11	0	603	8	0	1	3	129	755
									1497

EXHIBIT 6

EXHIBIT 6

Teachers by Qualifications 2014-2015 Incomplete Information

Private (non-exempt)	NV License to Teach	Out-of-state License to Teach	Bachelor's Degree + 3 years Verified Experience	Master's Degree + 1 year Verified Experience
Carson	10	1	0	0
Clark	191	27	121	77
Douglas	8	0	0	0
Lyon	1	0	0	0
Nye	1	1	0	1
Washoe	28	4	9	29

All teachers in Private, non-exempt schools MUST qualify by one of the four categories above.

Exempt Private Schools are not required to report teacher qualifications.

EXHIBIT 6

EXHIBIT 7

Dan Schwartz
State Treasurer

STATE OF NEVADA
OFFICE OF THE STATE TREASURER

For Immediate Release
7/9/15

Media Contact: Grant Hewitt
775-684-5757

Treasurer's Office Proposes Quarterly Enrollment Periods for Education Savings Accounts (SB302)

Carson City, NV – State Treasurer Dan Schwartz and the STO's Implementation team have proposed the following guidelines for Nevada's Education Savings Accounts (ESA) program's open enrollment and account funding dates.

"Understanding that the final regulations will take several months to enact, Nevada parents are entitled to know when they will be able to apply for an ESA and when those funds would be first available. We are committed to creating an enrollment and funding process that is easy to understand and allows parents the flexibility they need to decide the best time for their child to enroll," said Schwartz. "My office is working diligently to ensure that parents have the tools they need to make informed decisions about their child's educational opportunities while protecting against fraud and abuse," concluded Schwartz.

Nevada's ESA program will have a quarterly open enrollment period, which allows parents to make the decision at any time during the year on the best educational opportunity for their child. A student must meet all eligibility requirements prior to applying for an ESA. The chart below outlines when parents can enroll their child in Nevada's ESA program and the corresponding funding date for those accounts:

Open Enrollment Periods for 2016	**Estimated Account Funding Dates**
January 4 – February 29, 2016	First week of April 2016
April 1 – May 31, 2016	First week of July 2016
July 1 – August 31, 2016	First week of October 2016
October 1 – November 30, 2016	First week of January 2017

The State Treasurer will be holding a regulations workshop on July 17 at 9:00am in both Las Vegas and Carson City and public hearings in August/September 2015.

Parents and school administrators who continue to have questions pertaining to the implementation of Nevada's Education Savings account program should contact the STO office at 702-486-5101 or NevadaSchoolChoice@NevadaTreasurer.gov.

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Carson City, Nevada 89701-4786
(775) 684-5600 Telephone
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STATE TREASURER PROGRAMS
Governor Guinn Millennium Scholarship Program
Nevada Prepaid Tuition Program
Unclaimed Property
College Savings Plans of Nevada
Nevada College Kick Start Program

LAS VEGAS OFFICE
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Website: NevadaTreasurer.gov E-mail: StateTreasurer@NevadaTreasurer.gov

EXHIBIT 8

STATE OF NEVADA

OFFICE OF THE STATE TREASURER

NOTICE OF WORKSHOP

Education Savings Account - SB 302

Conducted On

August 21, 2015

Transcribed By: Always On Time

GRANT HEWITT: So, Senator Hammond—this is Grant Hewitt for the record. Senator Hammond spoke to this at the last hearing that the reason behind the 100 days is that for a student to have a qualifying allotment in the distributive school account, which is what funds ESAs, it's also what trickles down to the school district from the State level, you must've been included in the school count in the previous year or that year to have an allotment created. So, if you weren't there for the 100 days, then there's no actual budget allotment for your child, thus there would be no ESA funding available. If we let everybody in on the 100 days, as Senator Hammond indicated, you'd have approximately a $200M whole in the budget.

DAN SCHWARTZ: Those are just the reasons that are given. So, as I say, we're trying not to answer questions, but where there's an easy answer, we'll certainly try.

CHRISTOPHER BEAUMONT: Is that—thank you.

GRANT HEWITT: Thanks. And, please, everybody know—those who have talked to me, you can email NevadaSchoolChoice@NevadaTreasurer.gov. We are very, very good at getting back to people, normally within 24 hours. So, if you have any specific questions, please feel free to direct them there.

CHRISTOPHER BEAUMONT: Thank you, thank you all for your work.

2015-16 school year, given that a family did the early application prior to enrolling their son or daughter into private school?

GRANT HEWITT: Grant Hewitt for the record. The issue revolves around that the approximately $5,000 ESA payment, according to SB 302 is to be made in four equal payments over the course of the year. We are making those payments on calendar years. And, our office feels strongly that what we can make sure to deliver on for parents in Nevada is that we will be able to make a first funding payment in April for April, May and June. We don't feel that it's appropriate at this time to commit to a January payment date, because the technology and the processes just might not be in place for that. But, we do know that we can make an April payment date.

DAN SCHWARTZ: Jim, the short answer to your question is, payments are mandated quarterly. So, you'll get the full amount, but paid quarterly. Answer your question?

JIM FIRZLAFF: Yeah. So, if I understand you correctly then, if there's only one payment for the 15-16 school year, for a family that applied early and followed all the rules, then that would just automatically balloon to the total $5,000 for the year?

DAN SCHWARTZ: Yeah, it's—

JIM FIRZLAFF: The $5,000 is—

EXHIBIT 9

EXHIBIT 9

EARLY ENROLLMENT

EDUCATION SAVINGS ACCOUNT APPLICATION

During the process of filling out this application you will be asked to select files for upload. However, the application will not be considered for approval until necessary files have been received by the Treasurer's office.

We ask that you do not attempt to upload cell phone photos.

School District Student ID# 00000			
Student First Name:	Student Last Name:	Current Grade (2014-2015): (Please enter a number, i.e., 2,3,4..., use a 0 for kindergarden)	Student's Date of Birth: (Date Format MM/DD/YYYY)
Physical Address (P.O. Boxes will not be accepted):		City:	Zip Code:
County: Select a County		Phone (Include Area Code):	
Mailing Address: ☐ Mailing Address is the Same as the Physical Address		City:	Zip Code:
Applicant Parent First Name:	Parent Last Name:	Parent E-Mail Address:	

Do you and your child reside in Nevada?	Yes ○ No ○
Is your child under the age of 7 years?	Yes ○ No ○
Did the student attend a Nevada public/charter school for 100 school days immediately preceding the date of this application?	Yes ○ No ○
Was your child a full time student during the required 100 school days immediately preceding the date of this application?	Yes ○ No ○
During the 100 school days immediately preceding the date of this application did your child miss 15 or more consecutive school days (e.g., illness, special circumstances)? If yes, please attach a detailed explanation of the extended absence.	Yes ○ No ○

Next

EXHIBIT 9

EXHIBIT 9

EARLY ENROLLMENT

EDUCATION SAVINGS ACCOUNT APPLICATION

During the process of filling out this application you will be asked to select files for upload. However, the application will not be considered for approval until necessary files have been received by the Treasurer's office.

We ask that you do not attempt to upload cell phone photos.

Please list Nevada Public/Charter School(s) and School Code that your child attended for 100 consecutive school days immediately preceding the date of this application.	
School District/Charter Sponsor: Select a District	Dates of Attendance: (mm/dd/yyyy) to
Name of Public/Charter School: Select a School	
Add School	

Next

EXHIBIT 9

EXHIBIT 9

EARLY ENROLLMENT

EDUCATION SAVINGS ACCOUNT APPLICATION

During the process of filling out this application you will be asked to select files for upload. However, the application will not be considered for approval until necessary files have been received by the Treasurer's office.

We ask that you do not attempt to upload cell phone photos.

○ Yes ○ No	Is your child a pupil with disabilities? (NRS 388.440) ** "Pupil with a Disability Defined": means (i) with intellectual disabilities, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and (ii) who, by reason therof, needs special education and related services..
○ Yes ○ No	Is your annual household income within 185% of the federally designated poverty level? (http://aspe.hhs.gov/poverty/15poverty.cfm) If yes, provide proof of Annual Household Income. (copy of last year's tax return (first 2 pages) or a current paystub)

REQUIRED DOCUMENTS (ALL documents must be submitted)

1. Copy of the parent's valid (non-expired) Government issued ID
ID File: Browse...

2. A certified or verified copy of the student's birth certificate (If unable to provide at the time of this application, you will have 30 days to submit to the (STO) AND Proof of legal guardianship (if you're not the biological parent)
Birth Certificate File: Browse...
Guardianship File: Browse...

AND one of the following to prove residency:
MUST SHOW YOUR CURRENT PHYSICAL ADDRESS

1. Copy of your most current utility bill (applicant parent name and address) OR
Utility Bill File: Browse...

2. Copy of current property tax bill, rental lease agreement, or mortgage statement (applicant parent name and address)
File: Browse...

Next

EXHIBIT 10

EXHIBIT 10

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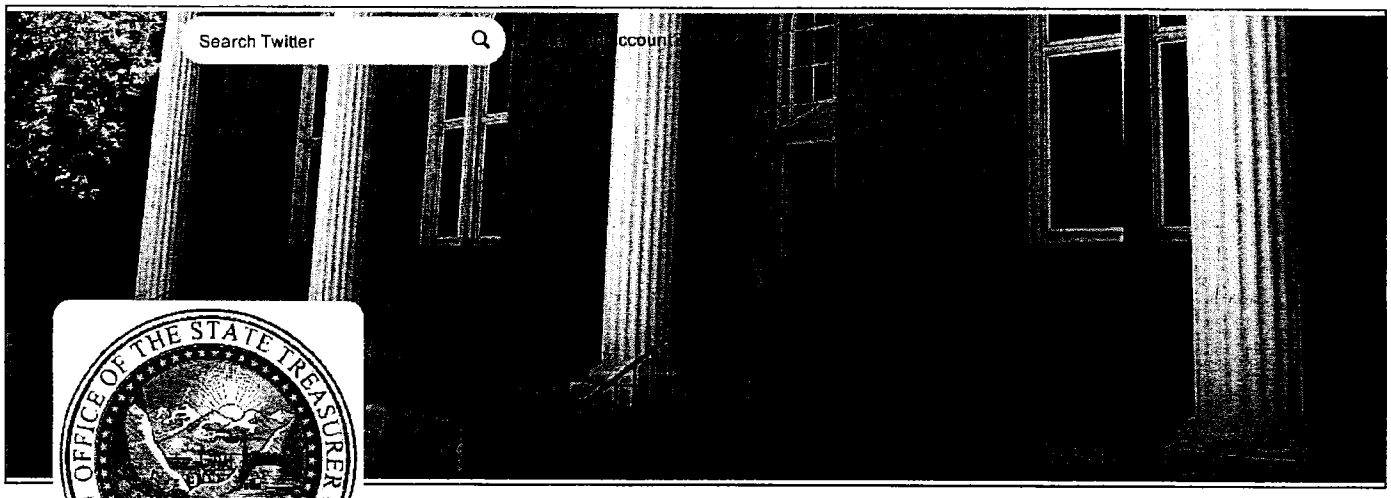

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Nevada State Treasure's Office

Carson City, NV

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Photos and videos

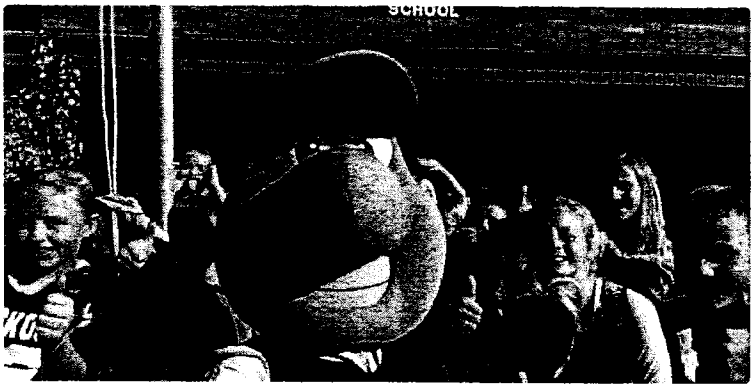
NVTreasury @NVTreasury · Oct 14

We are excited to announce that our office has received over 3500 applications for Nevada's #ESA program. #nvleg

4 2

NVTreasury @NVTreasury · Oct 14

Have you met Sage? He is making his way across #Nevada talking to kids about saving for college! #529 #nvleg



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NVTreasury Retweeted

Grant A. Hewitt @redptstrategies · Oct 13

@RindelsAP the ask for temporary staff was less than $50k of today's $128k ask. The total to ESA thus far is less than $250k #ESA #NVLEG

1

EXHIBIT 10

EXHIBIT 11

State of Nevada

Statewide Ballot Questions

2006

To Appear on the November 7, 2006 General Election Ballot

Issued by
Dean Heller
Secretary of State

QUESTION NO. 1

Amendment to the Nevada Constitution

CONDENSATION (Ballot Question)

Shall the Nevada Constitution be amended to require the Nevada Legislature to fund the operation of the public schools for kindergarten through grade 12 before funding any other part of the state budget for the next biennium?

Yes.....☐
No.....☐

EXPLANATION (Ballot Question)

The proposed amendment, if passed, would create five new sections to Section 6 of Article 11 of the Nevada Constitution. The amendment would provide that during a regular session of the Legislature, before any appropriation is enacted to fund a portion of the state budget, the Legislature must appropriate sufficient funds for the operation of Nevada's public schools for kindergarten through grade 12 for the next biennium, and that any appropriation in violation of this requirement is void. The appropriation requirement also applies to certain special sessions of the Legislature.

The following arguments for and against and rebuttals for Question No. 1 were prepared by a committee as required by Nevada Revised Statutes (NRS) 293.252.

ARGUMENT IN SUPPORT OF QUESTION NO. 1

Question One seeks a constitutional amendment changing the process by which public school education is funded at the State Legislature.

Education first ensures our state's public school system will be funded, before any other program for the next fiscal biennium, during each legislative session, by an appropriation the Legislature deems to be sufficient to fund the operation of our public schools for the student population reasonably estimated for that biennium.

Education First preserves the Legislature's ability to first fund the cost of the legislative session or an emergency measure demanding immediate action. Education First does not determine the level or source of funding public school education receives, so there is no fiscal impact to the state.

Education First will substantially enhance Nevada's credibility as a stable environment for students and teachers. As the fastest growing state in the nation, that is critical if Nevada is to keep pace with its growing student population.

For example, for the 2002-03 school year, Nevada hired over 2300 new teachers. Most new teachers are hired from out-of-state because Nevada's University and Community College System cannot meet our state's demand for teachers. Teachers make a serious commitment

when they choose to move and teach here. Education First will help ensure Nevada is equally committed.

The budget deadlock we experienced during the 2003 legislative sessions must never be repeated. The consequences for our schools, our teachers and our children were significant. Schools opened late, new teachers could not be hired, and special programs were jeopardized as those teachers were designated for reassignment to the general classroom. School administrators could not adequately plan for the coming school year, a process that typically begins each January. Education First prevents that from ever happening again.

As long as public school education is allowed to be the last major budget bill considered, special sessions and court intervention could easily become the norm in the legislative process. When education is first, that won't happen, as it did in 2003. Education First will ensure that the funding of education in Nevada will be given the status intended by the framers of our Constitution and will help prevent another Supreme Court ruling that negates the Gibbons tax restraint portion of our Constitution.

Take the politics out of funding Nevada's public schools. A YES vote on Question One will put education and Nevada's children first in line at budget time.

The above argument was submitted by the Ballot Question Committee composed of citizens in favor of this question as provided for in NRS 293.252

REBUTTAL TO ARGUMENT IN SUPPORT OF QUESTION NO. 1

The Education Funding Crisis of the 2003 Legislative session is the first in 73 regular sessions of the Nevada legislature. It was generated for political reasons to push a huge tax increase. Voters have an opportunity in this election to punish those guilty without changing the constitution. One failure in 73 sessions is insufficient reason to change the constitution.

A "NO" vote on Question 1 will force legislators to do the job we elect them to do. A "YES" vote will NOT correct the grave disregard for the Nevada Constitution by the Nevada Supreme Court during 2003. The Court showed blatant disregard for the people's will of the original Gibbons' petition and there is no reason to believe this will improve their attention to their oath of office. Make representative government work by voting "NO" on Question 1.

The above argument was submitted by the Ballot Question Committee composed of citizens opposed to this question as provided for in NRS 293.252

ARGUMENT AGAINST QUESTION NO. 1

The last legislative session showed that education funding can become a political football and few would agree that scenario should ever be repeated; however, a single event should not be a reason to compromise the public health and safety of Nevadans by detrimentally removing the Legislature's and our Governor's ability to determine our state's priorities.

1. The education budget is such a large portion of the budget that it cannot be determined until after the final meeting of the Economic Forum. The Economic Forum is a panel

of experts appointed by Nevada elected officials to formulate detailed projections regarding our state's revenue. The Economic Forum's projections would not be done until just prior to April 30th.

2. In the normal 120 day legislative process, the small budgets with little or no changes are processed starting weeks before the end of the legislative session. This allows the legislative workload to remain reasonable and matters to be handled in a logical manner. Holding all those budgets until the education budget can be decided may actually impede the process of closing budgets and make special sessions more likely, adding unnecessarily to taxpayer expense. Thus, this measure is likely to cause an adverse fiscal impact.

3. Under the current system the smaller budgets come through early providing lawmakers that do not sit on the Assembly Ways and Means or Senate Finance Committees with the time to review these budgets and ask questions. If those budgets are held until the education budget is decided, then the review by other legislators will be lost in the rush to close the session. Public health, safety and the protection of our environment will necessarily be compromised because of the limited time to review non-education budget matters that are equally important to our state's welfare.

4. Further it might be much easier for a lawmaker on the money committees to add "pork" to some budgets without the check and balance time and review process to stop potential wasteful spending.

5. While we agree that the entire budgeting and funding process in Nevada needs to be reviewed to encourage fiscal responsibility and accountability by the legislators and all with budgets within the executive branch, this measure seems to complicate the matter rather than actually improve and simplify the process.

We urge voters not to make the budget process more difficult by passing this measure.

The above argument was submitted by the Ballot Question Committee composed of citizens opposed to this question as provided for in NRS 293.252

REBUTTAL TO ARGUMENT IN OPPOSITION TO QUESTION NO. 1

1. Public education is one of five major budget bills. According to the Legislative Counsel Bureau, no budget can be closed prior to release of the Economic Forum's final report. This does not change. When budget bills are enrolled, education will be first.

2. The way the state budget is crafted does not change. The legislative workload is unaffected. The process becomes more logical when such a large component is dealt with first. The Legislature is responsible for managing its workload and adhering to a 120-day session. The status quo is more likely to result in special sessions.

3. Lawmakers not on money committees still participate. Issues are engaged in the same manner as now. Any impact should the Legislature not do its job as required by

the state Constitution is its responsibility. Public health, safety, welfare and the environment are not compromised by Education First.

4. Adding pork will always be tempting. Education First does not make it easier. If checks and balances aren't done, regardless of where in the process, legislators would be derelict in their duties.

5. When public education is no longer the budget's sacrificial lamb, the process is brought into check, improving accountability and simplicity.

The above argument was submitted by the Ballot Question Committee composed of citizens in favor of this question as provided for in NRS 293.252

FISCAL NOTE

FINANCIAL IMPACT – NO.

Approval of the proposal to amend the *Nevada Constitution* would have no adverse fiscal impact

FULL TEXT OF THE MEASURE

Education First Initiative Petition - State of Nevada

EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets [omitted material] is material to be omitted.

AN ACT relating to the funding of public education; amending the Constitution of the State of Nevada to require the Legislature to fund the operation of the public schools for kindergarten through grade 12 before any other part of the state budget for the next biennium is funded; providing that any appropriation enacted in violation of that requirement is void; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA DO ENACT AS FOLLOWS:

Section 1. Section 6 of Article 11 of the Constitution of the State of Nevada is hereby amended to read as follows:

1. In addition to other means provided for the support and maintenance of said university and common schools, the legislature shall provide for their support and maintenance by direct legislative appropriation from the general fund, upon the presentation of budgets in the manner required by law.

2. During a regular session of the Legislature, before any other appropriation is enacted to fund a portion of the state budget for the next ensuing biennium, the Legislature shall enact one or more appropriations to provide the money the Legislature deems to be sufficient, when combined with the local money reasonably available for this purpose, to fund the operation of the public schools in the State for kindergarten through grade 12 for the next ensuing biennium for the population reasonably estimated for that biennium.

3. During a special session of the Legislature that is held between the end of a regular session in which the Legislature has not enacted the appropriation or appropriations required by subsection 2 to fund education for the next ensuing biennium and the first day of that next ensuing biennium, before any other appropriation is enacted other than appropriations required to pay the cost of that

special session, the Legislature shall enact one or more appropriations to provide the money the Legislature deems to be sufficient, when combined with the local money reasonably available for this purpose, to fund the operation of the public schools in the State for kindergarten through grade 12 for the next ensuing biennium for the population reasonably estimated for that biennium.

4. During a special session of the Legislature that is held in a biennium for which the Legislature has not enacted the appropriation or appropriations required by subsection 2 to fund education for the biennium in which the special session is being held, before any other appropriation is enacted other than appropriations required to pay the cost of that special session, the Legislature shall enact one or more appropriations to provide the money the Legislature deems to be sufficient, when combined with the local money reasonably available for this purpose, to fund the operation of the public schools in the State for kindergarten through grade 12 for the population reasonably estimated for the biennium in which the special session is held.

5. Any appropriation of money enacted in violation of subsection 2, 3 or 4 is void.

6. As used in this section, "biennium" means a period of two fiscal years beginning on July 1 of an odd-numbered year and ending on June 30 of the next ensuing odd-numbered year.

EXHIBIT 12

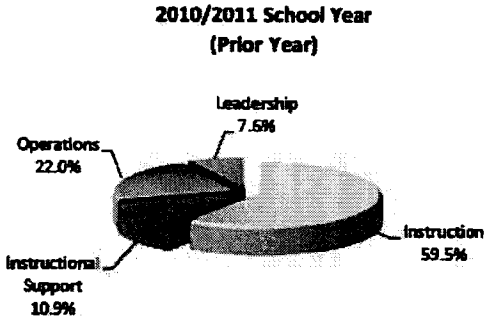
2015
NEVADA EDUCATION DATA BOOK

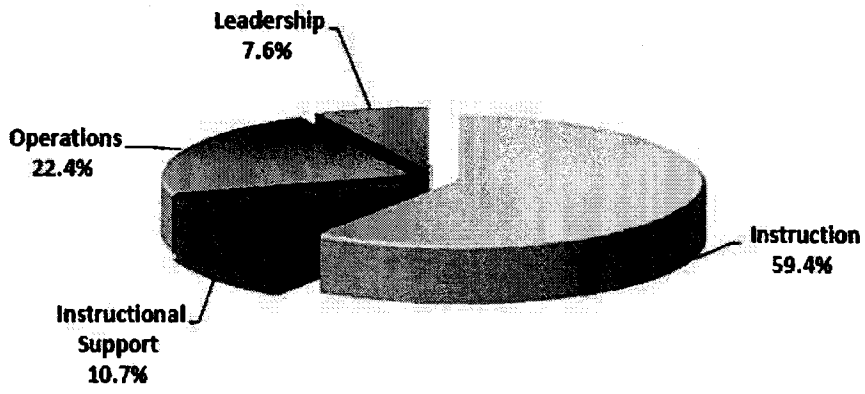
Chapter 6

Public School Expenditures, In$ite Financial Analysis System

Nevada School Districts & Charter Schools

#1 Total Expenditures
(All Funding Sources)
By Four Major Functions
2011/2012 School Year



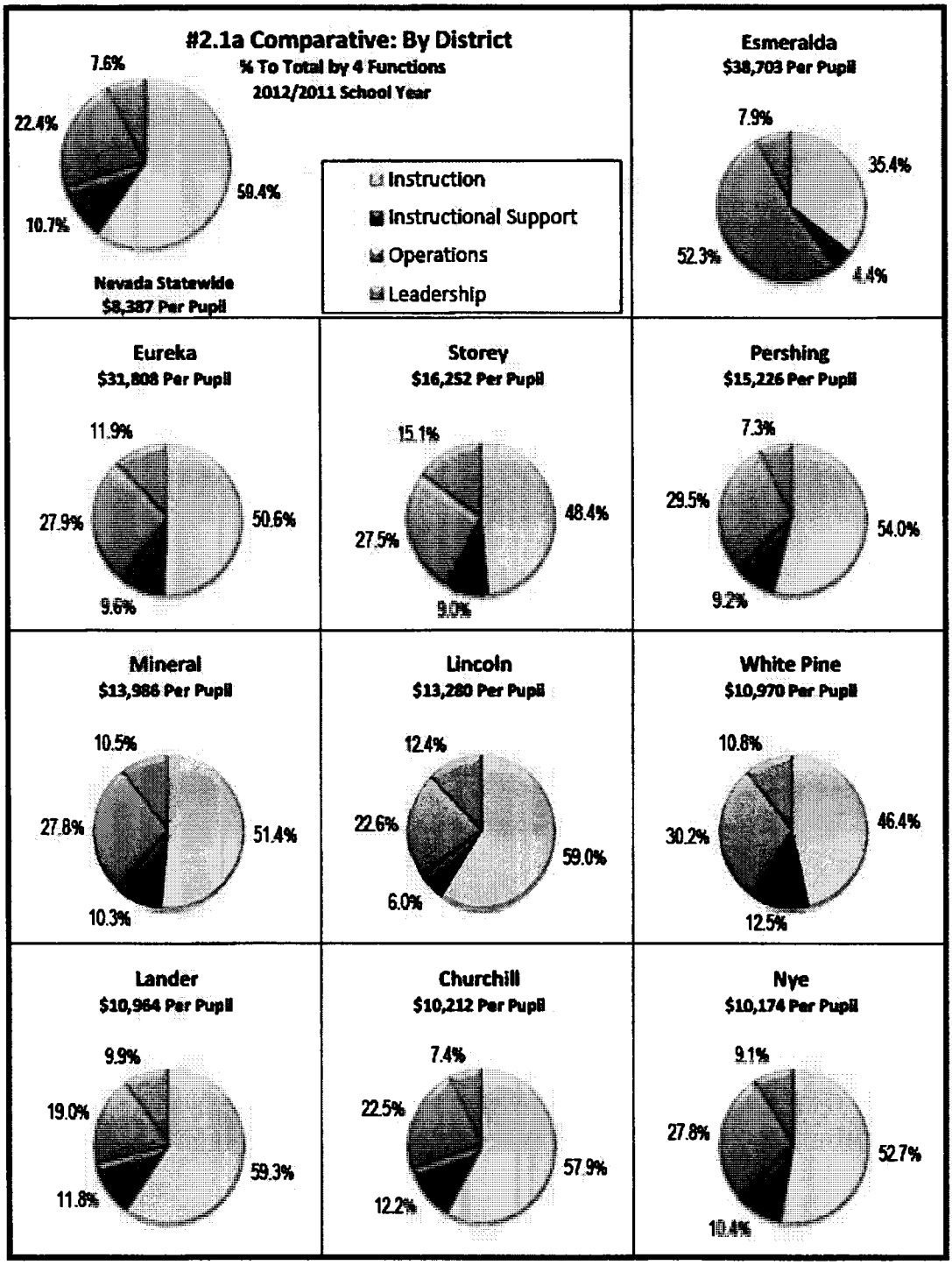


Weighted Enrollment: 422,452	Amount	Per Pupil	%-To-Total
Instruction	$2,104,257,122	$4,981	59.4%
Instructional Support	$379,118,760	$897	10.7%
Operations	$791,949,582	$1,875	22.4%
Leadership	$267,837,151	$634	7.6%
Total Expenditures	$3,543,162,615	$8,387	100.0%

2012-NV-01-01 (4) — In$ite, U. S. Patent No. 5,991,741

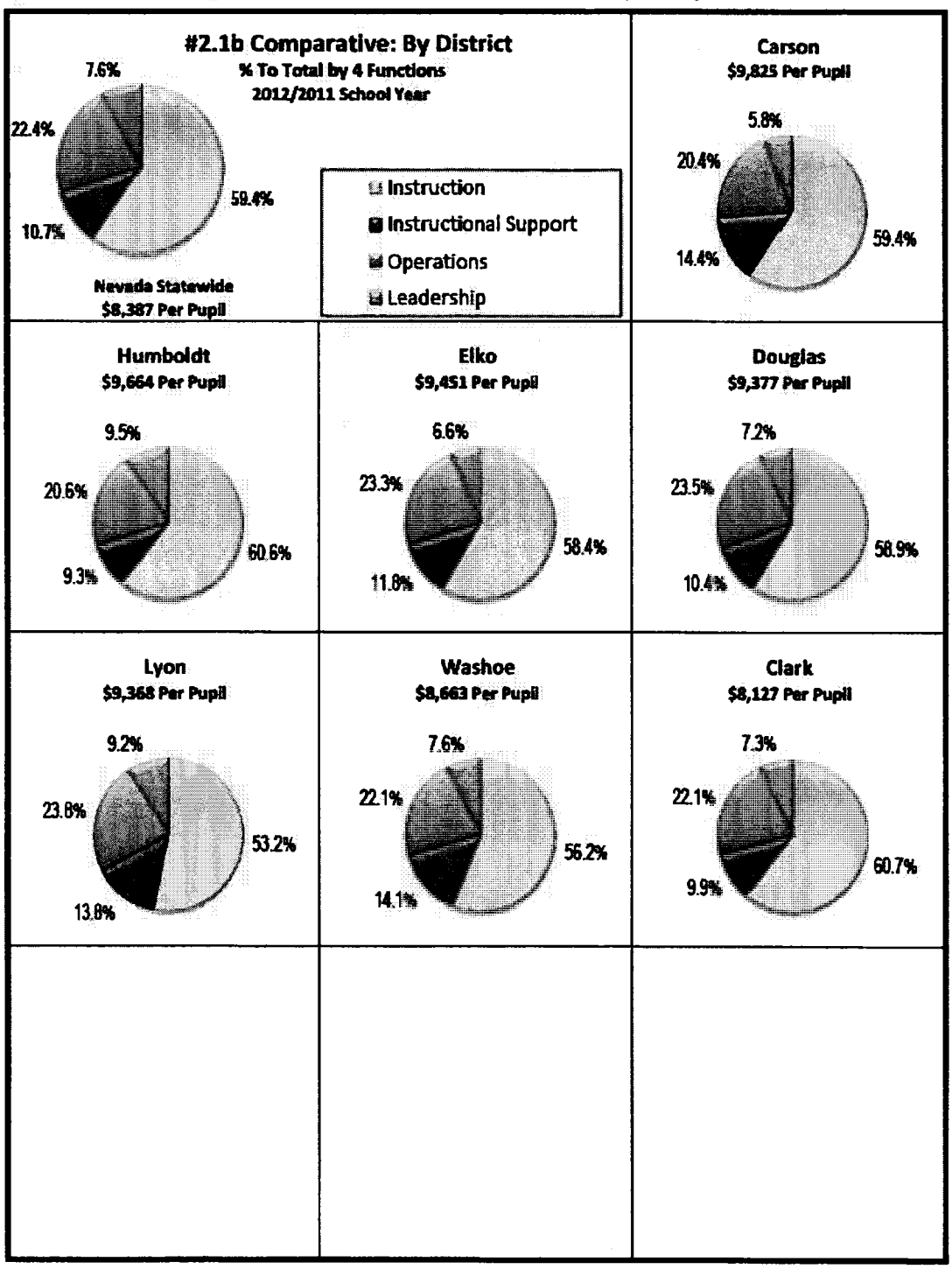
Source: http://edmin.com

Public School Expenditures, In$ite Financial Analysis System *(continued)*



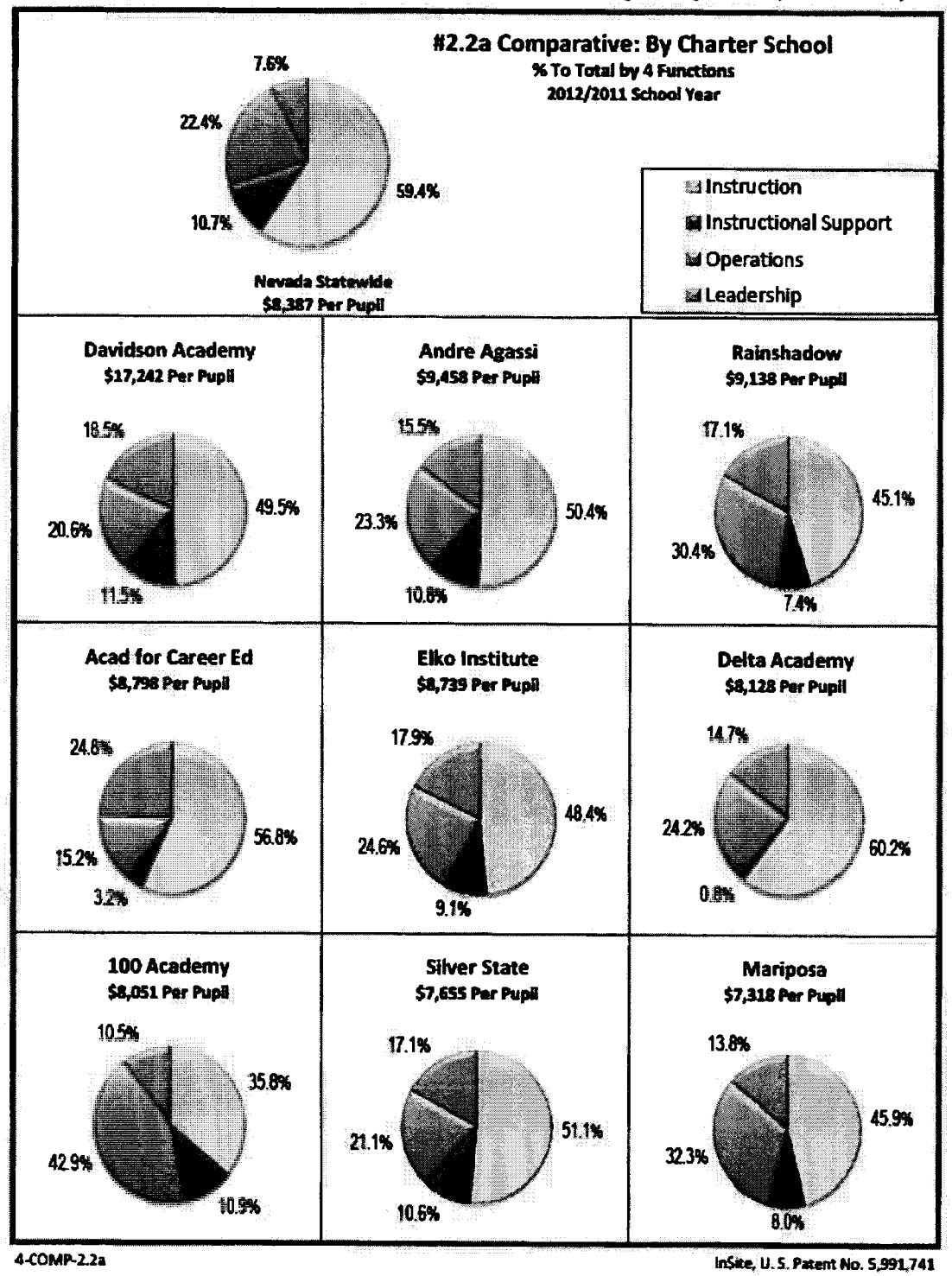
Source: http://edmin.com

Public School Expenditures, In$ite Financial Analysis System *(continued)*



Source: http://edmin.com

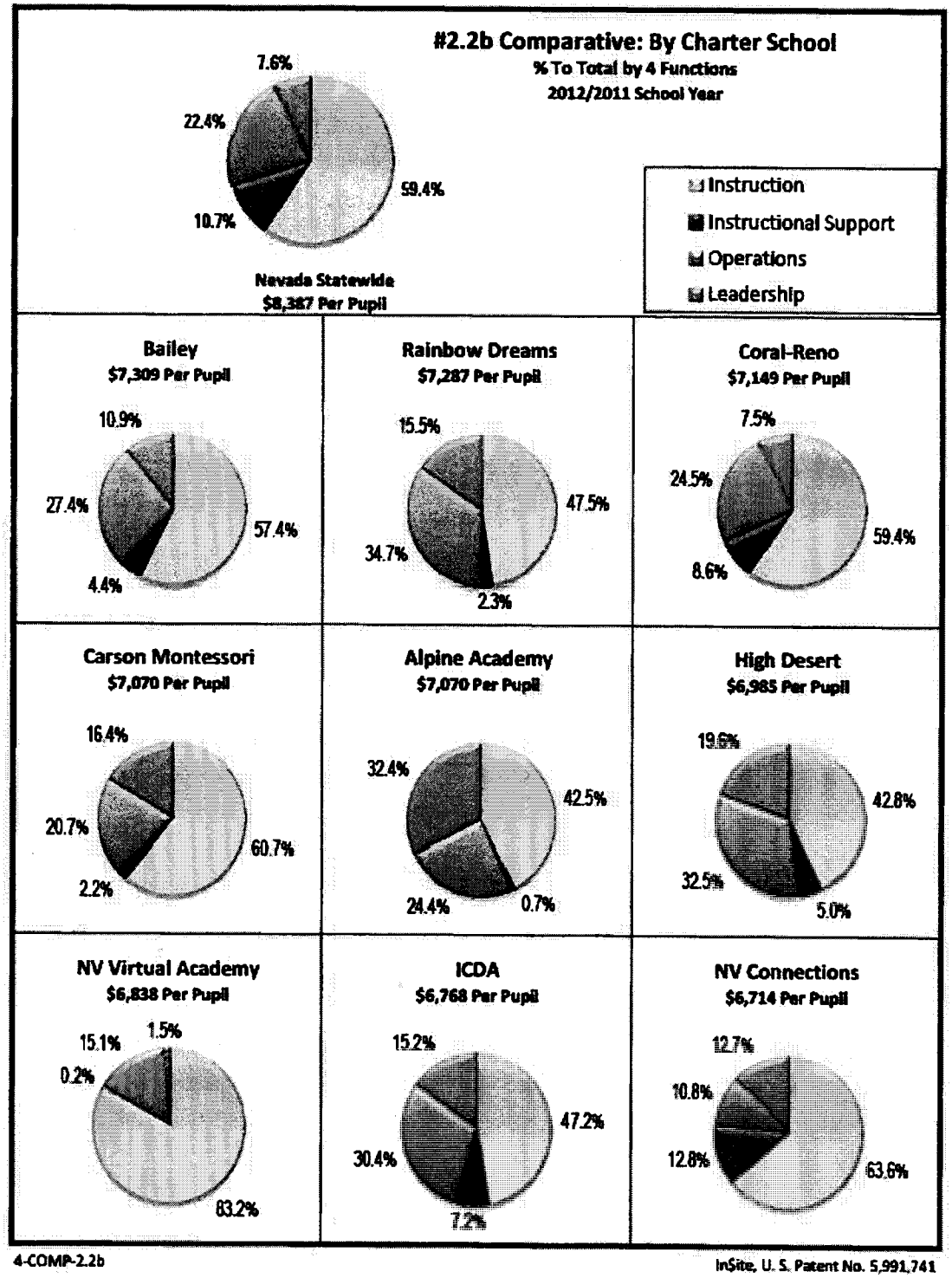
Public School Expenditures, In$ite Financial Analysis System *(continued)*



Source: http://edmin.com

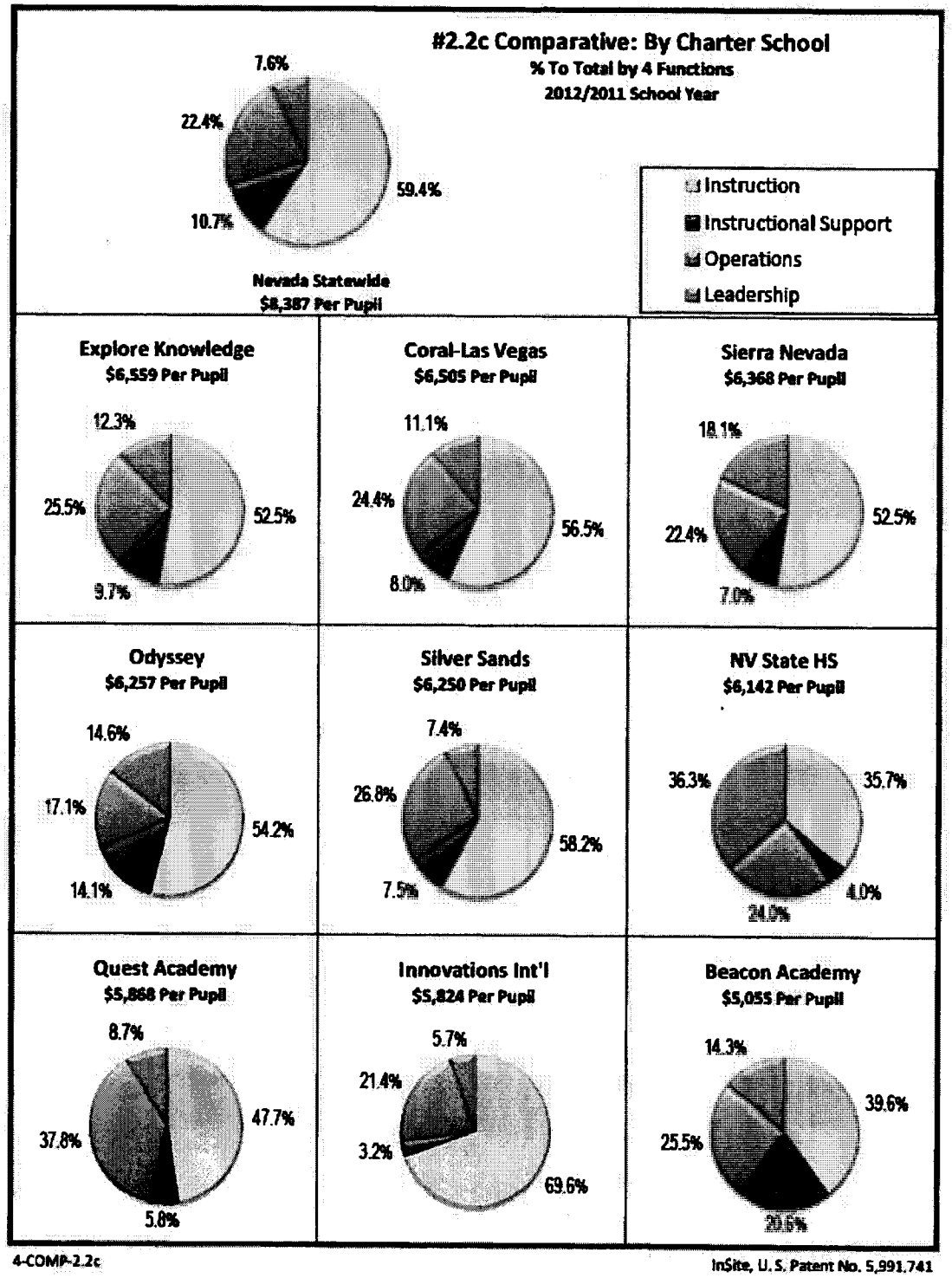
Chapter 6

Public School Expenditures, In$ite Financial Analysis System *(continued)*



Source: http://edmin.com

Public School Expenditures, In$ite Financial Analysis System *(continued)*

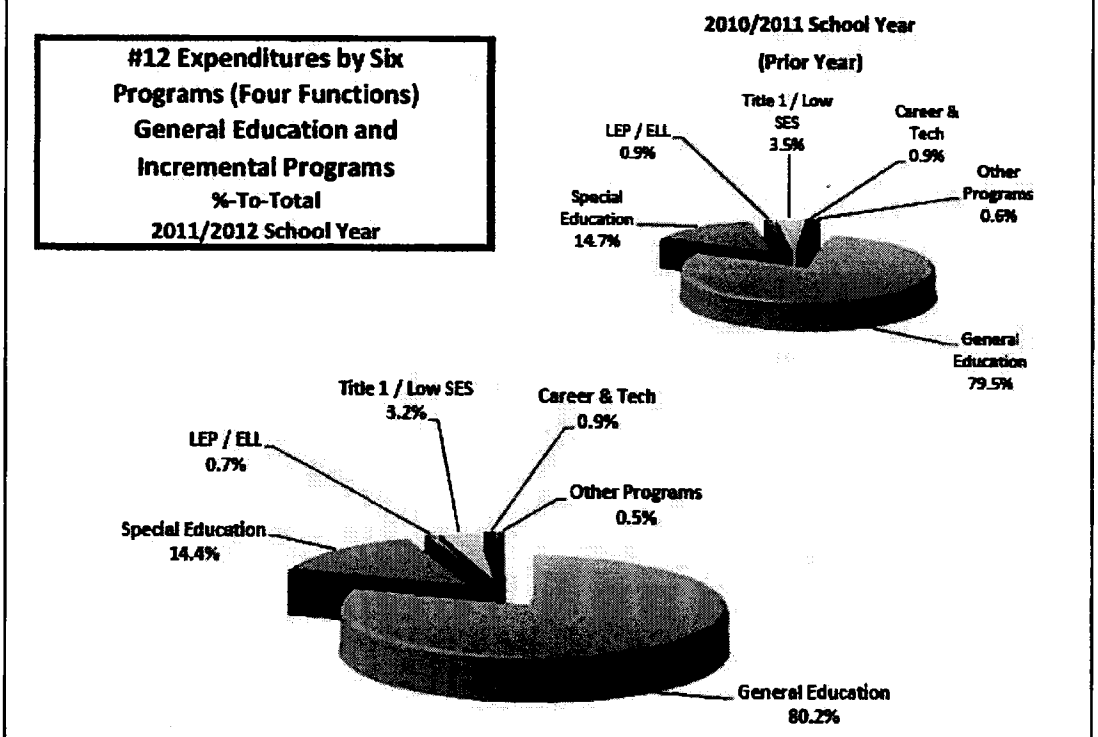


Source: http://edmin.com

Public School Expenditures, In$ite Financial Analysis System *(continued)*

Nevada School Districts & Charter Schools

#12 Expenditures by Six Programs (Four Functions) General Education and Incremental Programs %-To-Total 2011/2012 School Year



Program	Program Enrollment[1]	Amount	Incremental $ Per Pupil[3]	Total $ Per Pupil[3]	%-To-Total
General Education	422,450.80	$2,840,125,389	$6,723	$6,723	80.2%
Special Education	48,948.00	$508,801,256	$10,395	$17,118	14.4%
LEP / ELL	73,070.00	$26,087,304	$357	$7,080	0.7%
Title 1 / Low SES	102,360.00	$115,074,034	$1,124	$7,847	3.2%
Career & Tech	49,147.00	$33,635,118	$684	$7,407	0.9%
Other Programs[2]	N/A	$19,439,515	N/A	N/A	0.5%
Total	422,452	$3,543,162,615	N/A	$8,387	100.0%

2012-NV-15-12 (4) InSite, U. S. Patent No. 5,991,741

1 Students are counted as 1.0 in multiple programs. Therefore, the total of programmatic enrollments is greater than "Total District" enrollment. Kindergarten and pre-school students are counted as 0.6 for enrollment because they attend school for only part of the day.
2 "Other Programs" does not include a per pupil expenditure because these programs benefit various student populations with a variety of needs, and a per pupil calculation would not be comparable.
3 The per pupil programmatic expenditure amounts in the "Incremental $ Per Pupil" column represent only the incremental program expenditures. The "Total $ Per Pupil" column represents the total per pupil expenditures for the designated program (the General Education base per pupil amount in bold plus the incremental per pupil amount for each program).

Source: http://edmin.com

EXHIBIT 13

FIRST JUDICIAL DISTRICT COURT

IN AND FOR CARSON CITY, NEVADA

HELLEN QUAN LOPEZ, individually and on behalf of her minor child, C.Q.; MICHELLE GORELOW, individually and on behalf of her minor children, A.G. and H.G.; ELECTRA SKRYZDLEWSKI, individually and on behalf of her minor child, L.M.; JENNIFER CARR, individually and on behalf of her minor children, W.C., A.C., and E.C.; LINDA JOHNSON, individually and on behalf of her minor child, K.J.; SARAH and BRIAN SOLOMON, individually and on behalf of their minor children, D.S. and K.S.,

Plaintiffs,

vs.

DAN SCHWARTZ, IN HIS OFFICIAL CAPACITY AS TREASURER OF THE STATE OF NEVADA,

Defendant.

Case No. 150C002071B

Dept. No.: II

[PROPOSED] DECISION AND ORDER, COMPRISING FINDINGS OF FACT AND CONCLUSIONS OF LAW [1]

DON SPRINGMEYER
(Nevada Bar No. 1021)
JUSTIN C. JONES
(Nevada Bar No. 8519)
BRADLEY S. SCHRAGER
(Nevada Bar No. 10217)
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Attorneys for Plaintiffs

[1] If any finding herein is in truth a conclusion of law, or if any conclusion stated is in truth a finding of fact, it shall be deemed so.

Before the Court is Plaintiffs' Motion for a Preliminary Injunction, enjoining the implementation of Nevada's recently passed voucher law, Senate Bill 302 ("SB 302"). The motion is opposed by Defendant Dan Schwartz, in his official capacity as Treasurer for the State of Nevada.

Plaintiffs are parents whose children attend Nevada's public schools. They filed the original Complaint in this matter on September 9, 2015, alleging that Nevada's recently passed voucher law, Senate Bill 302 ("SB 302"), violates Article XI of the Nevada Constitution ("the Education Article") by diverting funds from public schools to pay for private school tuition and other expenses.

Having examined the submissions of both Plaintiffs and Defendant and heard oral argument thereon, this Court is of the opinion that a preliminary injunction should issue, enjoining Defendant Schwartz from implementing SB 302.

BACKGROUND

In the last legislative session, the Nevada Legislature passed SB 302. This law authorizes the State Treasurer to divert funds from public schools to private accounts, called Education Saving Accounts ("ESAs"), to pay for a wide array non-public education expenses, including private school tuition, tutoring, home-based education curricula, and transportation.

Any child who enrolls in a public school for 100 consecutive days may establish an ESA. SB 302 § 7. The 100-day requirement need be met only once in the child's academic career in order for that child to obtain funding every year until he or she matriculates, drops out, or leaves the state.

When an ESA is established, SB 302 requires that the State Treasurer deposit into the ESA an amount equal to 90 percent of the statewide average basic support guarantee per pupil, or $5,139 per pupil for the 2015-16 school year. For children with disabilities and children in households with an income of less than 185 percent of the Federal poverty level, the State Treasurer must transfer 100 percent of the statewide average basic support guarantee per pupil, or $5,710 per pupil for 2015-16. SB 302 § 8(2).

The total amount of the basic support guarantee transferred to ESAs is deducted from the funding appropriated by the Legislature for the operation of the school district in which the eligible children reside. Specifically, the statute directs the State Treasurer to deduct "all the funds deposited in education savings accounts established on behalf of children who reside in the county" from the school district's "apportionment" of the legislatively appropriated funding "computed on a yearly basis." SB 302 § 16.1; *see also* SB 302, Legislative Counsel's Digest ("the amount of the [ESA] must be deducted from the total apportionment to the resident school district of the child on whose behalf the grant is made."). As such, each ESA established represents a loss to a public school district of the basic support guarantee amount—either $5,139 or $5,710 per year.

STANDARD

A preliminary injunction issues "upon a showing that the party seeking it enjoys a reasonable probability of success on the merits and that the defendant's conduct, if allowed to continue, will result in irreparable harm for which compensatory damage is an inadequate remedy." *Dixon v. Thatcher*, 103 Nev. 414, 415, 742 P.2d 1029, 1029 (1987) (citing *Number One Rent-A-Car v. Ramada Inns*, 94 Nev. 779, 780 (1978)).

Plaintiffs have demonstrated a reasonable probability of success on the merits and have shown that they will suffer irreparable harm if the statute is not enjoined.

REASONABLE PROBABILITY OF SUCCESS ON THE MERITS

Plaintiffs argue that SB 302 violates Article XI of the Nevada Constitution in three distinct ways. The Court finds that the Plaintiffs have a reasonable probability of succeeding on the merits of all three claims.

First, Plaintiffs argue that SB 302 violates Article XI, sections 3 and 6 of the Nevada Constitution because those provisions prohibit the transfer of funds appropriated for the operation of the public schools to any other use. The Education Article of the Nevada Constitution requires the Legislature to "provide for the[] support and maintenance" of the common or public schools "by direct legislative appropriation from the general fund." NEV. CONST. art. XI § 6.1. The appropriation for the public schools must occur "before any other appropriation is enacted to fund a portion of the state budget for the next ensuing biennium." Nev. Const. art XI, § 6.2. The direct

legislative appropriation can only be used "to fund the operation of the public schools in the State for kindergarten through grade 12 for the next ensuing biennium for the population reasonably estimated for that biennium." NEV. CONST. art. XI, § 6.2. "Any appropriation of money enacted in violation of subsection 2... is void." Nev. Const. art. XI, § 6.5. Likewise, Article XI, section 3, specifies additional sources of funding for the public schools and also restricts the use of those funds. NEV. CONST. art. XI, § 3 (specifying funds "pledged for educational purposes" and stating that "the money therefrom must not be transferred to other funds for other uses").

From the plain language of Article XI, it is clear that funds appropriated to public education may not be used for any other purpose. The Supreme Court of Nevada so held over a century ago in *State v. Westerfield*, 23 Nev. 468 (1897). As the Supreme Court explained in *Westerfield*, funds appropriated for the public schools under Article XI can only be used for "the support" of the public schools and no portion of those funds can be used to pay a non-public school employee "without disregarding the mandates of the constitution." *Id.* at 121. Payments of such funds for any other purpose are "unconstitutional, null and void" *Id.*; *see also State ex rel. Wright v. Dovey*, 19 Nev. 396, 12 P. 910, 912 (1887) (holding that "neither the framers of the constitution nor the legislature intended to allow public–school moneys to any county for persons not entitled to attend the public schools therein . . . .").

SB 302 directs the State Treasurer to transfer into private ESAs the basic support guarantee per-pupil funding appropriated by the Legislature for the operation of the school district in which the ESA-eligible child resides. SB 302 § 16.1 (school districts are entitled to their apportioned funds "minus . . . all the funds deposited in education savings accounts established on behalf of children who reside in the county"). Because SB 302 explicitly authorizes the use of funds appropriated for the public schools for non-public educational purposes, I find that there is substantial likelihood that Plaintiffs will prevail on the merits of their argument that SB 302 violates Article XI, sections 3 and 6 of the Nevada Constitution.

Second, Plaintiffs argue that because SB 302 removes from the public school system a portion of the amount of funds the Legislature has "deemed sufficient" to maintain and

operate the public schools, the law violates section 6.2 of the Education Article of the Nevada Constitution.

Article XI, section 6.2, of the Nevada Constitution directs the Legislature to provide the appropriations it "deems to be sufficient," to fund the operation of Nevada's public schools for kindergarten through grade 12 for the next ensuing biennium. Article XI, section 6.5 provides that "any appropriation of money enacted in violation of [section 6.2]... is void." This provision was an amendment to the constitution by a ballot initiative in 2006. The stated purpose of this amendment was "to ensure funding of education be given the status intended" by the constitutions' framers and to "substantially enhance[ ] Nevada's credibility as a stable environment for students and teachers."

SB 302, by deducting ESAs from funds appropriated for public schools, reduces the level of funding for the operation of the public schools below that which the Legislature has deemed sufficient in its biennium appropriations for the maintenance and support of Nevada's public schools. On this basis, I find that there is reasonable probability that Plaintiffs will prevail on the merits of their argument that SB 302 violates Art. XI, section 6.2 and to the extent public school funds are transferred to ESAs, such appropriations are void under Art. XI, section 6.5.

Third, Article XI, section 2, of the Nevada Constitution mandates that the Legislature establish a "uniform system of common," or public, schools. Plaintiffs allege that SB 302 creates a non-uniform system of schools and therefore violates Article XI, section 2. Further, they allege that because SB 302 uses public funds to create a system of education other than the type mandated by the Constitution, it is unconstitutional.

Article XI, section 2 requires that the Legislature establish and maintain a "uniform system of common schools." In fulfillment of this mandate, the Legislature has enacted an extensive framework of requirements to ensure the public schools are open to all children. As Plaintiffs have shown, SB 302 allows public school funds to pay for private schools and other entities that are not subject to the requirements applied to public schools. The private schools, on-line programs and parents receiving public school funds under SB 302 do not have to use the State-adopted curriculum taught in public schools. Likewise, private schools and entities that accept

ESA funds do not have to accept all students. These schools and entities may discriminate based on a student's religion or lack thereof, academic achievement, ELL status, disability, homelessness or transiency, gender, gender identity and sexual orientation.

Because SB 302 takes funding away from the uniform system of common schools and applies to private educational services that are unregulated and non-uniform I find that there is reasonable probability that Plaintiffs will prevail on the merits of their argument that SB 302 violates Article XI, section 2 of the Nevada Constitution.

Plaintiffs also allege that in establishing the mandate to support a public school system, the Nevada Constitution has, in the same breath, forbidden the Legislature from establishing a separate alternative system to Nevada's uniform system of public schools. "Nevada follows the maxim 'expressio unius est exclusio alterius,' the expression of one thing is the exclusion of another," *State v. Javier C.*, 128 Nev. Adv. Op. 50, 289 P.3d 1194, 1197 (2012), and "[t]his rule applies as forcibly to the construction of written Constitutions as other instruments." *King v. Bd. of Regents of Univ. of Nev.*, 65 Nev. 533, 556, 200 P.2d 221 (1948).

Under this principle, the Legislature may not enact statutes that achieve Constitutional goals by means different from those explicitly provided for in the Constitution. The Nevada Supreme Court has expressly held that "[e]very positive direction" in the Nevada Constitution "contains an implication against anything contrary to it which would frustrate or disappoint the purpose of that provision." *Galloway v. Truesdell*, 83 Nev. 13, 26, 422 P.2d 237, 246 (1967) (citation omitted); *see also id.* at 26 (holding that the "affirmation of a distinct policy upon any specific point in a state constitution implies the negation of any power in the legislature to establish a different policy").

I therefore find that there is reasonable probability that Plaintiffs will prevail on the merits of their argument that the Constitution's mandate to provide for education through the establishment of a uniform system of public schools prohibits the Legislature from enacting SB 302, a law that allows for the education Nevada children through a non-uniform means.

IRREPARABLE HARM

Because SB 302 violates the Nevada Constitution, Plaintiffs do not need to demonstrate any irreparable injury. *City of Sparks v. Sparks Mun. Court*, 129 Nev. Adv. Op. 38, 302 P.3d 1118, 1124 (2013) ("As a constitutional violation may be difficult or impossible to remedy through money damages, such a violation may, by itself, be sufficient to constitute irreparable harm.").

Regardless, the Court also finds that Plaintiffs have demonstrated a threat of irreparable injury if SB 302 is not enjoined. As established in Plaintiffs' papers and the supporting declarations, if SB 302 is not enjoined money will be diverted from the public school system and such a diversion of funds will disrupt the ability of school administrators to provide for quality of education. As set forth by Plaintiffs' declarants, SB 302 may cause certain school districts to adjust classrooms mid-year, cut extracurricular activities or "non-essentials," or even potentially close an entire school. Because money damages cannot remedy these harms, Plaintiffs have met the burden of showing an irreparable injury if SB 302 is not enjoined.

IT IS HEREBY ORDERED, therefore, and for good cause appearing, that Plaintiffs' motion for a preliminary injunction is **GRANTED;**

IT IS FURTHER ORDERED that Defendant Dan Schwartz, in his official capacity as Treasurer of the State of Nevada, is enjoined from implementing Senate Bill 302.

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DISTRICT COURT JUDGE

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Submitted by:

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EXHIBIT B

DECLARATION OF DR. CHRISTOPHER LUBIENSKI

I, Dr. Christopher Lubienski, declare as follows:

1. My name is Christopher Lubienski, Ph.D. My permanent residence is at 705 W. Michigan Avenue, Urbana, Illinois, 61801. I am over 21 years of age, and I am of sound mind, and qualified to give this report. I have never been convicted of a crime that would disqualify me from providing this report, and this report is made on my personal knowledge, based on a review of documents related to this case.

I. Background and Introduction

2. I am currently a Professor of Education Policy at the University of Illinois (Urbana-Champaign). I received my Ph.D. in education policy from Michigan State University in 1999, and subsequently held two post-doctoral fellowships in education policy: one with the National Academy of Education, and the other in the Advanced Studies Fellowship Program at Brown University. I began my academic career as an assistant professor at Iowa State University, where I taught in the Historical, Philosophical and Comparative Studies in Education program. I accepted a position at the University of Illinois in 2004, was tenured in 2007, and promoted to full Professor in 2013. In 2011, I was named a Fulbright Senior Scholar for New Zealand. I also am currently a Sir Walter Murdoch Adjunct Professor in Education Policy at Murdoch University in Perth, Australia. I have been active in the Special Interest Group on School Choice, including as program chair, for the American Educational Research Association. I also co-direct the K-12 Working Group for the Scholars Strategy Network at Harvard University.

3. My research on school choice has been funded by the Federal Institute of Education Science (under the G.W. Bush Administration), the William T. Grant Foundation, the Australian Research Council, the Organisation for Economic Cooperation and Development, the Walton Family Foundation, the Hewlett Foundation, and the Spencer Foundation. I have authored or edited four academic books (one in press) having to do with school choice, charter schools, and vouchers, including an award-winning book in 2014 from the University of Chicago Press on public and private school achievement. I have two more books in preparation on this general topic. I have also published over 80 academic papers, mostly on school choice, the majority of which have been published in peer-reviewed journals.

4. I have been studying voucher and charter school policies since the early 1990s, focusing both on the United States as well as comparable school choice systems in other nations. My key publications relevant to the voucher issue include a 2008 article in the *Brigham Young University Law Review* (with Peter Weitzel) on voucher outcomes, a 2009 article in *Educational Policy* (with Weitzel & Sarah Lubienski) on voucher advocacy, the 2014 book from the University of Chicago Press (with Sarah Lubienski) based on nationally representative federal datasets, and an upcoming article in the *Peabody Journal of Education* (with T. Jameson Brewer) on impacts of vouchers on different populations. Through this research, I have been familiarized with voucher policies throughout the United States. I also examine school choice between public and private schools from an international perspective, using data from the Organisation for Economic Cooperation and Development (OECD).

5. In preparation for developing opinions in the matter of *Lopez v. Schwartz*, Case No. 150C002071B, First District Court in and for Carson City Nevada, I have reviewed the following documents and artifacts:

a. Original Complaint, *Lopez v. Schwartz*, Case No. 150C0020171B

b. Senate Bill 302, enacted May 29, 2015 (Nevada's recently enacted voucher legislation)

c. September 2, 2015 Proposed Regulations of the State Treasurer

d. Comparable legislation regarding voucher programs in other states, as well as voucher programs in the District of Columbia and Douglas County, Colorado

e. Research from Suzanne Eckes and Jessica Ulm, of Indiana University, and Julie Mead, of the University of Wisconsin, to be published in the *Peabody Journal of Education*[1]

f. Compendia of information on voucher programs, as compiled by two pro-voucher advocacy organizations: the Friedman Foundation for Educational Choice,[2] and the Heritage Foundation[3]

6. In forming the opinions presented in this report, I relied on my scholarly experience in researching school choice in general, and voucher plans in particular, over a period of more than two decades. This work includes studying voucher programs — including voucher programs that use education savings accounts ("ESAs") or their equivalents — charter schools, and other school choice programs in the United States, as well studying similar programs in Australia, Chile, England and Wales, Korea, New Zealand, and Sweden. During that time I have complied a library of some 3,470 articles, books and papers on the topic of vouchers and school choice.

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[1] Eckes, S. E., Ulm, J., & Mead, J. (in press). Dollars to Discriminate: The (Un)Intended Consequences of School Vouchers. *Peabody Journal of Education.*

[2] Friedman Foundation for Educational Choice. (n.d.). *School Choice in America.* Available at: http://www.edchoice.org/school-choice/school-choice-in-america/.

[3] Heritage Foundation. (n.d.). *School Choice in America.* Available at: http://www.heritage.org/applications/SchoolChoice.aspx.

II. Opinions Presented

7. Given the information available to me at this time, I have formed four opinions, based on my knowledge, experience and training that relate to Senate Bill 302 ("SB 302"). These opinions are outlined in detail below and include:

a. Opinion 1: Voucher programs in other states are most often made available to children based on their family's income or to children at academically underperforming schools; many voucher programs also cap the number of recipients of voucher funding per year. Compared to other states, SB 302 is anomalous in that it is not limited to children who have an apparent need for assistance and has no upper bound on the number of recipients per year.

b. Opinion 2: Voucher programs in other states often impose academic and curricular requirements on institutions receiving the voucher funds. Compared to other states, SB 302 is anomalous in that it includes relatively few restrictions for ESA-eligible institutions. SB 302 does not impose any curricular requirements, has minimal testing requirements, and no performance requirements.

c. Opinion 3: Voucher programs in other states often impose non-discrimination requirement on institutions receiving voucher funds. Compared to other states, SB 302 is anomalous in that it includes no language prohibiting institutions receiving ESA funds from discriminating against children on a number of bases, including religion, sexual orientation, English Language Learner status, and ability to pay.

d. Opinion 4: SB 302 represents a move toward what is, relatively speaking, an unregulated system of publicly funded schooling that may lead to more inequitable opportunities and outcomes.

A. Opinion 1: *Voucher programs in other states are most often made available to children based on their family's income or to children at academically underperforming schools; many voucher programs also cap the number of recipients of voucher funding per year. Compared to other states, SB 302 is anomalous in that it is not limited to children who have an apparent need for assistance and has no upper bound on the number of recipients per year.*

8. Eight other states, along with the District of Columbia and Douglas County, Colorado,[4] have adopted publicly funded school voucher legislation not targeted only at students with special needs.[5] All of these states have instituted eligibility requirements for students based on family income or the academic performance of their assigned public school, or have limits on the number or location of students that can enroll in the program. For instance, eligibility for voucher programs in the District of Columbia, Indiana, North Carolina, and Wisconsin is based on the incomes of students' families.[6] Applicants for the District of Columbia Opportunity Scholarship Program must come from families making no more than 185% of the federal poverty level, or be eligible for the Supplemental Nutrition Assistance Program. Applicants to Indiana's Choice Scholarship Program must come from families making less than 150% of the level set for Free or Reduced Lunch (FRL) eligibility, or 200% of that level under certain circumstances. North Carolina caps eligibility at 133% of the FRL level. Wisconsin's programs are limited to students from families making less than 300% of the federal poverty level in Milwaukee and Racine, or 185% elsewhere, where they must also be eligible for FRL. Louisiana's voucher system takes into account both the income of the student's family and the academic performance of the child's assigned public school. Arizona's program is capped at 0.5% of the previous year's total public school enrollment, and is limited to students with special needs, in low-

[4] Here I focus on programs that, similar to Nevada's SB 302, budget public funds for private education, as with publicly funded vouchers and education savings accounts. The relevant programs are in the following states: Arizona, Colorado (Douglas County), the District of Columbia, Indiana, Louisiana, Maine, North Carolina, Ohio, Vermont, and Wisconsin. I am not including tax-credit programs that, unlike SB 302, channel *potential* tax revenues directly to private schools or savings accounts.

[5] Several other states have adopted voucher programs aimed at special needs populations. For example, Florida has the John McKay Scholarship for Students with Disabilities program, and Utah has the Carson Smith Special Needs Scholarship Program, both of which are targeted exclusively at students with special needs.

[6] Friedman Foundation for Educational Choice. (n.d.). *School Choice in America.* Available at: http://www.edchoice.org/school-choice/school-choice-in-america/.

Heritage Foundation (n.d.). *School Choice in America.* Available at: http://www.heritage.org/applications/SchoolChoice.aspx.

performing schools, from military families, or from foster families — covering only an estimated 22% of Arizona students.[7] Programs in Maine and Vermont are targeted only at children in rural areas with no public schools.

9. SB 302 does not place any meaningful requirements, income or otherwise, on families who wish to register for an ESA. SB 302 requires only that students have been enrolled in a public or charter school, even if part-time, for 100 days at some point prior to establishing an account through SB 302. Thus, all children in Nevada are eligible to meet the minimum requirement, even children whose parents' income is otherwise more than sufficient to afford private school payments and children already in the private school sector. No other state-wide program in the US comes anywhere near that level of eligibility.

10. Only the Cleveland Scholarship Program in Ohio, and the Douglas County voucher program established in Colorado (recently ruled to be unconstitutional by the Colorado Supreme Court) approach the almost universal eligibility seen in Nevada with SB 302. Yet both of these local programs are restricted based on local geographic eligibility. Moreover, the Cleveland program gives preference to students from families making less than 200% of the federal poverty level (while other students can apply, they must get approval from the state Superintendent). The Douglas County program was capped for total enrollment and gave preference to low-income students.[8] None of those eligibility requirements apply in the case of SB 302.

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[7] Friedman Foundation for Educational Choice. (n.d.). *School Choice in America: Arizona.* Available at: http://www.edchoice.org/school-choice/programs/arizona-empowerment-scholarship-accounts/.

[8] Friedman Foundation for Educational Choice. (n.d.). *School Choice in America.* Available at: http://www.edchoice.org/school-choice/school-choice-in-america/.

11. Thus, SB 302 is anomalous from all other mainstream voucher programs that I have studied in that it is not targeted at children based on their parents' income, or children at academically underperforming schools, and does not cap the number of recipients of these funds per year.

B. Opinion 2: *Voucher programs in other states often impose academic and curricular requirements on institutions receiving the voucher funds. Compared to other states, SB 302 is anomalous in that it includes relatively few restrictions for ESA-eligible institutions. SB 302 does not impose any curricular requirements, has minimal testing requirements, and no performance requirements.*

12. States that have adopted voucher programs targeted at mainstream populations often impose academic and curricular requirement on schools receiving voucher funds. For instance, Indiana requires that participating private schools be accredited and meet minimum academic standards (administer the state testing program and not receive a D or F rating for two or more years in a row), and conduct criminal background checks on school employees, among other criteria.[9] Louisiana requires that participating schools be approved by the state, conduct criminal background checks on employees, maintain a quality curriculum equal to that of public schools, and meet academic performance standards based on a "Scholarship Cohort Index."[10] North Carolina specifies that schools accepting vouchers be accredited (by the state, a national or

[9] Indiana Code §§ 20-51-1.

[10] Friedman Foundation for Educational Choice. (n.d.). *School Choice in America.* Available at: http://www.edchoice.org/school-choice/school-choice-in-america/.
Louisiana Department of Education. (2012). Accountability System for Louisiana Scholarship Program Released [Press release] Retrieved from http://www.louisianabelieves.com/newsroom/news-releases/2012/07/23/accountability-system-for-louisiana-scholarship-program-released.

regional accreditor, or be active in the North Carolina Association of Independent Schools), and conduct criminal background checks on school employees.[11]

13. SB 302 does not have similar academic or curricular requirements for entities receiving voucher funding. In SB 302, "participating entities" are eligible if they (a) are licensed or exempt from licensing; (b) are part of the Nevada System of Higher Education or otherwise established in and organized under the laws of Nevada, tax-exempt, and accredited by a recognized regional accrediting agency; (c) are a part of a distance learning program; (d) if a tutoring service, be accredited by state, regional, or national organization (no specification that such be recognized by the government); or (e) are a parent. SB 302 includes no language regarding educational qualifications or standards, criminal backgrounds checks, accreditation standards for distance education or tutoring, or other factors used by other states to preclude the entry of unqualified or even dangerous providers into the program. The only specified academic requirement for participating entities is that they administer a norm-referenced achievement assessment in mathematics and English/language arts each year. SB 302 § 12(1)(a). However, SB 302 does not mandate that these subjects be taught or that participating entities achieve any minimum level of performance on these achievement tests. SB 302 also allows the State Treasurer (not the Department of Education) to review participating entities, but does not specify any criteria for what such a review would consider. SB 302 § 11 (5)(a-b).

14. Thus, as compared to other voucher programs that I have studied throughout the nation, SB 302 is anomalous in its lack of academic and curricular requirements for participating entities that are receiving these funds.

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[11] Friedman Foundation for Educational Choice. (n.d.). *School Choice in America*. Available at: http://www.edchoice.org/school-choice/school-choice-in-america/.

C. Opinion 3: *Voucher programs in other states often impose non-discrimination requirements on institutions receiving voucher funds. Compared to other states, SB 302 is anomalous in that it includes no language prohibiting institutions receiving ESA funds from discriminating against children on a number of bases, including religion, sexual orientation, English Language Learner status, and ability to pay.*

15. Other states that have adopted voucher programs targeted at general populations have required that institutions receiving voucher funds adopt non-discrimination policies. According to legal analyses by Suzanne Eckes and Jessica Ulm at Indiana University, and Julie Mead at the University of Wisconsin, all other states but three include some type of non-discrimination clause(s) for schools participating in their voucher programs.[12] Louisiana requires that schools use a transparent admissions process, and prohibits schools from applying additional admissions criteria to students using vouchers beyond those of the voucher program itself.[13] Indiana requires the use of "fair" admission standards.[14] Wisconsin specifies limits on capacity as the only legitimate reason for rejecting a voucher student. North Carolina and Wisconsin require that schools participating in a voucher program comply with 42 U.S.C. 2000d, which prohibits discrimination on the basis of "race, color, or national origin." Four statutes (Indiana, Louisiana, North Carolina, and Ohio) include language regarding requirements that private, voucher-accepting schools serve students with disabilities. Some states have requirements for

[12] Eckes, S. E., Ulm, J., & Mead, J. (in press). Dollars to Discriminate: The (Un)Intended Consequences of School Vouchers. *Peabody Journal of Education.*

[13] Eckes, S. E., Ulm, J., & Mead, J. (in press). Dollars to Discriminate: The (Un)Intended Consequences of School Vouchers. *Peabody Journal of Education.*

Friedman Foundation for Educational Choice. (n.d.). *School Choice in America.* Available at: http://www.edchoice.org/school-choice/school-choice-in-america/.

[14] Eckes, S. E., Ulm, J., & Mead, J. (in press). Dollars to Discriminate: The (Un)Intended Consequences of School Vouchers. *Peabody Journal of Education.*

voucher-enrolling schools regarding the enrollment of students of differing faith traditions, standards for admission, or procedures for over-subscription. For instance, Wisconsin prohibits private schools from requiring voucher-funded students to participate in religious practices.[15]

16. SB 302 does not require that participating entities receiving ESA funds adopt non-discrimination policies. Many private schools in Nevada have policies that are discriminatory. For instance, Liberty Baptist Academy in Las Vegas requires parents to "attend all church services including Sunday morning, Sunday night, Wednesday night and special conferences and revivals," and only accepts students whose parents agree to perform volunteer service for the school — thereby effectively excluding children of working parents lacking the time to perform such service.[16] Faith Christian Academy in Gardnerville explicitly excludes non-Christian students, students who do not have at least one parent who is also a Christian and is in agreement with the school's statement on human sexuality, as well as students whose academic performance is below average, or have behavioral problems.[17] And while Trinity International School of Las Vegas says it admits students regardless of religious preference, students are required to submit a letter of recommendation from a pastor, and parents must sign an agreement acknowledging the importance of "Christian principles" as taught at the school and regular

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[15] The only two exceptions that consistently defy the general pattern of prohibiting institutions from discriminating with tax funding involve old "tuitioning" programs in Vermont and Maine that were designed simply for rural areas with no public schools (and are limited to non-sectarian private schools).

Eckes, S. E., Ulm, J., & Mead, J. (in press). Dollars to Discriminate: The (Un)Intended Consequences of School Vouchers. *Peabody Journal of Education.*

Friedman Foundation for Educational Choice. (n.d.). *School Choice in America.* Available at: http://www.edchoice.org/school-choice/school-choice-in-america/.

[16] Liberty Baptist Academy. (n.d.). Student Handbook. Las Vegas, NV. Available at: http://experienceliberty.com/academy/wp-content/uploads/2013/07/LBA-Handbook.pdf.

[17] Faith Christian Academy. (2014-15). Handbook. Gardnerville, NV. Available at http://029b4a0.netsolhost.com/pages/fca/Handbook_14-15.pdf.

church attendance.[18] Additionally, Trinity International School charges additional fees of $525.00 per class per semester for English Language Learners. Nothing in SB 302 prevent schools that discriminate in this manner from receiving funding.

17. Moreover, nothing in SB 302 prevents a private school from charging more than the ESA amount and denying entry to those who are unable to pay the full tuition amount. Other states, such as Ohio and Wisconsin explicitly prohibit schools receiving vouchers from leveraging additional charges that would exclude poor students. Ohio prohibits schools from charging additional tuition or fees beyond the amount of the voucher for students from families at less than 200% of the federal poverty level. In Wisconsin, that level is specified at 220% for high school students. SB 302 makes no such prohibition, and therefore allows schools to exclude students unable to pay additional tuition or fees.

18. Thus, SB 302 is anomalous as compared to other states that I have studied in that it does not impose any non-discrimination requirements on participating entities receiving these funds.

D. Opinion 4: *SB 302 represents a move toward what is, relatively speaking, an unregulated system of publicly funded schooling that may lead to more inequitable opportunities and outcomes.*

19. Voucher programs are often justified on the basis that increased choice and competition will lead to increased efficiency and performance in the school system, thereby increasing access to quality options for all school children. While choice and competition may

[18] Trinity International School. (n.d.). Registration Packet and Parent/Guardian and Student Agreement. Las Vegas, NV. Available at: http://trinitylv.org/Registration-Packet.pdf.

produce efficient results in the business sector, such policies often lead to increasingly segregated schools and unevenly distributed opportunities in the education sector.

20. Research on the organizational behavior of schools in choice-based systems suggests that they may embrace policies that lead to inequitable educational opportunities for students. The inequitable effects created by choice-based systems is often explained by the fact that, under these programs, instead of students choosing schools, schools are able to choose their students. The ability to select amongst students typically leads to barriers to entry for higher-cost, lower-scoring, or more-difficult-to-educate students.[19]

21. This is perhaps most evident in the difficulty of special education students in finding places in New Orleans' charter/voucher system, where autonomous schools, concerned about test scores and costs, have discouraged higher-cost and more difficult-to-educate students from attending, leaving those students few options other than the public schools.[20] Recent research from Johns Hopkins University on Chicago's choice system also finds disadvantaged students have fewer and poorer quality choices for schools in near proximity. Students from Chicago communities where the median household income exceeds $75,000 typically attend a smaller set of 2-3 schools; when that figure falls below $25,000, students are dispersed to 13

[19] Fiske, E. B., & Ladd, H. F. (2000). *When Schools Compete: A Cautionary Tale.* Washington, DC: Brookings Institution Press.
Lauder, H., Hughes, D., Watson, S., Waslander, S., Thrupp, M., Strathdee, R., . . . Hamlin, J. 1999). *Trading in Futures: Why Markets in Education Don't Work.* Buckingham, UK: Open University Press.
Lubienski, C., Gulosino, C., & Weitzel, P. (2009). School Choice and Competitive Incentives: Mapping the Distribution of Educational Opportunities across Local Education Markets. *American Journal of Education, 115*(4), 601-647.

[20] Merrow, J. (Director). (2013). Rebirth: New Orleans. Learning Matters.

schools, on average, and had average commutes that are significantly longer.[21] Patterns of inequities inherent to such systems are also evident in a 2014 report from the OECD which noted that, in an examination of 11 nations, poorer families in choice systems have less access to information on school quality, and tend to focus on transportation and other costs when choosing schools, while more affluent families are able to absorb costs and put more emphasis on academic quality; thus, in systems where schools have to compete for the choices of families, "schools are often more socially segregated."[22]

22. Under SB 302, which, as explained in Opinions 1-3, is less regulated than any other voucher program in the nation, the segregative effects typically associated with choice programs may be more pronounced. Nevada appears to be moving toward an education marketplace characterized by an uneven playing field between school sectors. District-run public schools are required to serve all students living within the district's boundaries. Yet, entities participating in SB 302 do not operate under that level of regulation, and are free to include or exclude students with relatively little constraint. However, the Legislature has required that public schools, including charter schools, serve all students, regardless of: (a) Race; (b) Gender; (c) Religion; (d) Ethnicity; or (e) Disability, of a pupil.[23] Moreover, district schools in Nevada are subject to requirements regarding curriculum, testing, and teacher standards. Participating entities in SB 302 do not have to meet these requirements. Despite the fact that

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[21] Rosen, J. (2015, September 2) . Johns Hopkins Sociologist Challenges Common Assumptions About School Choice. *Hub*.

[22] Organisation for Economic Co-Operation and Development. (2014). *Pisa 2012 Results: What Makes Schools Successful (Volume Iv)* (Vol. Paris): OECD Publishing.

[23] N.R.S. § 386.580 (3); N.R.S. §§ 388.450; 388.520; 388.405; 388.407.

these two sectors are subject to significantly different regulations and requirements, they are being positioned to compete for students and the portable funding they bring.

23. Virtually all the research of which I am aware on school choice and organizational behavior suggests that this may promote more segregated patterns of student sorting by race, ethnicity, socio-economic status, and academic ability, as autonomous schools are funded and incentivized to serve more advantaged students. Autonomous schools receiving voucher funding compete not by improving educational outcomes, but by capitalizing on their autonomy to select more advantaged and higher performing students, leaving disadvantaged and lower performing students to the public schools required to accept them. SB 302 stands out for its lack of (a) basic measures of quality control for education providers, and (b) safeguards for the equitable treatment of students using these public funds to pursue an education. While other states have put in place non-discrimination requirements and certain academic requirements for educational service providers in voucher systems, SB 302 imposes almost no similar requirements. As such, the segregative effects typically seen with choice programs may be more pronounced under SB 302.

III. Conclusion

24. The opinions presented in this expert's report are presented to a reasonable degree of professional certainty. The opinions offered above are based on the record available to me at this time, and are subject to revision based on review of additional information, data or testimony, as it may become available to me. These opinions are submitted with the knowledge of the penalty for perjury, and are true and correct.

Dated this 19th day of October, 2015.

By: _____
DR. CHRISTOPHER LUBIENSKI

EXHIBIT C

FIRST JUDICIAL DISTRICT COURT

IN AND FOR CARSON CITY, NEVADA

HELLEN QUAN LOPEZ, individually and on behalf of her minor child, C.Q.; MICHELLE GORELOW, individually and on behalf of her minor children, A.G. and H.G.; ELECTRA SKRYZDLEWSKI, individually and on behalf of her minor child, L.M.; JENNIFER CARR, individually and on behalf of her minor children, W.C., A.C., and E.C.; LINDA JOHNSON, individually and on behalf of her minor child, K.J.; SARAH and BRIAN SOLOMON, individually and on behalf of their minor children, D.S. and K.S.,

Plaintiffs,

vs.

DAN SCHWARTZ, IN HIS OFFICIAL CAPACITY AS TREASURER OF THE STATE OF NEVADA,

Defendant.

Case No.: 150C002071B

Dept. No: II

DECLARATION OF PAUL JOHNSON

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Attorneys for Plaintiffs

I, PAUL JOHNSON, declare as follows:

1. I am the Chief Financial Officer ("CFO") of White Pine County School District ("White Pine"). I have been the CFO of White Pine for over 18 years and have served on a number of panels and task forces to evaluate the funding formula for the Nevada public school system. I make this declaration based on personal knowledge and experience. If called as a witness, I could and would competently testify to the facts set forth herein.

2. As CFO of White Pine, I have personal knowledge of the management of White Pine's yearly budget. I have also read SB 302 and the proposed regulations and analyzed the potential impact of SB 302 on White Pine.

3. White Pine is a smaller rural school district serving around 1,200 Nevada students. It is similar in size to Lander and Lincoln counties, serving more students than Esmeralda, Eureka, Mineral, Pershing, Storey, and University, but fewer than Clark County, Elko, Washoe, and others.

4. Public schools in Nevada are funded through the "Nevada Plan." White Pine and other school districts in Nevada receive funding from two sources under the Nevada Plan: (i) the State, via the State Distributive School Account ("DSA"); and (ii) local funds, via the Local School Support Tax and ad valorem taxes. School districts also receive certain funds outside of the Nevada Plan through local and other sources. Under the Nevada Plan, the State determines a guaranteed amount of funding (the "basic support guarantee") for each local school district. A school district's total guaranteed support is calculated by multiplying the basic support guarantee per pupil by the average daily enrollment of pupils enrolled in a school district (with different weights given to different students), as calculated and reported on a quarterly basis (on October 1, January 1, April 1, and July 1). The State then appropriates from the DSA to school districts the difference between the total guaranteed support and local funds available to the district. In other words, the DSA covers only a portion of a school district's per-pupil expenditures. For example, White Pine's basic support guarantee for fiscal year 2015-2016 is $7,799 per pupil. Using an enrollment figure of approximately 1212 students for fiscal year 2015-2016, White Pine's total guaranteed support is $9,452,388. Of that, around 58 percent, or $4,485.50 per student, is funded by the state through the DSA.

5. SB 302 and its proposed regulations allow students who have been enrolled in one or more classes at a public school for 100 days to become eligible to receive between $5,139 and $5,710 in funds originally appropriated for the public schools. A number of damaging scenarios are possible:

a. First, students who leave the public schools after obtaining ESAs may no longer be counted towards the school district's quarterly enrollment figure. Despite the fact that those students will not be counted towards the school district's total enrollment figures, funds for ESAs will be deducted from the school district's quarterly apportionment from the DSA. If these assumptions are correct, SB 302 is likely to have grave impacts, particularly on smaller school districts, where small shifts in enrollment have a substantial impact on the operating budget of such districts. For example, in White Pine, a decline of enrollment by 60 students, or about 5 percent, would result in the reduction of White Pine's total guaranteed support by $467,940 ($7,799 multiplied by 60 students). In addition to a reduction in total guaranteed support as a result of the decline in enrollment, White Pine's apportionment from the DSA would be reduced by the amount of funds deposited in ESAs for those students, or between $300,000 and $342,000. This would result in a total reduction of funding of approximately $783,000 to $825,000. Total revenue would decline by approximately 6.8 percent to 7.2 percent as the result of a 5 percent migration of students to the voucher system.

b. Second, even if students who receive ESAs continue to be included in White Pine's enrollment figure for purposes of calculating White Pine's total guaranteed support (and I have no reason to believe they would), the reduction of funding to White Pine will be significant. White Pine's apportionment from the DSA would still be reduced by between $5,139 and $5,710 per pupil receiving an ESA. However, as noted above, the State's portion of the basic support guarantee funding to White Pine is only $4,485.50 per student. Therefore, White Pine's apportionment from the DSA would be reduced by more than the ordinary per-pupil allotment from the

State. In other words, if a child left the district without receiving an ESA, White Pine's budget would be reduced by $4,485 to reflect the declining enrollment (subject to hold harmless provisions); however, for a student who leaves the district after obtaining an ESA, White Pine's budget will be reduced by between $5,139 to $5,710, or approximately an additional $515 to $1,215 beyond what it would otherwise lose. Therefore, the loss of a student to an ESA does not result in a net-neutral impact on the public schools, but rather a loss of funding due to a reduction from the DSA apportionment on a more-than per-pupil basis.

6. Regardless of the precise mechanism by which ESA funds are removed from the public schools' budgets, SB 302 will harm public schools and the students they serve. For example, a school district will receive less than its projected funding for the year if students who are enrolled in the prior school year elect to apply for an ESA and do not to return to public school the following year. And, for students who enroll in the district for the first 100 days and then leave, the district will receive the basic support guarantee for those students for the first half of the year, but will have its funding reduced once the child leaves the school district. This will result in a mid-year reduction of the district's operating budget.

7. Although White Pine's local funding will not be reduced as a result of SB 302, White Pine and its students will still be harmed by the loss of DSA funding as a result of SB 302. This is because if a student were to leave White Pine after obtaining an ESA, White Pine would nevertheless maintain many of the fixed expenditures associated with educating that child. Accordingly, a transfer of funds from a school district into an ESA is not a net neutral impact on the public schools. Instead, if one or a handful of students leaves White Pine after obtaining an ESA, White Pine still must run the same number of buses, employ the same number of administrators, staff the same number of classes, maintain the same square footage of property. These fixed costs remain the same even if certain students leave the school district, and those costs are not recouped if the student leaves the school district.

8. For example, the cost of salary and benefits for a typical classroom teacher in White Pine is approximately $68,208. Imagine that teacher serves a classroom of 30 students, and

all of those students leave White Pine to obtain an ESA. In that circumstance, at least $154,170 to $171,300 (30 x $5,139 or 30 x $5,710) would be deducted from White Pine's operating budget. However, White Pine cannot easily eliminate a teacher in the middle of the school year without significant disruption to the educational process. Also, pursuant to N.R.S. 391.3196, school districts must notify teachers by May 1 if they will be reemployed for the ensuing school year. These staffing decisions are made based on projected enrollment, and cannot be readily adjusted during the school year. Even if White Pine were then able to eliminate the expense of the teacher for that classroom, it would still have to reduce its budget by an additional $81,792 to $102,792. Many of the school district's expenditures, however, are not easily reduced on a per-pupil basis. In fact, the only costs which can be eliminated on a per-pupil basis are direct instructional costs. At David E. Norman Elementary School, the average instructional cost for a student is $2,187. A reduction of revenue by $5,139 to $5,710 per pupil would therefore require White Pine to make an additional budget cut of $2,952 to $3,523 per pupil across budget items which cannot be reduced on a per-pupil basis. For example, a loss of 30 students may not reduce the need or number of school counselors, school administrators, school resource officers, custodial staff, maintenance personnel, groundskeepers, bus routes, bus drivers, nutrition programs, and other support services.

9. Even more challenging is that, in reality, a loss of 30 students would likely not come from one classroom, but rather from a departure of a few students in different grade levels. Demand would then diminish slightly per classroom, but that reduction in demand would not directly correlate to a reduction in demand of one teaching position. For example, if one student in a classroom of 30 leaves White Pine after obtaining an ESA, the school district loses $5,139 to $5,710, but retains the full expense of the teacher salary, as that teacher is still needed for the remaining 29 students. Likewise, White Pine cannot eliminate the bus used to transport that child, the custodial staff used to maintain that child's classroom, or the nutritional staff used to provide food service to that student. Accordingly, White Pine does not recoup the funding lost as a result of an ESA through savings of no longer having to serve that student. To the contrary, White Pine retains all of the fixed costs of educating that student. Because of fixed costs that cannot be

reduced, White Pine would be forced to eliminate other services, like extracurricular activities that keep students invested in school, in order to make ends meet.

10. The potential reduction of revenue resulting from SB 302 is particularly daunting for a small school district. White Pine, for example, is currently facing a critical financial time as a result of recent changes in enrollment. White Pine already struggles on its meager budget to provide diverse and interesting academic offerings beyond the core academic subjects to make its schools competitive. White Pine also already lacks funding for instructional materials, technology support, maintenance staff, and student transportation. It has outsourced custodial and nutrition services in order to keep those programs, but those cuts are becoming more and more difficult to make. If White Pine were to lose additional students and funding as a result of SB 302, there would be substantial impacts to students in the district.

11. If funding declines in the coming years as a result of SB 302, White Pine will begin seriously considering closing schools because it will not be able to afford the overhead required to maintain those facilities. As one such example, White Pine may be required to close White Pine Middle School, and send students in grades six through eight to either White Pine High School or David E. Norman Elementary School. Class sizes for grades four through twelve would balloon, as White Pine would not be able to afford to take on or hire new teachers, and Nevada law requires White Pine to maintain smaller class sizes in kindergarten through third grade.

12. SB 302 will also negatively impact school districts to the extent it causes changes in enrollment during the school year. As noted above, school districts receive, each quarter, an amount calculated based on the quarterly enrollment figure for the immediately preceding quarter of the school year. In part as a result of SB 302, which creates incentives for students to leave the school district after 100 days, a school district's quarterly enrollment figure will change throughout the year. Children who are enrolled for the first 100 days in the district but then leave after receiving ESAs will be counted in the average daily enrollment for the count days on October 1 and January 1, but will not be counted on April 1 and July 1. Although there is a hold harmless provision which provides that, if there has been an enrollment decrease from the same quarter of

the immediately preceding school year of 5 percent or more, a school district will maintain funding in the amount of for the same quarter of the immediately preceding year, that hold harmless provision will not eliminate the negative impact of SB 302, for three reasons:

a. First, the hold harmless provision will not protect districts who lose less than 5 percent of students as a result of SB 302 because it does not account for reductions of less than five percent enrollment. Accordingly, for school districts that lose less than 5 percent of their enrollment to SB 302, the budgetary allotment will be adjusted on a quarterly basis, without any hold harmless provision for students who leave the district after the first 100 days of school to obtain an ESA. As a result, a school district's budgetary allotment will be reduced when any student applies for and receives an ESA.

b. Second, quarterly budget fluctuations are likely to occur even for school districts that lose more than 5 percent enrollment as a result of SB 302. If a school district, over the course of the year, loses 5 percent of its students as a result of SB 302 over the course of the year, there may not be a reduction of 5 percent or more in any given quarter. Because the hold harmless provision applies only if there has been a reduction of 5 percent or more from *the same quarter* of the immediately preceding school year but not from the average enrollment for the entire *prior year*, there will still be fluctuations on a quarterly basis that are exacerbated by students leaving the district to obtain ESAs after 100 days.

c. Third, even if the hold harmless provision applies, the result will be an increased and unbudgeted-for demand on the DSA. That is, if the hold harmless provision applies, the state will be required not only to apportion funds to school districts at a rate that includes the students who have left to obtain ESAs, but also to pay for the ESAs themselves. In other words, if 7 percent of White Pine's students leave to obtain an ESA in a single quarter, the hold harmless provision will apply and the state will be required to apportion funds to White Pine for that 7 percent, or $380,549.82 ($4,485.50 [the state DSA per-pupil amount covered by the DSA in

White Pine] x 7 percent of 1212 [the approximate enrollment of students in White Pine for fiscal year 2015-2016]). At the same time, and in addition, the state will be required to fund ESAs in an amount between $435,992.76 and $484,436.40. As a result, the demand on the DSA will likely exceed the amount appropriated by the Legislature to the DSA. Ultimately, SB 302 will create a funding obligation which competes with funding the public schools.

13. In the long term, SB 302 will introduce significant budgeting instability that will harm students. School districts like White Pine will be faced with the prospect of planning for a shifting landscape. As a result, White Pine will face the substantial challenge of projecting and budgeting for changes in enrollment caused on a regular basis and in the middle of the school year by SB 302. Even if White Pine were able to reduce staffing to compensate for declining enrollment caused by SB 302 in the middle of the year, those changes would be incredibly disruptive to a school community. Schools would be required to revise its course offerings, change student schedules, and move students into different classrooms. Schools must also consider whether the teacher certifications of the remaining teachers match the student population need as well as whether the course offerings correspond with the curricular needs of students. Making those changes in the middle of the year, or even from year to year, reduces the quality of education that schools are able to provide.

I declare under penalty of perjury under the laws of Nevada that the foregoing is true and correct. Dated this 19 day of October, 2015 in White Pine County, Nevada.

By: _____
PAUL JOHNSON

EXHIBIT D

FIRST JUDICIAL DISTRICT COURT

IN AND FOR CARSON CITY, NEVADA

HELLEN QUAN LOPEZ, individually and on behalf of her minor child, C.Q.; MICHELLE GORELOW, individually and on behalf of her minor children, A.G. and H.G.; ELECTRA SKRYZDLEWSKI, individually and on behalf of her minor child, L.M.; JENNIFER CARR, individually and on behalf of her minor children, W.C., A.C., and E.C.; LINDA JOHNSON, individually and on behalf of her minor child, K.J.; SARAH and BRIAN SOLOMON, individually and on behalf of their minor children, D.S. and K.S.,

Plaintiffs,

vs.

DAN SCHWARTZ, IN HIS OFFICIAL CAPACITY AS TREASURER OF THE STATE OF NEVADA,

Defendant.

Case No.: 150C002071B

Dept. No: II

DECLARATION OF JEFF ZANDER

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Attorneys for Plaintiffs

I, JEFF ZANDER, declare as follows:

1. I am Superintendent of the Elko County School District. I have been Superintendent of the Elko County School District since 2010. From 2006 to 2009 I was the Assistant Superintendent of Finance and Facilities in the Elko County School District. I served as the Comptroller of the Elko County School District from 2001 to 2006. I make this declaration based on personal knowledge and experience. If called as a witness, I could and would competently testify to the facts set forth herein.

2. As Superintendent of Elko County and in my previous positions as Comptroller and Assistant Superintendent of Finance and Facilities, I have personal knowledge of the management of Elko County's yearly budget. I have read SB 302 and the proposed regulations and analyzed the potential impact of SB 302 on Elko County.

3. SB 302 and its proposed regulations allow students who have been enrolled in one or more classes at a public school for 100 days to become eligible to receive either $5,139 or $5,710 in funds originally appropriated for the public schools. It is my understanding that those funds will be deducted from the school district's quarterly apportionment from the State Distributive School Account ("DSA").

4. SB 302 will reduce the funding available to school districts and may result in a mid-year or quarterly reduction of the district's operating budget. While SB 302 will result in the reduction of district budgetary allotments on a quarterly basis, many of a school district's costs are fixed prior to the start of a school year, based on estimated enrollment for the upcoming year. For example, school districts must notify teachers by May 1 if they will be reemployed for the ensuing school year, and cannot readily reduce staffing during the school year. School districts have several other fixed costs, including leases for copy machines, and licenses for interim assessment and intervention tracking software.

5. These fixed costs cannot be adjusted on a per-pupil basis during the school year, particularly in rural counties. Smaller rural counties like Elko do not have the ability to easily transfer teachers to other positions or other schools when there are minor changes in enrollment, because those schools can be up to 100 miles apart. For smaller rural districts, making these

staffing determinations accurately is critical to developing a budget for the next fiscal year. Because SB 302 introduces instability into district budgeting, there may be teacher surpluses in a given school, which will result in the elimination of programming and opportunities for students.

6. When there are reductions to a school district's budgetary allotment, the district may be required to eliminate teacher resources and professional development programs which are critical to improving instruction at our schools. This may include the elimination of: (i) professional development opportunities that help teachers create challenging and engaging curricula; (ii) coaching/mentoring programs for classroom teachers; (iii) overtime pay used to compensate teachers for time spent beyond the school day in professional learning communities to improve instruction; and (iv) IT and maintenance positions, which provide critical support to schools. Other programs that provide substantial benefits to students but are not essential to the day-to-day delivery of instruction may be eliminated or reduced, including extra and co-curricular activities like music programs and intramural sports.

7. The fact that SB 302 allows students to leave in the middle of a school year makes managing budget reductions all the more challenging. Mid-year budget reductions are particularly harmful and disruptive to schools. They require school districts to make changes in the allocation of resources and the provision of programs during the school year, to the detriment of students.

I declare under penalty of perjury under the laws of Nevada that the foregoing is true and correct. Dated this 19 day of September, 2015 in Elko, NV.

By: Jeff Zander
JEFF ZANDER

EXHIBIT E

FIRST JUDICIAL DISTRICT COURT

IN AND FOR CARSON CITY, NEVADA

HELLEN QUAN LOPEZ, individually and on behalf of her minor child, C.Q.; MICHELLE GORELOW, individually and on behalf of her minor children, A.G. and H.G.; ELECTRA SKRYZDLEWSKI, individually and on behalf of her minor child, L.M.; JENNIFER CARR, individually and on behalf of her minor children, W.C., A.C., and E.C.; LINDA JOHNSON, individually and on behalf of her minor child, K.J.; SARAH and BRIAN SOLOMON, individually and on behalf of their minor children, D.S. and K.S.,

Plaintiffs,

vs.

DAN SCHWARTZ, IN HIS OFFICIAL CAPACITY AS TREASURER OF THE STATE OF NEVADA,

Defendant.

Case No.: 150C002071B

Dept. No: II

DECLARATION OF JIM MCINTOSH

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I, JIM MCINTOSH, declare as follows:

1. I am the Chief Financial Officer ("CFO") of Clark County School District ("CCSD"). I have been the CFO of CCSD since 2013. Prior to being named CFO of CCSD, I was the Deputy CFO of CCSD and, before that, the Accounting Director of CCSD. I make this declaration based on personal knowledge and experience. If called as a witness, I could and would competently testify to the facts set forth herein.

2. As CFO of CCSD and in my previous positions as Deputy CFO and Accounting Director of CCSD, I have personal knowledge of the management of CCSD's yearly budget. I have also read SB 302 and the proposed regulations.

3. Pursuant to SB 302, a student may enroll in the first 100 days of classes and, subsequently, leave the district, taking with him or her 90 to 100 percent of the basic support guarantee attributable to that student. Practically, the reduction of funds to a district will happen almost immediately. Pursuant to N.R.S. 387.1233, a district must report its average enrollment on a quarterly basis, which the state then uses to compute a district's budgetary allotment. Funding allotted to a district will be adjusted up or down on a quarterly basis based on quarterly changes in enrollment. Accordingly, a district's budget will be reduced mid-year if students enroll for the first 100 days of school and subsequently leave after obtaining an ESA.

4. Although CCSD is funded on a quarterly basis, it must project and plan for an annual budget, based on projected enrollment for the upcoming school year. For example, CCSD's projected enrollment for the 2015-2016 school year is 322,902. If CCSD lost 1,000 students from its projected enrollment, CCSD would experience a budgetary shortfall of over $5 million dollars. That budgetary shortfall would cause significant harm to students enrolled in CCSD, in the following ways:

   a. Because teachers must be rehired by May 1 of the preceding school year, a decline from projected enrollment may result in a teacher surplus in a particular school. The district-wide impact of any teacher surplus is significant, as salaries comprise between 85-87 percent of CCSD's expenditures. In order to respond to that teacher surplus, CCSD must transfer teachers from overstaffed positions to vacant

positions. This can be a disruptive process, during which individual classes must be restructured and teachers moved to different schools. If all vacancies are filled and a teacher surplus remains, CCSD may be forced to reduce the workforce. Even if a school district reduces a workforce, it is required to provide substantial notice pursuant to the collective bargaining agreements. Thus, any reduction in workforce would not take effect immediately, and the district would not recoup the costs of declining enrollment immediately.

b. Fixed costs, including salaries, utilities, transportation, facilities maintenance and upkeep, make up a large portion of CCSD's budget. These costs cannot be readily decreased if there is a reduction of students. For example, if one student leaves the district, the district will nevertheless still have to pay for the school bus that previously transported that child to school. As another example, CCSD enters into software licenses for instructional tools (i.e., for reading comprehension and mathematics skill-building) on an annual basis based on estimated enrollment figures. Those costs do not decrease when a student obtains an ESA and leaves the district.

c. Because many of CCSD's costs are fixed, CCSD may be forced to make budgetary adjustments which would be detrimental to students. For example, a school may have to eliminate instructional materials for certain courses or cut programs like college preparation programs, dropout prevention programs, math and science enrichment programs. These curricular programs are critical to helping our schools provide academic support to our highest-need students.

5. Further, the cost of educating students on a per-pupil basis in CCSD will increase as enrollment declines. As a large district, CCSD is able to limit expenses through economies of scale. For example, when the district negotiates a software license, a vendor may offer a lower price per pupil because of CCSD's purchasing power. However, if CCSD's enrollment declines or becomes unstable, the cost of these licenses and other services may increase on a per-pupil basis, making it even more expensive to educate the students remaining in the district.

Additionally, the cost of educating high-need students, i.e., English language learners, students with special needs, and students receiving free and reduced-price lunch, is between 1.5 and 2 times higher than the average per-pupil cost in CCSD. The cost of educating students on a per-pupil basis increases if students who are less expensive to educate leave the district, thereby increasing the proportion of high-needs students in the district.

6. Impacts of shifting and declining enrollment and funding are felt most deeply at the school level. Each time a particular school experiences a decline in enrollment and funding, staff will be transferred and students will need to be re-dispersed mid-way through the school year. If course offerings are reduced and student schedules changed, it could cause substantial disruption to students' academic careers.

I declare under penalty of perjury under the laws of Nevada that the foregoing is true and correct. Dated this 20 day of October, 2015 in Clark County.

By: _____
JIM MCINTOSH

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FIRST JUDICIAL DISTRICT COURT

IN AND FOR CARSON CITY, NEVADA

HELLEN QUAN LOPEZ, individually and on behalf of her minor child, C.Q.; MICHELLE GORELOW, individually and on behalf of her minor children, A.G. and H.G.; ELECTRA SKRYZDLEWSKI, individually and on behalf of her minor child, L.M.; JENNIFER CARR, individually and on behalf of her minor children, W.C., A.C., and E.C.; LINDA JOHNSON, individually and on behalf of her minor child, K.J.; SARAH and BRIAN SOLOMON, individually and on behalf of their minor children D.S. and K.S.,

Plaintiffs,

v.

DAN SCHWARTZ, in his official capacity as Treasurer of the State of Nevada,

Defendant.

CASE NO. 15-OC-00207-1B

Dept. No: II

OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION AND COUNTERMOTION TO DISMISS

Office of the Attorney General
100 North Carson Street
Carson City, NV 89701-4717

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100 North Carson Street
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Carson City, NV 89701-4717

INTRODUCTION

Plaintiffs bring a facial challenge to Nevada's new education savings account ("ESA") program, enacted by the Legislature as Senate Bill 302 ("SB 302") to address serious and longstanding problems with the education system in Nevada. Claiming that the ESA program violates Sections 2, 3, and 6 of Article 11 of the Nevada Constitution, Plaintiffs seek a preliminary injunction. But all of Plaintiffs' claims fail as a matter of law. And Plaintiffs fail to demonstrate the irreparable injury required for a court to grant preliminary relief. Accordingly, Plaintiffs' complaint should be dismissed under Rule 12(b)(5), and their motion for preliminary injunction should be denied.

BACKGROUND

I. Nevada's New Education Savings Account Program

The State of Nevada, as part of sweeping education reforms enacted earlier this year, has empowered parents with real choice in how best to educate their children. Senate Bill 302, adopted by the Legislature and approved by Governor Sandoval on June 2, 2015, creates the ESA program. Under SB 302, Nevada parents may enter into agreements with the State Treasurer to open ESAs for their children. SB 302, §§ 7.1, 7.2 (attached as Exhibit 1). Any school-age child in Nevada may participate in the program. § 7.1. The only requirements are that a child take standardized tests and be enrolled in a Nevada public school for at least 100 consecutive school days before opening an account. §§ 7.1, 12.1.

Once an education savings account is opened, "[t]he child will receive a grant, in the form of money deposited" into the account. § 7.1(b); § 8.1. Children participating in the program receive a grant equal to 90% of a formula described as the "statewide average basic support per pupil." § 8.2(b). Children with disabilities or in low-income households receive 100% of Nevada's per-student allocation. § 8.2(a). For the 2015-16 school year, accounts will be funded in the spring, and the grant amounts will be a pro rata portion of $5,139 or $5,710. Any funds remaining in an account at the end of a school year are carried forward to the next year if the parents' agreement with the State Treasurer is renewed. § 8.6(a).

SB 302 specifies the educational purposes for which ESA grants may be spent,

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including tuition, textbooks, tutoring, special education, and fees for achievement, advanced placement, and college-admission examinations. § 9.1(a)-(k).[1] For these purposes, ESA grants may be used at a "participating entity" or "eligible institution," including private schools, colleges or universities within the Nevada System of Higher Education, certain other accredited colleges, and certain accredited distance-learning programs. §§ 3.5, 5; *see also* § 11.1. Participating private schools must be "licensed pursuant to chapter 394 of NRS or exempt from such licensing pursuant to NRS 394.211." § 5.

II. Legislative History of SB 302

Senate Majority Leader Michael Roberson explained the purpose of SB 302: "This would be a world-class educational choice program. We are attempting to make an historic investment in the Nevada public school system this session. There is room for a school choice system as well." *Minutes of the Senate Committee on Finance*, 78th Sess. 18 (Nev. May 14, 2015). As Senator Scott Hammond, the Vice Chair of the Senate Committee on Education and the sponsor of SB 302, stated, "[t]he ultimate expression of parental involvement is when parents choose their children's school." *Minutes of the Senate Committee on Education*, 78th Sess. 7 (Nev. Apr. 3, 2015) ("*Minutes*, Apr. 3"). "More than 20 states," he noted, "offer programs empowering parents to choose educational placement that best meets their children's unique needs." *Id.*

Senator Hammond explained that "[s]chool choice programs provide greater educational opportunities by enhancing competition in the public education system. They also give low-income families a chance to transfer their children to private schools that meet their

[1] While Plaintiffs label SB 302 a "voucher law," Plfs.' Mot. for Prelim. Inj. ("PI Mot.") 1, Nevada's ESA program is not a "voucher" program. In a voucher program, the State issues "vouchers" that authorize the disbursement of State funds directly to a private school. *See* BLACK'S LAW DICTIONARY 1809 (10th ed. 2014). Under Nevada's ESA program, by contrast, the State disburses funds into students' education savings accounts, from which parents choose where and how those funds will be spent (within the variety of educational purposes allowed by SB 302). Parents are not required to spend ESA funds at a private school, but rather may choose to spend ESA funds at, for example, a university or college within the Nevada System of Higher Education, on tutoring, on achievement, advanced placement, and admission examinations, or on a homeschool curriculum. *See* SB 302, §§ 3.5, 9(c), (e), (k), 11(d), (e).

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needs." *Id.* He observed that "the nonpartisan Center on Education Policy outlined the following conclusions from research studies about school choice programs: students offered school choice programs graduate from high school at a higher rate than their public school counterparts and parents are more satisfied with their child's school. In some jurisdictions with school choice options, public schools demonstrated gains in student achievement because of competition." *Id.* Senator Hammond found, too, that educational choice "would provide relief to overcrowded public schools, benefiting teachers and students," *id.* at 8, and that "[s]chools would be motivated to maintain high quality teaching and to be more responsive to the needs of students and their parents." *Id.*

The legislative record includes evidence that school-choice programs improve public schools. *Minutes of the Assembly Committee on Education*, 78th Sess. 30 (Nev. May 28, 2015) ("*Minutes*, May 28"). The Legislature received a report that examined empirical studies of school-choice programs. *See* Greg Forster, Friedman Foundation for Educational Choice, *A Win-Win Solution: The Empirical Evidence on School Choice* (3d ed. 2013) ("Friedman Report"). Of the "23 empirical studies that have looked at the academic impact of school choice on students that remain in the public schools," 22 "of those studies found school choice improved outcomes in the public schools, and one found no difference." *Minutes*, May 28, at 30 (testimony of Victor Joecks of the Nevada Policy Research Institute). The report concludes that "[s]chool choice improves academic outcomes" for participants and public schools "by allowing students to find the schools that best match their needs, and by introducing healthy competition that keeps schools mission-focused." Friedman Report at 1.

The Legislature also heard the testimony of Nevada parents. *Minutes*, Apr. 3, at 15 & Exhibit I thereto; *Minutes*, May 28, at 27-30. As one Clark County parent testified, "[p]ublic school is not a good fit for everyone. Parents know their children best and need to be able to choose the best educational direction for them." *Minutes*, Apr. 3, at 15. Assemblyman David Gardner noted that, according to a 2013 survey by the Cato Institute, "[o]ne hundred percent of the parents participating in [an ESA program in Arizona] are satisfied." *Minutes*, May 28, at 15.

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A number of organizations also supported SB 302, including the American Federation for Children, the Friedman Foundation for Educational Choice, Advocates for Choice in Education of Nevada, Nevada Policy Research Institute, Excellence in Education National, and Nevada Families for Freedom. *Minutes*, Apr. 3, at 13-16; *Minutes*, May 28, at 25-27, 30-32. Even private businesses weighed in. A representative of the Las Vegas Sands, for example, testified:

> ESAs could become a game changer for the state of Nevada. As a company, the Sands is dedicated to helping our employees and their children learn, advance, and share new ideas that drive innovation. We believe that S.B. 302 (R2) will provide Nevada students with the opportunity to earn a high-quality education at the institution of their choice. ... Simply put, S.B. 302 (R2) can provide a choice and a chance for Nevada students. [*Minutes*, May 28, at 27.]

III. The Enactment of SB 302 as Part of the 2015 Education Reforms

SB 302 was part of a comprehensive overhaul of the education system in Nevada. The Governor, in his 2015 *State of the State* address to the Legislature, drew attention to the serious problems that Nevada parents and students know all too well. *See* Gov. Brian Sandoval, State of the State (Jan. 15, 2015).[2] Governor Sandoval noted that "far too many of our schools are persistently failing"—10% of Nevada schools are on the Nevada Department of Education's list of underperforming schools—and "[m]any have been failing for more than a decade." *Id.* at 8. "Our most troubling education statistic," he lamented, is "Nevada's worst-in-the-nation high school graduation rate." *Id.* at 5. Nevada schools, he also noted, "are simply overcrowded and need maintenance. Imagine sitting in a high school class in Las Vegas with over forty students and no air conditioning." *Id.* at 6. "[I]mprovements will not be made," he said, "without accountability measures, collective bargaining reform, and school choice." *Id.*

In the months following the Governor's call for a "New Nevada," *id.* at 2, the Legislature proceeded to enact more than 40 education reform measures. (For descriptions of many of the new programs, *see* http://www.doe.nv.gov/Legislative/Materials/.) For example, the

[2] Available at http://gov.nv.gov/uploadedFiles/govnvgov/Content/About/2015-SOS.pdf.

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Legislature created the Victory schools program, under which schools with the lowest student achievement levels in the poorest parts of the State will receive an additional $25 million in annual funding. *See* Senate Bill 432. The Legislature created the Nevada Educational Choice Scholarship Program, which provides tax credits in exchange for contributions to organizations that offer scholarships to students from low-income households. *See* Assembly Bill 165. The Legislature expanded the Zoom schools program, which assists pupils with limited English proficiency. *See* Senate Bill 405. The Legislature also acted to improve Charter schools. *See* Senate Bill 491.

IV. Public School Funding in Nevada

The Nevada Constitution requires the Legislature to support and maintain the public schools by "direct legislative appropriation from the general fund." NEV. CONST. art. 11, § 6.1. The Legislature is required to "provide the money the Legislature deems to be sufficient, when combined with the local money" to fund the public schools for the next biennium. *Id.* § 6.2. "To fulfill its constitutional obligation to fund education, the Legislature created the Nevada Plan, a statutory scheme setting forth the process by which it determines the biennial funding for education." *Educ. Initiative PAC v. Comm. to Protect Nev. Jobs*, 129 Nev. Adv. Op. 5, 293 P.3d 874, 883 n.8 (2013). Under the Nevada Plan, "the Legislature establishes 'basic support guarantees' for all school districts." *Rogers v. Heller*, 117 Nev. 169, 174, 18 P.3d 1034, 1037 (2001) (quoting NRS 387.121). The basic support guarantee is the amount of money each school district is assured of having to fund its operations. *See* NRS 387.121. The guarantee is an amount "per pupil for each school district." NRS 387.122. "After the Legislature determines how much money each local school district can" contribute, the Legislature "makes up the difference between" the district's contribution and the amount of the basic support guarantee. *Rogers*, 117 Nev. at 174, 18 P.3d at 1037. Funds appropriated by the Legislature from the general fund sufficient to satisfy each district's basic support guarantee are deposited in the State Distributive School Account ("DSA"), which is an account within the State general fund. *See* NRS 387.030.

The DSA, in addition to receiving such appropriations from the general fund, also

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receives money from certain other sources. The Permanent School Fund ("PSF") is one of those sources. The Legislature created the PSF to implement Article 11, Section 3 of the Constitution, which provides that specified property, including "lands granted by Congress to [Nevada] for educational purposes" and "the proceeds derived from these sources," are "pledged for educational purposes and the money therefrom must not be transferred to other funds for other uses." NEV. CONST. art. 11, § 3. Section 3 money is kept in the PSF, and interest on Section 3 money is transferred to the DSA. *See* NRS 387.030. The interest on the PSF, however, constitutes a miniscule portion of the funds in the DSA. For example, in 2014, of the $1.4 billion in the DSA that came from the State Government, $1.1 billion, or 78%, came from the general fund. Only $1.6 million, just 0.14%, came from the PSF. *See* Exhibit 2 (DSA Summary).[3]

In June 2015, the Legislature enacted Senate Bill 515 to "ensur[e] sufficient funding for K-12 public education for the 2015-2017 biennium." SB 515, Title. The Legislature established an estimated weighted average basic support guarantee of $5,710 per pupil for FY 2015-16 and $5,774 per pupil for FY 2016-17. *Id.* §§ 1-2. The per-pupil basic support guarantee varies by district. For example, the FY 2015-16 guarantee for Clark County is $5,512 while White Pine County's is $7,799 and Lincoln County's is $10,534. *Id.* § 1. The Legislature appropriated some $1.1 billion from the general fund to the DSA for FY 2015-16 and more than $933 million for FY 2016-17—over $2 billion for the biennium. *Id.* § 7.

STANDARDS OF REVIEW

A number of standards govern the Court's review. "To survive dismissal [under Rule 12(b)(5)], a complaint must contain some set of facts, which, if true, would entitle [the plaintiff] to relief." *In re Amerco Derivative Litig.*, 127 Nev. Adv. Op. 17, 252 P.3d 681, 692 (2011) (quotation marks omitted).

Plaintiffs repeatedly state that they are challenging SB 302 "on its face." PI Mot. 2, 16, 17. In a facial challenge to a statute, the plaintiff "bears the burden of demonstrating that

[3] Available at http://www.doe.nv.gov/uploadedFiles/ndedoenvgov/content/Legislative/DSA-SummaryForBiennium.pdf.

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there is no set of circumstances under which the statute would be valid." *Deja Vu Showgirls v. Nevada Dep't of Taxation*, 130 Nev. Adv. Op. 73, 334 P.3d 392, 398 (2014). Given the high bar set by the facial-challenge rule, "[a] facial challenge to a legislative Act is, of course, the most difficult challenge to mount successfully." *United States v. Salemo*, 481 U.S. 739, 745 (1987).

A preliminary injunction is "extraordinary relief." *Dep't of Conserv. & Nat. Res. v. Foley*, 121 Nev. 77, 80, 109 P.3d 760, 762 (2005). "For a preliminary injunction to issue, the moving party must show that there is a likelihood of success on the merits and that the nonmoving party's conduct, should it continue, would cause irreparable harm for which there is no adequate remedy at law." *Id.*

Importantly, "[b]ecause statutes are presumed to be valid," Plaintiffs bear "the burden of clearly showing that [SB 302] is unconstitutional" to win a preliminary injunction. *S.M. v. State of Nevada Dep't of Pub. Safety*, No. 64634, 2015 WL 528122, at *2 (Nev. Feb. 6, 2015); *id.* at *3 (holding that the plaintiff "did not and could not meet his burden of clearly demonstrating that A.B. 579 is unconstitutional as applied to him and, thus, could not show a reasonable likelihood of success on the merits to maintain his preliminary injunction."). In Nevada, "the judiciary has long recognized a strong presumption that a statute duly enacted by the Legislature is constitutional." *Sheriff, Washoe Cnty. v. Smith*, 91 Nev. 729, 731, 542 P.2d 440, 442 (1975). "In case of doubt, every possible presumption will be made in favor of the constitutionality of a statute, and courts will interfere only when the Constitution is clearly violated." *List v. Whisler*, 99 Nev. 133, 137, 660 P.2d 104, 106 (1983).

ARGUMENT

I. The Legislature's Constitutional Power To "Encourage Education" By "All Suitable Means" Fully Authorized The Enactment Of SB 302 And The ESA Program.

The question in this case is whether Article 11 of the Nevada Constitution allows or forbids the ESA program enacted by the Legislature in SB 302. Plaintiffs contend that the program violates the Legislature's obligations under Sections 2, 3, and 6 of Article 11.

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Any analysis of this issue, however, must begin with Article 11's very first section. Section 1—captioned "Legislature to encourage education ..."—provides in full:

> The legislature shall encourage by *all suitable means* the promotion of intellectual, literary, scientific, mining, mechanical, agricultural, and moral improvements, and also provide for a superintendent of public instruction and by law prescribe the manner of appointment, term of office and the duties thereof. [NEV. CONST. art. 11, § 1 (emphasis added).]

The plain language of Section 1 thus confers broad, discretionary power on the Legislature to encourage education in Nevada by "all" means the Legislature deems to be "suitable."[4] The Legislature is not limited to encouraging education through the public-school system. *See, e.g.*, NRS 392.070 (exempting children in private schools and being homeschooled from public school attendance requirements). On the contrary, Section 1 authorizes the Legislature to encourage education by "all" suitable means.

The Legislature deemed the ESA program to be a means of encouraging education. Thus, the Nevada Legislature exercised its Section 1 power when it enacted SB 302 as part of the 2015 education reforms, and Section 1 fully authorized the Legislature to enact the ESA program established by SB 302. Plaintiffs' arguments under Sections 2, 3, and 6 cannot justify the negation of the Legislature's legitimate use of its express Section 1 authority.

II. The ESA Program Does Not Violate The "Uniform System Of Common Schools" Language In Article 11, Section 2.

Article 11, Section 2 of the Nevada Constitution provides:

> The legislature shall provide for a uniform system of common schools, by which a school shall be established and maintained in each school district at least six months in every year, and any school district which shall allow instruction of a sectarian character therein may be deprived of its proportion of the interest of the public school fund during such neglect or infraction, and the legislature may pass such laws as will tend to secure a general attendance of the children in each school district upon said public schools. [NEV. CONST. art. 11, § 2.]

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[4] In *Meredith v. Pence*, 984 N.E.2d 1213 (Ind. 2013), the Indiana Supreme Court explained that the similarly worded "all suitable means" clause in the Indiana Constitution constituted a "broad delegation of legislative discretion." *Id.* at 1224 n.7. *See infra* at 13 n.8. The same is true of the "all suitable means" clause in Article 11, Section 1 of the Nevada Constitution.

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Plaintiffs contend (PI Mot. 16-19) that the ESA program violates that portion of Section 2 requiring the Legislature to provide for a "uniform system of common schools." *Id.* But the ESA program does not even *implicate* Section 2, much less violate its uniformity requirement. The program is instead fully authorized by Section 1. Plaintiffs' claim under Section 2 lacks merit and should be dismissed.

Section 2 confers on the Legislature both the power and the duty to establish a public-school system. It requires the Legislature to establish a "uniform" public-school system with a school in every district open at least six months per year. The uniformity requirement in Section 2 is concerned with uniformity *within* the public school system. It is aimed at avoiding certain differences between public schools in different parts of the State. *See State of Nevada v. Tilford*, 1 Nev. 240 (1865).[5]

Plaintiffs argue that "SB 302 uses public monies for private schools and entities not subject to the legal requirements and educational standards governing public schools, in violation of the uniformity mandate" of Section 2. PI Mot. 18. Plaintiffs also argue that the ESA program is unlawful because Section 2 "prohibit[s] the Legislature from establishing and maintaining a separate alternative system to Nevada's public schools." *Id.* Yet Plaintiffs' two theories wholly ignore Section 1. The Legislature did not create the ESA program as part of Nevada's "uniform system of common schools" under Section 2; it created ESAs as part of its plenary power to "encourage [education] by all suitable means" under Section 1. In all events, both of Plaintiffs' theories suffer deeper flaws.

Plaintiffs' first objection to the ESA program—that private schools receiving ESA funds are not subject to the laws and standards uniformly applied to public schools—fails because

[5] In *Tilford* the Supreme Court upheld, based on Section 2, the Legislature's abolition of the Storey County board of education as part of the creation of a new public-school system. The Court explained: "There were county officers in Storey county which were not to be found in any other county in the State. The system of schools was different there from that in any other county. It became the imperative duty of the Legislature to either alter the systems of school and county government in Storey county so as to conform to the other counties, to make the other counties conform to Storey, or to adopt a new system of school and county government for all the counties. Certainly the legislature was not restricted in the choice of these three alternatives. The legislature adopted the latter alternative." *Tilford*, 1 Nev. at 245.

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Section 2 requires only that the *public schools* be uniform. Section 2 does not apply to private schools or impose any uniformity requirement on them. *Cf.* NRS 394.130 (requiring private schools to provide "instruction in the subjects required by law" for public schools "[i]n order to secure uniform and standard work for pupils in private school"). Nor does the ESA program convert participating private schools into public schools. *See* SB 302, § 14 (providing that SB 302 shall not be deemed "to make the actions of a participating entity the actions of the State Government"). Nevada had a uniform public-school system before the adoption of SB 302, and after SB 302's adoption the State continues to have a uniform public-school system—one that is open to all who wish to attend. Nothing in Section 2 bars the Legislature from funding ESAs that parents and students may choose to use for private school. Any construction of Section 2 as prohibiting the ESA program would fly in the face of Section 1, which expressly empowers the Legislature to use "all suitable means" to encourage education.

Plaintiffs' second theory—that Section 2 "prohibit[s] the Legislature from establishing and maintaining a separate alternative system to Nevada's uniform public schools"—fares no better than their first. PI Mot. 18. As an initial matter, it simply misunderstands the effect of SB 302: the Legislature has not established, let alone maintained, an alternative system of schools. Moreover, by its terms, the "uniform system of common schools" language in Section 2 does not impose any restriction on the Legislature's ability to provide grants to children for educational purposes beyond public schools. Section 2 mandates uniformity within the public school system; it does not prohibit other efforts to promote education. Section 2's public-school uniformity requirement thus does not bar the Legislature from funding ESAs that parents and students may use on private schooling. Any such interpretation of Section 2 reads out of Nevada's Constitution Section 1's clear and expansive directive to the Legislature to "encourage [education] by all suitable means," including means outside the public-school system.[6]

[6] This construction of the Nevada Constitution makes particular sense in light of the reality that parents have a constitutional right to educate their children outside the public education system. *See Pierce v. Society of Sisters*, 268 U.S. 510 (1925); *Meyer v. Nebraska*, 262 U.S. 390 (1923). Given that federal constitutional right, it would be more than passing strange for

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Plaintiffs argue that the Legislature's duty under Section 2 "to provide for the education of Nevada's children through the establishment of a uniform system of public schools ... prohibits the Legislature from enacting SB 302, a law that allows for the education of Nevada children" outside of the public-school system. PI Mot. 18-19. This argument fails for several reasons. First, it overlooks the Legislature's express power to encourage education by "*all* suitable means." NEV. CONST. art. 11, § 1 (emphasis added). The Legislature is not restricted to encouraging education through the public schools. *See, e.g.*, NRS 392.070 (permitting private schools and homeschooling). Furthermore, Plaintiffs' argument is a non-sequitur. The Legislature has a duty to create and fund public schools; it does not follow, however, that this duty prohibits the Legislature from supporting with ESAs parents and students who choose a private-sector education. Section 2 is a floor, not a ceiling. And Plaintiffs' argument proves too much. If, as Plaintiffs argue, Section 2 prohibits the Legislature from enacting "a law that allows for the education of Nevada children" outside of the public school system, that would mean NRS 392.070—which excuses private and homeschool students from Nevada's public school attendance requirements (*see* NRS 392.040)—is unconstitutional. If this Court accepts Plaintiffs' theory of Section 2, it will make private schools and homeschooling illegal in Nevada. That cannot be the law.

Plaintiffs' argument is based on a mechanical and erroneous use of the *expressio unius* canon. *See* PI Mot. 18. That canon must be applied "with great caution" and "courts should be careful not to allow its use to thwart legislative intent." N. Singer & S. Singer, 2A Sutherland Statutory Construction § 47:25 (7th ed.). It "does not mean that anything not required is forbidden." *Id.* Plaintiffs' claim illustrates why courts call the maxim "a valuable servant" but "a dangerous master." *Ford v. United States*, 273 U.S. 593, 612 (1927) (quotation marks omitted).

Here, Plaintiffs' argument converts the *expressio unius* canon from a commonsense tool into a weapon of illogic. It would thwart the intent of Section 1 to encourage education by

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Nevada to be powerless to provide any assistance to children educated outside the uniform system of public schools.

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"all" suitable means. Surely Section 2 was not intended to nullify the immediately antecedent provision in the Constitution. Plaintiffs' blinkered approach in applying the maxim to Article 11 would also yield absurd results. For example, Article 11, Section 4 of the Constitution requires a "State University which shall embrace departments for Agriculture, Mechanic Arts, and Mining." In Plaintiffs' world, the fact that the Constitution *requires* the University to have these three departments *forbids* it from having any others.[7] A perusal of the UNR course catalog reveals that this is not the case.

The Supreme Courts of Indiana, North Carolina, and Wisconsin have all upheld educational choice programs against challenges brought under the "uniformity" clauses of their state constitutions. *Davis v. Grover*, 480 N.W.2d 460 (Wis. 1992), upheld the Milwaukee Parental Choice Program ("MPCP"). The plaintiffs in *Davis* argued that the MPCP violated Article X, § 3 of the Wisconsin Constitution, which states: "The legislature shall provide by law for the establishment of district schools, which shall be as nearly uniform as practicable; and such schools shall be free and without charge ....." Rejecting that argument, the *Davis* Court held:

> [T]he MPCP in no way deprives any student the opportunity to attend a public school with a uniform character of education. ... [T]he uniformity clause requires the legislature to provide the opportunity for all children in Wisconsin to receive a free uniform basic education. The legislature has done so. The MPCP merely reflects a legislative desire to do more than that which is constitutionally mandated. [480 N.W.2d at 474.]

See also Jackson v. Benson, 578 N.W.2d 602, 627-28 (Wis. 1998) (again upholding the MPCP).

The Indiana Choice Scholarship Program was upheld in *Meredith v. Pence*, 984 N.E.2d 1213 (Ind. 2013). Indiana's Constitution, like Nevada's, directs the legislature to

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[7] Plaintiffs rely on *Galloway v. Truesdell*, 83 Nev. 13, 422 P.2d 237 (1967) (PI Mot. 18). *Galloway* involved a statute that gave non-judicial powers to, and imposed non-judicial duties on, district judges. The Supreme Court struck down the statute because it violated the separation of powers set forth in Article 3, Section 1 and Article 6, Section 6 of the Constitution. In contrast to the statute at issue in *Galloway*, the ESA program is authorized by Article 11, Section 1 and does not violate any constitutional provision.

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(1) "encourage" education by "all suitable means" and (2) establish a "uniform system of Common Schools."[8] Rejecting the plaintiffs' "uniformity" challenge, the Court explained that the "[t]he school voucher program does not replace the public school system, which remains in place and available to all Indiana schoolchildren," and that "so long as a 'uniform' public school system ... is maintained, the General Assembly has fulfilled the duty imposed by the Education Clause." *Id.* at 1223.

The *Meredith* Court also held that the Indiana program was authorized by the legislature's power to encourage education by all suitable means, explaining that "the Education Clause directs the legislature generally to encourage improvement in education in Indiana, and this imperative is broader than and in addition to the duty to provide for a system of common schools." *Id.* at 1224. Because the Indiana program did "not alter the structure or components of the public school system," it came under "the first imperative" to encourage education "and not the second" imperative for a uniform public-school system. *Id.*

North Carolina's Opportunity Scholarship Program was recently upheld in *Hart v. State of North Carolina*, 774 S.E.2d 281 (N.C. 2015). The plaintiffs argued that the program violated Article IX, § 2(1) of the State Constitution, which provides that "[t]he General Assembly shall provide by taxation and otherwise for a general and uniform system of free public schools." The *Hart* Court rejected that argument. The uniformity clause, which "requires that provision be made for public schools of like kind throughout the state," was held to "appl[y] exclusively to the public school system and does not prohibit the General Assembly from funding educational initiatives outside of that system." *Id.* at 289-90. The Court specifically rejected the argument that the school-choice program created "an alternate system of publicly funded private schools standing apart from the system of free public schools," *id.* at 289—the same argument that Plaintiffs make here.

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[8] The Education Clause of the Indiana Constitution provides that "it should be the duty of the General Assembly to encourage, by all suitable means, moral, intellectual, scientific, and agricultural improvement; and to provide, by law, for a general and uniform system of Common Schools, wherein tuition shall be without charge, and equally open to all." IND. CONST. art. 8, § 1.

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Plaintiffs rely upon *Bush v. Holmes*, 919 So.2d 392 (Fla. 2006) (PI Mot. 19), but *Bush* is of no help to them. *Bush* struck down a Florida program under Article IX, Section 1(a), of the Florida Constitution, which reads in relevant part:

> It is ... a paramount duty of the state to make adequate provision for the education of all children residing within its borders. Adequate provision shall be made by law for a uniform, efficient, safe, secure, and high quality system of free public schools that allows students to obtain a high quality education and for the establishment, maintenance, and operation of institutions of higher learning and other public education programs that the needs of the people may require. [FLA. CONST. art. IX, § 1(a).]

The *Bush* Court read the first sentence, with its "paramount duty" language, as imposing a duty on the legislature to provide an adequate education and construed the second sentence concerning "a uniform, efficient, safe, secure, and high quality system of free public schools" as a *restriction* on how the legislature may carry out its "paramount duty." The Court held that the Florida program violated the second sentence "by devoting the state's resources to the education of children within our state through means other than a system of free public schools." *Bush*, 919 So.2d at 407.

Bush distinguished the Wisconsin Supreme Court's decision in *Davis* on the ground that "the education article of the Wisconsin Constitution construed in *Davis*, *see* WIS. CONST. art. X, does not contain language analogous to the statement in [Florida] article IX, section 1(a) that it is 'a paramount duty of the state to make adequate provision for the education of all children residing within its borders.'" *Bush*, 919 So.2d at 407 n.10. This reasoning also distinguishes this case, because the Nevada Constitution, like Wisconsin's, does not contain the "paramount duty" and "adequate provision" language that the *Bush* Court found dispositive.

The Indiana Supreme Court's decision in *Meredith* confirms the foregoing analysis. *Meredith* distinguished *Bush* based on *Bush*'s distinction of the Wisconsin case. *See Meredith*, 984 N.E.2d at 1224 ("Like the Wisconsin Constitution, the Indiana Constitution contains no analogous 'adequate provision' clause."). The Indiana Supreme Court also distinguished *Bush* based on the "all suitable means" clause in the Indiana Constitution. As

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noted, Indiana's Constitution is the most similar to Nevada's because it contains an "all suitable means" clause as well as a "uniform system of Common Schools" clause. IND. CONST. art. 8, § 1; *see supra* at 13 n.8. The *Meredith* Court held that the legislature's duty to provide for a uniform system of common schools "cannot be read as a restriction on the first duty" to encourage education by all suitable means. 984 N.E.2d at 1224. "[T]he legislature [has a duty] generally to encourage improvement in education in Indiana, and this imperative is broader than and in addition to the duty to provide for a system of common schools. Each may be accomplished without reference to the other." *Id.* So too here. The Nevada Constitution, like the Indiana Constitution, empowers the Legislature to promote education by "all suitable means" and does not contain the language on which the *Bush* Court relied. For the reasons articulated in *Meredith*, *Bush* does not support Plaintiffs' challenge to the ESA program.

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III. The ESA Program Does Not Violate Article 11, Section 3's Pledge Of Certain Property For "Educational Purposes".

Plaintiffs argue that SB 302 violates Section 3 "on its face" because SB 302 "diverts funds allocated for the public schools to private uses." PI Mot. 2; *see also id.* at 11-13. Plaintiffs' argument is that the Legislature appropriated funds for the public schools and, contrary to Section 3, SB 302 transfers a portion of those funds to ESAs. But the plain language of Section 3 defeats Plaintiffs' facial challenge to SB 302.

Article 11, Section 3 of the Constitution provides in full:

> All lands granted by Congress to this state for educational purposes, all estates that escheat to the state, all property given or bequeathed to the state for educational purposes, and the proceeds derived from these sources, together with that percentage of the proceeds from the sale of federal lands which has been granted by Congress to this state without restriction or for educational purposes and all fines collected under the penal laws of the state are hereby pledged for educational purposes and the money therefrom must not be transferred to other funds for other uses. The interest only earned on the money derived from these sources must be apportioned by the legislature among the several counties for educational purposes, and, if necessary, a portion of that interest may be appropriated for the support of the state university, but any of that interest which is unexpended at the end of any year must be added to the principal sum pledged for

educational purposes. [NEV. CONST. art. 11, § 3.]

The first point to make about Section 3 is that it simply does not require all funds covered by that section, or all funds appropriated for "educational purposes," to be used for public schools. Nothing in Section 3's text imposes any such requirement. Instead, Section 3 provides that the specific property described therein is "pledged for educational purposes and the money therefrom must not be transferred to other funds for other uses." NEV. CONST. art. 11, § 3.[9]

As explained above, the interest on Section 3 money goes from the Permanent School Fund to the Distributive School Account. *See supra* at 6. ESAs will be funded from the DSA. *See* SB 302, § 16.1. But depositing a small amount of Section 3 money with the other funds in the DSA does not mean that SB 302 violates Section 3, for two reasons.

First, Plaintiffs' facial challenge to SB 302 fails because nothing in SB 302 requires that ESAs be funded with Section 3 money. Section 3 money, as noted, constitutes a tiny fraction of the DSA. In 2014, of the $1.4 billion in State funds in the DSA, only $1.6 million—a mere 0.14%—came to the DSA from the PSF. The vast majority of the $1.4 billion—$1.1 billion or 78%—came from the general fund. *See supra* at 6; Exhibit 2 (DSA Summary). Because the amount of money from the DSA used to support the public schools is far greater than the PSF funds deposited into the DSA—orders of magnitude greater—this Court can safely conclude that all PSF funds will be used to support public schools. Funds for ESAs will constitute only a small portion of the funds distributed from the DSA, and ESA funds need not be drawn from the tiny portion of the DSA comprised of PSF funds. ESA funds may be drawn from that part of the DSA consisting of appropriations from the general fund. "[T]hose attacking a statute [have] the burden of making a *clear showing* that the statute is unconstitutional," *List*, 99 Nev. at 138, 660 P.2d at 106 (emphasis added). Speculation that PSF funds are being used to

[9] Before SB 302's enactment, NRS 387.045 provided that "[n]o portion of the public school funds or of the money specially appropriated for the purpose of public schools shall be devoted to any other object or purpose." Yet SB 302 expressly amended NRS 387.045 to exempt the ESA program from this statute. *See* SB 302, § 15.9. Thus, Plaintiffs do not contend that the ESA program violates NRS 387.045. *See* PI Mot. 12.

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fund ESAs is just that—speculation.

Because Plaintiffs challenge SB 302 on its face, they bear "the burden of demonstrating that there is *no set of circumstances* under which the statute would be valid." *Deja Vu Showgirls*, 334 P.3d at 398 (emphasis added). The ESA program has not yet been implemented. It is not enough for Plaintiffs to posit that some Section 3 money could in theory go to ESAs. Under the facial-challenge rule, even if SB 302 "might operate unconstitutionally under some conceivable set of circumstances [that] is insufficient." *Salerno*, 481 U.S. at 745. SB 302 does not require that Section 3 money be used for the ESA program. There is no reason to assume that the State will implement SB 302 such that Section 3 money goes to ESAs.

Second, even if some Section 3 money were used to fund ESAs, that would not violate Section 3. The plain text of Section 3 provides that Section 3 money must be used "for educational purposes." NEV. CONST. art. 11, § 3. Any Section 3 money transferred to an ESA account is being used for an educational purpose. The ESA program is unquestionably an educational program, as the legislative history makes clear. *See supra* at 2-5. The United States Supreme Court has long recognized that education-choice programs serve educational purposes. *See, e.g., Mueller v. Allen*, 463 U.S. 388, 395 (1983) ("A state's decision to defray the cost of educational expenses incurred by parents—regardless of the type of schools their children attend—evidences ... [the] purpose of ensuring that the state's citizenry is well-educated."). Plaintiffs assert that SB 302 serves "non-public educational purposes" (PI Mot. 12); but they make no argument that SB 302's purposes are not "educational purposes," which is all Section 3 requires. And in all events, SB 302 does serve public-education purposes. SB 302 was not enacted just to promote the welfare of students opting out of public schools, but also to improve the educational well-being of *all* students, whether they use ESAs or remain in public schools with smaller class sizes and better educational opportunities because of the positive effect of the "exit" option SB 302 creates has on the public schools. In considering SB 302, the Legislature examined evidence that education-choice programs improve public schools by promoting competition and reducing overcrowding. *See supra* at 3.

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Thus, the Legislature enacted SB 302 for *public education* purposes as well other educational purposes.

Plaintiffs rely on *State ex rel. Keith v. Westerfield*, 23 Nev. 468, 49 P. 119 (1897) (PI Mot. 12 n.4, 13 & n.5), but they misread that case. The question in *Keith* was whether the Legislature's appropriation of a sum to pay the salary of a teacher at the state orphans' home could be paid from an account known as the "general school fund." The Supreme Court concluded the salary could not be paid from that fund. *Keith*, 49 p. at 121. But the Court did not hold that the salary payment lacked an "educational purpose"; quite the opposite, the Court readily acknowledged that "moneys ... appropriated" for educating children not in public school *is* "applying [that money] to educational purposes." *Id.* The Court held the payment could not come from the "general school fund" because the orphans in *Keith* "'ha[d] not the right to attend the public school.'" *Id.* at 120 (following *State ex rel. Wright v. Dovey*, 19 Nev. 396, 12 P. 910 (1887)).[10] Here, ESA funds are spent to educate children who have the right to attend public school in Nevada. Thus, spending State funds on the ESA program is, as *Keith* explained (and common sense confirms), "applying them to educational purposes." *Id.* at 121.[11]

Moreover, even though the Supreme Court in *Keith* held that the salary of the orphan-home teacher could not be paid from the general school fund because the orphans were not

[10] When *Wright* and *Keith* were decided, Article 11, Section 3 "provide[d] that the interest on school moneys shall be apportioned among the several counties in proportion to the ascertained number of the persons between the ages or six and eighteen years in the different counties." *Wright*, 12 P. at 910. *Wright* held that orphans were not be counted because they were "not entitled to attend the public schools." *Id.* at 912.

[11] Plaintiffs' citation of a few scattered phrases in the report of the debates in Nevada's Constitutional Convention are inapposite. The first snippet that Plaintiffs quote concerns Section 2, not Section 3. *See* PI Mot. 12 (quoting Official Report of the Debates and Proceedings in the Constitutional Convention of the State of Nevada 568 (1866)). The speaker was making the point that sectarian instruction in a school district would cause a loss of funds under Section 2 only if such instruction occurred in a public school; no funding loss would occur if there were a Catholic school in the district. Plaintiffs also misapply the statement of a speaker who was discussing, not the "educational purpose" language of Section 3, but rather "the last proviso" of Section 3, which at that time stated that interest on Section 3 proceeds "may be appropriated for the support of the State University." *See* PI Mot. 12 n.4 (citing Debates 579).

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allowed to attend public school, the Court went on to hold that the salary was "payable out of the general fund in the state treasury." *Id.* The implication of that latter holding for the instant case is clear: the vast majority of the money in the DSA is, in fact, from the general fund, and if this Court were to conclude that Section 3 funds cannot be used for the educational purpose of funding ESAs, then, like the Court in *Keith*, it should also conclude that ESAs are "payable out of the general fund" monies already in the DSA. *Id.* Plaintiffs admit that, under *Keith*, funding ESAs from general fund monies would not violate Section 3, PI Mot. 13 n.5, but they attempt to dismiss what the *Keith* Court did as involving only a *de minimus* amount of money. But there is nothing in *Keith* to support that distinction. Under *Keith*, there is simply no constitutional issue in paying for non-public school educational purposes out of the general fund. Section 3 does not apply to monies in the DSA appropriated from the general fund.

Plaintiffs also assert that the Legislature would not "have passed [SB 302] if it required a substantial new appropriation from the general fund," *id.*, but they ignore the fact that the Legislature *did* appropriate substantial monies for the ESA program—from the general fund. In SB 515, enacted right after SB 302, the Legislature appropriated some $2 billion from the general fund to the DSA to fund the public schools *and ESAs* for the biennium. *See* SB 515, § 7; *see also* SB 302, § 16 (ESAs to be funded from the DSA).

IV. In Enacting SB 302, The Legislature Did Not Violate Its Article 11, Section 6 Duty To Appropriate Funds "The Legislature Deems To Be Sufficient" For The Public Schools.

Plaintiffs' final claim is that SB 302 violates Article 11, Section 6, the first two paragraphs of which provide:

> 1. In addition to other means provided for the support and maintenance of said university and common schools, the legislature shall provide for their support and maintenance by direct legislative appropriation from the general fund, upon the presentation of budgets in the manner required by law.
>
> 2. During a regular session of the Legislature, before any other appropriation is enacted to fund a portion of the state budget for the next ensuing biennium, the Legislature shall enact one or more appropriations to provide the money *the Legislature deems to be sufficient*, when combined with the local money reasonably

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> available for this purpose, to fund the operation of the public schools in the State for kindergarten through grade 12 for the next ensuing biennium for the population reasonably estimated for that biennium. [NEV. CONST. art. 11, § 6 (emphasis added).]

Specifically, Plaintiffs argue that "SB 302, by transferring funding appropriated by the Legislature for the public schools into ESAs for private uses necessarily reduces the Legislature's appropriations for the public schools below the level deemed 'sufficient' by the Legislature under Art. XI, section 6.2." PI Mot. 14. But Plaintiffs' notion that the Legislature has somehow violated its own judgment about what amount of funds are "sufficient" ignores the chronology of SB 302's passage, disregards the way the Legislature historically has complied with Article 11, Section 6, and engages in gross, incorrect speculation unfit for a facial challenge.

Under the Nevada Plan, the Legislature does not appropriate a sum certain for the public schools; it funds on a per-pupil basis by establishing the basic support guarantee for each school district. This per-pupil method means that a district's funding fluctuates with enrollment. This was true before ESAs, and remains so today. *See* Canavero Decl. ¶ 6 (attached as Exhibit 3).

The Legislature, in addition to this per-pupil amount, also guarantees school districts a minimum aggregate amount of funding under the Nevada Plan's "hold harmless" provision. *See* NRS 387.1233(3), *as amended*, SB 508, § 9. This provision guarantees that if a school district experiences more than a 5% reduction in enrollment, it will receive funding at a level based on the prior year's enrollment. *Id.* Thus, Nevada's "hold harmless" provision sets a lump-sum funding floor for Nevada's public schools based on 95% of the prior year's enrollment. This also was true before ESAs, and remains true today. *See* Canavero Decl. ¶ 8.

In short, both before and after ESAs, the Legislature has complied with its Article 11, Section 6 requirement the same way: by guaranteeing a minimum fixed amount of funding (*i.e.*, the hold harmless guarantee), and by guaranteeing a minimum per-pupil amount of funding with no upper limit (*i.e.*, the per-pupil basic support guarantee).

. . .

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On June 1, 2015, the Legislature passed SB 515 to "ensur[e] sufficient funding for K-12 public education for the 2015-2017 biennium." SB 515, Title. In Sections 1 and 2 of SB 515, the Legislature—just as it did before it created the ESA program—established per-pupil basic support guarantees for each school district, and in Section 7 it appropriated some $2 billion from the general fund to the DSA. SB 515, enacted against the backdrop of Nevada's hold harmless guarantee, was how the Legislature "enact[ed] one or more appropriations to provide the money the Legislature deems to be sufficient, when combined with the local money reasonably available for this purpose, to fund the operation of the public schools ... for the population reasonably estimated for that biennium." NEV. CONST. art. 11, § 6.2. *See* Canavero Decl. ¶ 5.

Plaintiffs complain that SB 302 violates Section 6 because it "transfer[s] funding appropriated by the Legislature for the public schools into ESAs." PI Mot. 14. This ignores that SB 302 was enacted *before* SB 515 appropriated funds under Section 6. The Legislature passed SB 302 on May 29, 2015. It passed SB 515 three days later on June 1, 2015.[12] SB 515 was passed against the backdrop of the already-passed SB 302. Therefore, even assuming Plaintiffs are correct that SB 302's ESA program somehow affects the appropriation made by SB 515, that effect had already been put in place by the Legislature when it made the appropriation it "deemed to be sufficient" for the public schools under Article 6. "Whenever possible, this court will interpret a rule or statute in harmony with other rules or statutes." *State of Nevada, Div. of Ins. v. State Farm Mut. Auto. Ins. Co.*, 116 Nev. 290, 295, 995 P.2d 482, 486 (2000) (citing cases). Furthermore, "when the legislature enacts a statute, this court presumes that it does so 'with full knowledge of existing statutes relating to the same subject.'" *Id.* (quoting *City of Boulder v. Gen. Sales Drivers*, 101 Nev. 117, 118-119, 694 P.2d 498, 500 (1985)). Nothing in Article 6 required the Legislature to ignore background laws in making the "sufficient" appropriation under Section 6. Quite the opposite, the Legislature clearly does make Section 6 appropriations against the backdrop of already-existing laws, including

[12] The Governor approved SB 302 on June 2, 2015. He approved SB 515 on June 11, 2015.

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Nevada's "hold harmless provision" in NRS 387.1233(3). The Legislature's passage of SB 302 could not somehow cause the Legislature, three days later, to appropriate less than that which it deemed sufficient for the public schools. Contrary to Plaintiffs' argument, this cannot be a case where the Legislature set aside an amount of money under Section 6, and then *later* impermissibly "transferr[ed]" or "removed" that money to another use. PI Mot. 14. That other use was already in place—and presumably accounted for—when the Legislature made the Section 6 set-aside. Plaintiffs' statement that it "is simple math" that SB 302 "will reduce [public school] funding below the amount deemed sufficient by the Legislature," *id.*, gets a failing grade.

Plaintiffs' argument that SB 302 violates Section 6 because public schools have "significant fixed costs," PI Mot. 15, is not really an attack on ESAs, but an attack on the Nevada Plan itself. The Legislature funded public schools under Section 6 using a per-pupil basic support guarantee long before ESAs existed. This per-pupil guarantee will fluctuate based on actual enrollment. If Plaintiffs are right that ESAs cause the Nevada Plan to violate Section 6 because the "fixed costs of operating a system of public schools are not commensurately reduced by losing one or even a handful of students," *id.*, then the Nevada Plan was unconstitutional long before ESAs. Public schools have always had "fixed costs" and lost "one or even a handful of students" for innumerable reasons, including students dropping out, moving, or withdrawing to go to a private school or homeschool. Plaintiffs' "fixed costs" argument proves too much.

In any event, the Legislature *has* accommodated Plaintiffs' concern about fixed costs—and in the same way before and after SB 302. The Nevada Plan's "hold harmless" provision protects school districts by providing a guaranteed 95% funding floor. That is the fixed amount the Legislature deems "sufficient" under Article 6. And that amount is unaffected by SB 302.[13]

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[13] In a declaration attached to Plaintiffs' motion, Paul Johnson speculates about "possible" ways that ESAs "may" affect per-pupil public school funding if his "assumptions are correct." Johnson Decl. ¶ 5. To prevail on a facial challenge, Plaintiffs must prove "that there is no set of circumstances under which the statute would be valid," *Deja Vu Showgirls*, 334 P.3d at 398,

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Plaintiffs' claim under Section 6 must also be rejected on the independent ground that whether the Legislature has appropriated the funds it deems sufficient for the public schools is not a justiciable question. *See N. Lake Tahoe Fire Prot. Dist. v. Washoe Cnty. Bd. of Cnty. Comm'rs*, 129 Nev. Adv. Op. 72, 310 P.3d 583, 587 (2013) ("Under the political question doctrine, controversies are precluded from judicial review when they revolve around policy choices and value determinations constitutionally committed for resolution to the legislative and executive branches.") (quotation marks omitted); *Heller v. Legislature of State of Nevada*, 120 Nev. 456, 466, 93 P.3d 746, 753 (2004) ("Separation of powers is particularly applicable when a constitution expressly grants authority to one branch of government"). Section 6 provides that "*the Legislature* shall enact one or more appropriations to provide the money *the Legislature deems to be sufficient* ... to fund the operation of the public schools." NEV. CONST. art. 11, § 6.2 (emphases added). The Legislature is the sole judge of what it "deems" to be "sufficient," and its view of the matter may not be reviewed or second-guessed by the judicial branch. *Cf. Webster v. Doe*, 486 U.S. 592, 600 (1988) (statute permitting CIA Director to terminate Agency employee whenever the Director shall "deem such termination necessary or advisable" "exudes deference to the Director" and "foreclose[s] the application of any meaningful judicial standard of review" under the Administrative Procedure Act).[14]

Finally, even if this Court were to find a violation of the Legislature's duty under Section

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not speculate about "possible" ways ESAs "may" be implemented to the detriment of a school district. Mr. Johnson's conceded speculation neither helps Plaintiffs' motion for preliminary injunction nor prevents dismissal of their facial challenge. In any event, Mr. Johnson's "assumptions ... are not correct." *See* Canavero Decl. ¶¶ 9-13. Indeed, Mr. Johnson's speculation in this case is contradicted by his own earlier statement submitted to the Legislature and included in its fiscal note on SB 302, that SB 302 would have "no impact" in White Pine County School district. *See* SB 302 Fiscal Note, at 4 (attached as Exhibit 4), available at http://www.leg.state.nv.us/Session/78th2015/FiscalNotes/8283.pdf.

[14] In *Guinn v. Legislature of State of Nevada*, 119 Nev. 277, 71 P.3d 1269 (2003), *pet. for reh'g dis'd & prior op. clarified*, 119 Nev. 460, 76 P.3d 22 (2003), the Supreme Court suspended the operation of a constitutional provision requiring a two-thirds supermajority vote of the Legislature to raise taxes because that provision caused an impasse preventing the Legislature from passing a balanced budget and funding the public schools. But the Supreme Court emphasized that "we could not, nor did we, direct the Legislature to approve any particular funding amount" for the public schools. *Id.*, 119 Nev. at 472, 76 P.3d at 30.

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6.2 to appropriate the money it deems to be sufficient, enjoining the ESA program would not be a proper remedy. Section 6.5 provides that "[a]ny appropriation of money enacted in violation of subsection 2, 3 or 4 is void." NEV. CONST. art. 11, § 6.5. If there were a Section 6.2 violation, this Court would have to set aside the appropriations bill, *i.e.*, SB 515—not SB 302. And because Plaintiffs have not requested any such relief, this Court should not order it even if there were a Section 6.2 violation (which there is not).

V. Plaintiffs Are Not Entitled To A Preliminary Injunction.

Plaintiffs fail to prove that a preliminary injunction should issue. Nevada courts will grant a preliminary injunction only "where the moving party can demonstrate that it has a reasonable likelihood of success on the merits and that, absent a preliminary injunction, it will suffer irreparable harm for which compensatory damages would not suffice." *Excellence Cmty. Mgmt. v. Gilmore*, 131 Nev. Adv. Op. 38, 351 P.3d 720, 722 (2015). "In considering preliminary injunctions, courts also weigh the potential hardships to the relative parties and others, and the public interest." *Univ. & Cmty. Coll. Sys. of Nevada v. Nevadans for Sound Gov't*, 120 Nev. 712, 721, 100 P.3d 179, 187 (2004). Plaintiffs do not demonstrate that any of these factors supports their request for such "extraordinary relief." *Dep't of Conserv. & Nat. Res.*, 121 Nev. at 80, 109 P.3d at 762.

As shown above, Plaintiffs have not met their burden of "clearly demonstrating" that SB 302 "is unconstitutional" and hence have not shown a "reasonable likelihood of success on the merits." *S.M. v. State of Nevada Dep't of Pub. Safety*, 2015 WL 528122, at *3. The Court can deny Plaintiffs' motion for this reason alone. *See, e.g., Boulder Oaks Cmty. Ass'n v. B & J Andrews Enter., LLC*, 125 Nev. 397, 403 n.6, 215 P.3d 27, 31 n.6 (2009).

Plaintiffs, even if this Court sets aside their meritless claims, fail entirely to show that they will suffer "irreparable harm for which there is no adequate remedy at law." *Dep't of Conserv. & Nat. Res.*, 121 Nev. at 80, 109 P.3d at 762. As a threshold matter, Plaintiffs allege potential harms to *school districts*, not to themselves—and even those harms relate only to financial loss that could be remedied at law. The principal harms that Plaintiffs allege are that public school districts will receive less funding, will face higher per-pupil education costs, and

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will have to adjust their budgets and program offerings in response to the ESA program. *See* PI Mot. 20-21. Because they are "[m]ere allegations of financial hardship," Plaintiffs' predictions are legally "insufficient to support a finding of irreparable harm." *Church of Scientology of Cal. v. United States*, 920 F.2d 1481, 1489 (9th Cir. 1990); *see also Elias v. Connett*, 908 F.2d 521, 526 (9th Cir. 1990) (irreparable harm not established where plaintiff "has failed to show that he will suffer more than mere monetary harm or financial hardship if denied relief"). But even if the alleged harms were cognizable, Plaintiffs have made no effort to show that the harms will have any effect on *them.* None of the Plaintiffs have submitted a declaration. There is no evidence that they personally will suffer irreparable injury.

The harms that Plaintiffs allege, moreover, are speculative. They say that "[s]chool districts *may* have to" cut educational services and extra-curricular activities, PI Mot. 20-21 (emphasis added), but they provide no concrete proof to support these chicken-little predictions. Especially in a facial challenge like this one—where Plaintiffs bear the burden to demonstrate that SB 302 is unconstitutional in *all* circumstances—unsupported hypotheticals are insufficient to justify a preliminary injunction. *See Flick Theater, Inc. v. City of Las Vegas*, 104 Nev. 87, 91 n.4, 752 P.2d 235, 238 n.4 (1988) (holding that the "case for a preliminary injunction" may not be "based on mere conjecture"); *Goldie's Bookstore, Inc. v. Super. Ct. of State of Cal.*, 739 F.2d 466, 472 (9th Cir. 1984) ("Speculative injury does not constitute irreparable injury."); *In re Excel Innovations, Inc.*, 502 F.3d 1086, 1098 (9th Cir. 2007) ("Speculative injury cannot be the basis for a finding of irreparable harm.").

The declarations that Plaintiffs offer to support their predictions are equally speculative. Paul Johnson, the Chief Financial Officer of White Pine County School District can say no more than that "[a] number of damaging *scenarios* are *possible.*" Johnson Decl. ¶ 5 (emphases added); *see also* ¶ 11 ("*If* funding declines *in the coming years* as a result of SB 302, White Pine will *begin seriously considering* closing schools ....") (emphases added). Jeff Zander, the Superintendent of the Elko County School District says that SB 302 "*may* result in a mid-year or quarterly reduction of the district's operating budget." Zander Decl. ¶ 4 (emphasis added). The Chief Financial Officer of Clark County School District, Jim McIntosh,

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similarly warns that SB 302 "*may* result in a teacher surplus in a particular school," McIntosh Decl. ¶ 4(a) (emphasis added), that certain costs "*may* increase on a per-pupil basis," *id.* ¶ 5 (emphasis added), and that a school district "*may* be forced to make budgetary adjustments which would be detrimental to students," *id.* ¶ 4(c) (emphasis added). And the most that Dr. Christopher Lubienski, a professor from Illinois, can muster is that SB 302 "*may* lead to more inequitable opportunities and outcomes." Lubienski Decl. ¶ 7(d) (emphasis added). Courts should not preliminarily enjoin a duly-enacted, state-wide public policy based on selective conjecture from non-party declarants.

Worse yet, the declarations contradict each other and fail to understand the law. Mr. Johnson warns that class sizes in certain grades "would balloon," Johnson Decl. ¶ 11, while Mr. McIntosh worries that shrinking class sizes could lead to "a teacher surplus in a particular school." McIntosh Decl. ¶ 4. Mr. Johnson even contradicts himself. *Compare* Johnson Decl. ¶ 6 ("SB 302 will harm public schools"), *with* SB 302 Fiscal Note, at 4 (SB 302 will have "no impact"). Nor do the declarants acknowledge the "hold harmless" provision enacted by the Legislature ensures that no school district will lose more than 5% of its funding from quarter to quarter due to a decline in enrollment. *See* NRS 387.1233(3), *amended by* SB 508, § 9. The "hold harmless" provision is intended to prevent the large funding fluctuations on which Plaintiffs and their declarants base their speculations.

Even if significant fluctuations are still possible, they are not caused by SB 302, but instead by the Nevada Plan for school funding, which Plaintiffs have not challenged here. Under the Nevada Plan's funding formula, school districts are funded on a per-pupil basis. When a pupil exits the district—whether because she has moved to a different district or another State, she has dropped out of a poor-performing school, or she has decided to go to private school (whether or not with ESA funds)—the district's total funding will decrease. Enrollment fluctuations and concomitant funding fluctuations will naturally occur with or without the ESA program. Under Plaintiffs' theory, it would be unconstitutional—and cause irreparable harm—for the State to transfer a large number of government workers from Carson City to Las Vegas anytime during the school year, simply because the departure of

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those employees' school-age children could cause funding decreases for the Carson City schools.

In reality, the ESA program actually could stabilize public school enrollments. Nevada has the dubious distinction of having the worst high-school graduation rate in the country, as Governor Sandoval noted in his 2015 *State of the State* address. In enacting SB 302, the Legislature considered evidence that education-choice programs *improve* public school outcomes. *See supra* at 3. If through competition the ESA program improves public schools, there may be fewer dropouts and thus more funding for public schools. If the Court is to entertain Plaintiffs' conjecture about the hypothetical harms of SB 302, it should also consider the many predicted benefits of that measure.[15]

Finally, a preliminary injunction in this case would severely damage the public interest. Every child in Nevada has a right to "the opportunity to receive a basic education." *Guinn*, 119 Nev. at 286, 71 P.3d at 1275. Plaintiffs do not argue and present no evidence that the ESA program will *deprive* any child of this right and opportunity. Granting a preliminary injunction, however, would deny Nevada children the opportunity to transcend this lowest common denominator by attending the school that is best for them. The people of Nevada and their elected representatives have adopted a policy aimed at improving education in the State. A handful of plaintiffs with mere policy disagreements and no proof of irreparable harm are not entitled to obstruct the Legislature's considered judgment.

* * *

Nevada's new ESA program is a lawful exercise of the Legislature's express constitutional power to "encourage" education by "all suitable means." NEV. CONST. art. 11, § 1. The program does not violate the constitutional provision concerning a "uniform system

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[15] Plaintiffs argue that, because they allege a constitutional violation, they are not required to show actual irreparable injury. *See* PI Mot. 19-20. But Plaintiffs rely on a case that merely states that a constitutional violation "may" constitute irreparable harm. *City of Sparks v. Sparks Mun. Ct.*, 129 Nev. Adv. Op. 38, 302 P.3d 1118, 1124 (2013) (citing *Monterey Mech. Co. v. Wilson*, 125 F.3d 702, 715 (9th Cir. 1997)). Plaintiffs have not explained how they personally are irreparably harmed by the ESA program. Nor have they shown that the ESA program is unconstitutional.

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of common schools." *Id.*, art. 11, § 2. The program exists for an obvious and urgently needed "educational purpose," *id.* art. 11, § 3, and does not call for the use of money covered by Section 3 in any event. And in enacting the program—three days *before* it appropriated funds for the public schools for the next biennium—the Legislature did not violate its duty to "provide the money the Legislature deems to be sufficient" for the public schools. *Id.*, art. 11, § 6.2. Because none of Plaintiffs' facial attacks on the ESA program have merit, this Court should uphold the constitutionality of the program.

CONCLUSION

For the foregoing reasons, Defendant's motion to dismiss should be granted, and Plaintiffs' motion for preliminary injunction should be denied.

DATED this 5th day of November, 2015.

Respectfully submitted,

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EXHIBIT INDEX

Case No: 15-OC-00207-1B	Dept. No.: II
Plaintiff: Hellen Quan Lopez et al.	Defendant: Dan Schwartz

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Senate Bill No. 302–Senator Hammond

CHAPTER.....

AN ACT relating to education; establishing a program by which a child who receives instruction from a certain entity rather than from a public school may receive a grant of money in an amount equal to the statewide average basic support per-pupil; providing for the amount of each grant to be deducted from the total apportionment to the school district; providing a child who receives a grant and is not enrolled in a private school with certain rights and responsibilities; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires each child between the ages of 7 and 18 years to attend a public school of the State, attend a private school or be homeschooled. (NRS 392.040, 392.070) Existing law also provides for each school district to receive certain funding from local sources and to receive from the State an apportionment per pupil of basic support for the schools in the school district. (NRS 387.1235, 387.124) This bill establishes a program by which a child enrolled in a private school may receive a grant of money in an amount equal to 90 percent, or, if the child is a pupil with a disability or has a household income that is less than 185 percent of the federally designated level signifying poverty, 100 percent, of the statewide average basic support per pupil. **Sections 7 and 8** of this bill allow a child to enroll part-time in a public school while receiving part of his or her instruction from an entity that participates in the program to receive a partial grant. Money from the grant may be used only for specified purposes.

Section 7 of this bill authorizes the parent of a child who is required to attend school and who has attended a public school for 100 consecutive school days to enter into an agreement with the State Treasurer, according to which the child will receive instruction from certain entities and receive the grant. Each agreement is valid for 1 school year but may be terminated early and may be renewed for any subsequent school year. Not entering into or renewing an agreement for any given school year does not preclude the parent from entering into or renewing an agreement for any subsequent year.

If such an agreement is entered into, an education savings account must be opened by the parent on behalf of the child. Under **section 8** of this bill, for any school year for which the agreement is entered into or renewed, the State Treasurer must deposit the amount of the grant into the education savings account. Under **section 16** of this bill, the amount of the grant must be deducted from the total apportionment to the resident school district of the child on whose behalf the grant is made. **Section 8** provides that the State Treasurer may deduct from the amount of the grant not more than 3 percent for the administrative costs of implementing the provisions of this bill.

Section 9 of this bill lists the authorized uses of grant money deposited in an education savings account. **Section 9** also prohibits certain refunds, rebates or sharing of payments made from money in an education savings account.

Under **section 10** of this bill, the State Treasurer may qualify private financial management firms to manage the education savings accounts. The State Treasurer must establish reasonable fees for the management of the education savings

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accounts. Those fees may be paid from the money deposited in an education savings account.

Section 11 of this bill provides requirements for a private school, college or university, program of distance education, accredited tutor or tutoring facility or the parent of a child to participate in the grant program established by this bill by providing instruction to children on whose behalf the grants are made. The State Treasurer may refuse to allow such an entity to continue to participate in the program if the State Treasurer finds that the entity fails to comply with applicable provisions of law or has failed to provide educational services to a child who is participating in the program. **Section 16.2** of this bill authorizes a child who is participating in the program to enroll in a program of distance education if the child is only receiving a portion of his or her instruction from a participating entity.

Under **section 12** of this bill, each child on whose behalf a grant is made must take certain standardized examinations in mathematics and English language arts. Subject to applicable federal privacy laws, a participating entity must provide those test results to the Department of Education, which must aggregate the results and publish data on the results and on the academic progress of children on behalf of whom grants are made. Under **section 13** of this bill, the State Treasurer must make available a list of all entities who are participating in the grant program, other than a parent of a child. **Section 13** also requires the Department to require resident school districts to provide certain academic records to participating entities.

Sections 15.1 and 16.4 of this bill provide that a child who participates in the program but who does not enroll in a private school is an opt-in child. **Section 16.4** requires the parent or guardian of such a child to notify the school district where the child would otherwise attend or the charter school in which the child was previously enrolled, as applicable.

Existing law requires the parent of a homeschooled child who wishes to participate in activities at a public school, including a charter school, through a school district or through the Nevada Interscholastic Activities Association to file a notice of intent to participate with the school district in which the child resides. (NRS 386.430, 386.580, 392.705) **Section 16.5** of this bill enacts similar requirements for the parents of an opt-in child who wishes to participate with the school district. **Sections 15.2 and 15.3** of this bill authorize an opt-in child to participate in the Nevada Youth Legislature. **Sections 15.4-15.8 and 16.7** of this bill authorize an opt-in child to participate in activities at a public school, through a school district or through the Nevada Interscholastic Activities Association if the parent files a notice of intent to participate. **Section 16.6** of this bill requires an opt-in child who wishes to enroll in a public high school to provide proof demonstrating competency in courses required for promotion to high school similar to that required of a homeschooled child who wishes to enroll in a public high school.

Section 14 of this bill provides that the provisions of this bill may not be deemed to infringe on the independence or autonomy of any private school or to make the actions of a private school the actions of the government of this State. **Section 15.9** of this bill exempts grants deposited in an education savings account from a prohibition on the use of public school funds for other purposes.

Existing law requires children who are suspended or expelled from a public school for certain reasons to enroll in a private school or program of independent study or be homeschooled. (NRS 392.466) **Section 16.8** of this bill authorizes such a child to be an opt-in child.

EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets [~~omitted material~~] is material to be omitted.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 385 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 15, inclusive, of this act.

Sec. 2. ***As used in sections 2 to 15, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 3 to 6, inclusive, of this act have the meanings ascribed to them in those sections.***

Sec. 3. ***"Education savings account" means an account established for a child pursuant to section 7 of this act.***

Sec. 3.5. ***"Eligible institution" means:***

1. A university, state college or community college within the Nevada System of Higher Education; or

2. Any other college or university that:

(a) Was originally established in, and is organized under the laws of, this State;

(b) Is exempt from taxation pursuant to 26 U.S.C. § 501(c)(3); and

(c) Is accredited by a regional accrediting agency recognized by the United States Department of Education.

Sec. 4. ***"Parent" means the parent, custodial parent, legal guardian or other person in this State who has control or charge of a child and the legal right to direct the education of the child.***

Sec. 5. ***"Participating entity" means a private school that is licensed pursuant to chapter 394 of NRS or exempt from such licensing pursuant to NRS 394.211, an eligible institution, a program of distance education that is not offered by a public school or the Department, a tutor or tutoring agency or a parent that has provided to the State Treasurer the application described in subsection 1 of section 11 of this act.***

Sec. 5.5. ***"Program of distance education" has the meaning ascribed to it in NRS 388.829.***

Sec. 6. ***"Resident school district" means the school district in which a child would be enrolled based on his or her residence.***

Sec. 7. ***1. Except as otherwise provided in subsection 10, the parent of any child required by NRS 392.040 to attend a public school who has been enrolled in a public school in this State during the period immediately preceding the establishment of an education savings account pursuant to this section for not less***

than 100 school days without interruption may establish an education savings account for the child by entering into a written agreement with the State Treasurer, in a manner and on a form provided by the State Treasurer. The agreement must provide that:

(a) The child will receive instruction in this State from a participating entity for the school year for which the agreement applies;

(b) The child will receive a grant, in the form of money deposited pursuant to section 8 of this act in the education savings account established for the child pursuant to subsection 2;

(c) The money in the education savings account established for the child must be expended only as authorized by section 9 of this act; and

(d) The State Treasurer will freeze money in the education savings account during any break in the school year, including any break between school years.

2. If an agreement is entered into pursuant to subsection 1, an education savings account must be established by the parent on behalf of the child. The account must be maintained with a financial management firm qualified by the State Treasurer pursuant to section 10 of this act.

3. The failure to enter into an agreement pursuant to subsection 1 for any school year for which a child is required by NRS 392.040 to attend a public school does not preclude the parent of the child from entering into an agreement for a subsequent school year.

4. An agreement entered into pursuant to subsection 1 is valid for 1 school year but may be terminated early. If the agreement is terminated early, the child may not receive instruction from a public school in this State until the end of the period for which the last deposit was made into the education savings account pursuant to section 8 of this act, except to the extent the pupil was allowed to receive instruction from a public school under the agreement.

5. An agreement terminates automatically if the child no longer resides in this State. In such a case, any money remaining in the education savings account of the child reverts to the State General Fund.

6. An agreement may be renewed for any school year for which the child is required by NRS 392.040 to attend a public school. The failure to renew an agreement for any school year does not preclude the parent of the child from renewing the agreement for any subsequent school year.

7. A parent may enter into a separate agreement pursuant to subsection 1 for each child of the parent. Not more than one education savings account may be established for a child.

8. Except as otherwise provided in subsection 10, the State Treasurer shall enter into or renew an agreement pursuant to this section with any parent of a child required by NRS 392.040 to attend a public school who applies to the State Treasurer in the manner provided by the State Treasurer. The State Treasurer shall make the application available on the Internet website of the State Treasurer.

9. Upon entering into or renewing an agreement pursuant to this section, the State Treasurer shall provide to the parent who enters into or renews the agreement a written explanation of the authorized uses, pursuant to section 9 of this act, of the money in an education savings account and the responsibilities of the parent and the State Treasurer pursuant to the agreement and sections 2 to 15, inclusive, of this act.

10. A parent may not establish an education savings account for a child who will be homeschooled, who will receive instruction outside this State or who will remain enrolled full-time in a public school, regardless of whether such a child receives instruction from a participating entity. A parent may establish an education savings account for a child who receives a portion of his or her instruction from a public school and a portion of his or her instruction from a participating entity.

Sec. 8. *1. If a parent enters into or renews an agreement pursuant to section 7 of this act, a grant of money on behalf of the child must be deposited in the education savings account of the child.*

2. Except as otherwise provided in subsections 3 and 4, the grant required by subsection 1 must, for the school year for which the grant is made, be in an amount equal to:

(a) For a child who is a pupil with a disability, as defined in NRS 388.440, or a child with a household income that is less than 185 percent of the federally designated level signifying poverty, 100 percent of the statewide average basic support per pupil; and

(b) For all other children, 90 percent of the statewide average basic support per pupil.

3. If a child receives a portion of his or her instruction from a participating entity and a portion of his or her instruction from a public school, for the school year for which the grant is made, the grant required by subsection 1 must be in a pro rata based on amount the percentage of the total instruction provided to the

child by the participating entity in proportion to the total instruction provided to the child.

4. The State Treasurer may deduct not more than 3 percent of each grant for the administrative costs of implementing the provisions of sections 2 to 15, inclusive, of this act.

5. The State Treasurer shall deposit the money for each grant in quarterly installments pursuant to a schedule determined by the State Treasurer.

6. Any money remaining in an education savings account:

(a) At the end of a school year may be carried forward to the next school year if the agreement entered into pursuant to section 7 of this act is renewed.

(b) When an agreement entered into pursuant to section 7 of this act is not renewed or is terminated, because the child for whom the account was established graduates from high school or for any other reason, reverts to the State General Fund at the end of the last day of the agreement.

Sec. 9. *1. Money deposited in an education savings account must be used only to pay for:*

(a) Tuition and fees at a school that is a participating entity in which the child is enrolled;

(b) Textbooks required for a child who enrolls in a school that is a participating entity;

(c) Tutoring or other teaching services provided by a tutor or tutoring facility that is a participating entity;

(d) Tuition and fees for a program of distance education that is a participating entity;

(e) Fees for any national norm-referenced achievement examination, advanced placement or similar examination or standardized examination required for admission to a college or university;

(f) If the child is a pupil with a disability, as that term is defined in NRS 388.440, fees for any special instruction or special services provided to the child;

(g) Tuition and fees at an eligible institution that is a participating entity;

(h) Textbooks required for the child at an eligible institution that is a participating entity or to receive instruction from any other participating entity;

(i) Fees for the management of the education savings account, as described in section 10 of this act;

(j) Transportation required for the child to travel to and from a participating entity or any combination of participating entities up to but not to exceed $750 per school year; or

(k) Purchasing a curriculum or any supplemental materials required to administer the curriculum.

2. A participating entity that receives a payment authorized by subsection 1 shall not:

(a) Refund any portion of the payment to the parent who made the payment, unless the refund is for an item that is being returned or an item or service that has not been provided; or

(b) Rebate or otherwise share any portion of the payment with the parent who made the payment.

3. A parent who receives a refund pursuant to subsection 2 shall deposit the refund in the education savings account from which the money refunded was paid.

4. Nothing in this section shall be deemed to prohibit a parent or child from making a payment for any tuition, fee, service or product described in subsection 1 from a source other than the education savings account of the child.

Sec. 10. *1. The State Treasurer shall qualify one or more private financial management firms to manage education savings accounts and shall establish reasonable fees, based on market rates, for the management of education savings accounts.*

2. An education savings account must be audited randomly each year by a certified or licensed public accountant. The State Treasurer may provide for additional audits of an education savings account as it determines necessary.

3. If the State Treasurer determines that there has been substantial misuse of the money in an education savings account, the State Treasurer may:

(a) Freeze or dissolve the account, subject to any regulations adopted by the State Treasurer providing for notice of such action and opportunity to respond to the notice; and

(b) Give notice of his or her determination to the Attorney General or the district attorney of the county in which the parent resides.

Sec. 11. *1. The following persons may become a participating entity by submitting an application demonstrating that the person is:*

(a) A private school licensed pursuant to chapter 394 of NRS or exempt from such licensing pursuant to NRS 394.211;

(b) An eligible institution;

(c) A program of distance education that is not operated by a public school or the Department;

(d) A tutor or tutoring facility that is accredited by a state, regional or national accrediting organization; or

(e) The parent of a child.

2. The State Treasurer shall approve an application submitted pursuant to subsection 1 or request additional information to demonstrate that the person meets the criteria to serve as a participating entity. If the applicant is unable to provide such additional information, the State Treasurer may deny the application.

3. If it is reasonably expected that a participating entity will receive, from payments made from education savings accounts, more than $50,000 during any school year, the participating entity shall annually, on or before the date prescribed by the State Treasurer by regulation:

(a) Post a surety bond in an amount equal to the amount reasonably expected to be paid to the participating entity from education savings accounts during the school year; or

(b) Provide evidence satisfactory to the State Treasurer that the participating entity otherwise has unencumbered assets sufficient to pay to the State Treasurer an amount equal to the amount described in paragraph (a).

4. Each participating entity that accepts payments made from education savings accounts shall provide a receipt for each such payment to the parent who makes the payment.

5. The State Treasurer may refuse to allow an entity described in subsection 1 to continue to participate in the grant program provided for in sections 2 to 15, inclusive, of this act if the State Treasurer determines that the entity:

(a) Has routinely failed to comply with the provisions of sections 2 to 15, inclusive, of this act; or

(b) Has failed to provide any educational services required by law to a child receiving instruction from the entity if the entity is accepting payments made from the education savings account of the child.

6. If the State Treasurer takes an action described in subsection 5 against an entity described in subsection 1, the State Treasurer shall provide immediate notice of the action to each parent of a child receiving instruction from the entity who has entered into or renewed an agreement pursuant to section 7 of this act and on behalf of whose child a grant of money has been deposited pursuant to section 8 of this act.

Sec. 12. *1. Each participating entity that accepts payments for tuition and fees made from education savings accounts shall:*

(a) Ensure that each child on whose behalf a grant of money has been deposited pursuant to section 8 of this act and who is receiving instruction from the participating entity takes:

(1) Any examinations in mathematics and English language arts required for pupils of the same grade pursuant to chapter 389 of NRS; or

(2) Norm-referenced achievement examinations in mathematics and English language arts each school year;

(b) Provide for value-added assessments of the results of the examinations described in paragraph (a); and

(c) Subject to the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g, and any regulations adopted pursuant thereto, provide the results of the examinations described in paragraph (a) to the Department or an organization designated by the Department pursuant to subsection 4.

2. The Department shall:

(a) Aggregate the examination results provided pursuant to subsection 1 according to the grade level, gender, race and family income level of each child whose examination results are provided; and

(b) Subject to the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g, and any regulations adopted pursuant thereto, make available on the Internet website of the Department:

(1) The aggregated results and any associated learning gains; and

(2) After 3 school years for which examination data has been collected, the graduation rates, as applicable, of children whose examination results are provided.

3. The State Treasurer shall administer an annual survey of parents who enter into or renew an agreement pursuant to section 7 of this act. The survey must ask each parent to indicate the number of years the parent has entered into or renewed such an agreement and to express:

(a) The relative satisfaction of the parent with the grant program established pursuant to sections 2 to 15, inclusive, of this act; and

(b) The opinions of the parent regarding any topics, items or issues that the State Treasurer determines may aid the State Treasurer in evaluating and improving the effectiveness of the grant program established pursuant to sections 2 to 15, inclusive, of this act.

4. The Department may arrange for a third-party organization to perform the duties of the Department prescribed by this section.

Sec. 13. *1. The State Treasurer shall annually make available a list of participating entities, other than any parent of a child.*

2. Subject to the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g, and any regulations adopted pursuant thereto, the Department shall annually require the resident school district of each child on whose behalf a grant of money is made pursuant to section 8 of this act to provide to the participating entity any educational records of the child.

Sec. 14. ***Except as otherwise provided in sections 2 to 15, inclusive, of this act, nothing in the provisions of sections 2 to 15, inclusive, of this act, shall be deemed to limit the independence or autonomy of a participating entity or to make the actions of a participating entity the actions of the State Government.***

Sec. 15. ***The State Treasurer shall adopt any regulations necessary or convenient to carry out the provisions of sections 2 to 15, inclusive, of this act.***

Sec. 15.1. NRS 385.007 is hereby amended to read as follows:

385.007 As used in this title, unless the context otherwise requires:

1. "Charter school" means a public school that is formed pursuant to the provisions of NRS 386.490 to 386.649, inclusive.

2. "Department" means the Department of Education.

3. "Homeschooled child" means a child who receives instruction at home and who is exempt from compulsory attendance pursuant to NRS 392.070 ~~[1]~~ ***, but does not include an opt-in child.***

4. "Limited English proficient" has the meaning ascribed to it in 20 U.S.C. § 7801(25).

5. ***"Opt-in child" means a child for whom an education savings account has been established pursuant to section 7 of this act, who is not enrolled full-time in a public or private school and who receives all or a portion of his or her instruction from a participating entity, as defined in section 5 of this act.***

6. "Public schools" means all kindergartens and elementary schools, junior high schools and middle schools, high schools, charter schools and any other schools, classes and educational programs which receive their support through public taxation and, except for charter schools, whose textbooks and courses of study are under the control of the State Board.

~~[6.]~~ ***7.*** "State Board" means the State Board of Education.

~~[7.]~~ ***8.*** "University school for profoundly gifted pupils" has the meaning ascribed to it in NRS 392A.040.

Sec. 15.2. NRS 385.525 is hereby amended to read as follows:

385.525 1. To be eligible to serve on the Youth Legislature, a person:

(a) Must be:

(1) A resident of the senatorial district of the Senator who appoints him or her;

(2) Enrolled in a public school or private school located in the senatorial district of the Senator who appoints him or her; or

(3) A homeschooled child ***or opt-in child*** who is otherwise eligible to be enrolled in a public school in the senatorial district of the Senator who appoints him or her;

(b) Except as otherwise provided in subsection 3 of NRS 385.535, must be:

(1) Enrolled in a public school or private school in this State in grade 9, 10 or 11 for the first school year of the term for which he or she is appointed; or

(2) A homeschooled child ***or opt-in child*** who is otherwise eligible to enroll in a public school in this State in grade 9, 10 or 11 for the first school year of the term for which he or she is appointed; and

(c) Must not be related by blood, adoption or marriage within the third degree of consanguinity or affinity to the Senator who appoints him or her or to any member of the Assembly who collaborated to appoint him or her.

2. If, at any time, a person appointed to the Youth Legislature changes his or her residency or changes his or her school of enrollment in such a manner as to render the person ineligible under his or her original appointment, the person shall inform the Board, in writing, within 30 days after becoming aware of such changed facts.

3. A person who wishes to be appointed or reappointed to the Youth Legislature must submit an application on the form prescribed pursuant to subsection 4 to the Senator of the senatorial district in which the person resides, is enrolled in a public school or private school or, if the person is a homeschooled child ~~[,]~~ ***or opt-in child,*** the senatorial district in which he or she is otherwise eligible to be enrolled in a public school. A person may not submit an application to more than one Senator in a calendar year.

4. The Board shall prescribe a form for applications submitted pursuant to this section, which must require the signature of the principal of the school in which the applicant is enrolled or, if the applicant is a homeschooled child ~~[,]~~ ***or opt-in child,*** the signature of a member of the community in which the applicant resides other than a relative of the applicant.

Sec. 15.3. NRS 385.535 is hereby amended to read as follows:

385.535 1. A position on the Youth Legislature becomes vacant upon:

(a) The death or resignation of a member.

(b) The absence of a member for any reason from:

(1) Two meetings of the Youth Legislature, including, without limitation, meetings conducted in person, meetings conducted by teleconference, meetings conducted by videoconference and meetings conducted by other electronic means;

(2) Two activities of the Youth Legislature;

(3) Two event days of the Youth Legislature; or

(4) Any combination of absences from meetings, activities or event days of the Youth Legislature, if the combination of absences therefrom equals two or more,

➥ unless the absences are, as applicable, excused by the Chair or Vice Chair of the Board.

(c) A change of residency or a change of the school of enrollment of a member which renders that member ineligible under his or her original appointment.

2. In addition to the provisions of subsection 1, a position on the Youth Legislature becomes vacant if:

(a) A member of the Youth Legislature graduates from high school or otherwise ceases to attend public school or private school for any reason other than to become a homeschooled child ~~[,]~~ ***or opt-in child;*** or

(b) A member of the Youth Legislature who is a homeschooled child ***or opt-in child*** completes an educational plan of instruction for grade 12 or otherwise ceases to be a homeschooled child ***or opt-in child*** for any reason other than to enroll in a public school or private school.

3. A vacancy on the Youth Legislature must be filled:

(a) For the remainder of the unexpired term in the same manner as the original appointment, except that, if the remainder of the unexpired term is less than 1 year, the member of the Senate who made the original appointment may appoint a person who:

(1) Is enrolled in a public school or private school in this State in grade 12 or who is a homeschooled child ***or opt-in child*** who is otherwise eligible to enroll in a public school in this State in grade 12; and

(2) Satisfies the qualifications set forth in paragraphs (a) and (c) of subsection 1 of NRS 385.525.

(b) Insofar as is practicable, within 30 days after the date on which the vacancy occurs.

4. As used in this section, "event day" means any single calendar day on which an official, scheduled event of the Youth Legislature is held, including, without limitation, a course of instruction, a course of orientation, a meeting, a seminar or any other official, scheduled activity.

Sec. 15.4. NRS 386.430 is hereby amended to read as follows:

386.430 1. The Nevada Interscholastic Activities Association shall adopt rules and regulations in the manner provided for state agencies by chapter 233B of NRS as may be necessary to carry out the provisions of NRS 386.420 to 386.470, inclusive. The regulations must include provisions governing the eligibility and participation of homeschooled children ***and opt-in children*** in interscholastic activities and events. In addition to the regulations governing eligibility ~~[:a]~~ ***:***

(a) A homeschooled child who wishes to participate must have on file with the school district in which the child resides a current notice of intent of a homeschooled child to participate in programs and activities pursuant to NRS 392.705.

(b) An opt-in child who wishes to participate must have on file with the school district in which the child resides a current notice of intent of an opt-in child to participate in programs and activities pursuant to section 16.5 of this act.

2. The Nevada Interscholastic Activities Association shall adopt regulations setting forth:

(a) The standards of safety for each event, competition or other activity engaged in by a spirit squad of a school that is a member of the Nevada Interscholastic Activities Association, which must substantially comply with the spirit rules of the National Federation of State High School Associations, or its successor organization; and

(b) The qualifications required for a person to become a coach of a spirit squad.

3. If the Nevada Interscholastic Activities Association intends to adopt, repeal or amend a policy, rule or regulation concerning or affecting homeschooled children, the Association shall consult with the Northern Nevada Homeschool Advisory Council and the Southern Nevada Homeschool Advisory Council, or their successor organizations, to provide those Councils with a reasonable opportunity to submit data, opinions or arguments, orally or in writing, concerning the proposal or change. The Association shall consider all written and oral submissions respecting the proposal or change before taking final action.

4. As used in this section, "spirit squad" means any team or other group of persons that is formed for the purpose of:

(a) Leading cheers or rallies to encourage support for a team that participates in a sport that is sanctioned by the Nevada Interscholastic Activities Association; or

(b) Participating in a competition against another team or other group of persons to determine the ability of each team or group of persons to engage in an activity specified in paragraph (a).

Sec. 15.5. NRS 386.462 is hereby amended to read as follows:

386.462 1. A homeschooled child must be allowed to participate in interscholastic activities and events in accordance with the regulations adopted by the Nevada Interscholastic Activities Association pursuant to NRS 386.430 if a notice of intent of a homeschooled child to participate in programs and activities is filed for the child with the school district in which the child resides for the current school year pursuant to NRS 392.705.

2. ***An opt-in child must be allowed to participate in interscholastic activities and events in accordance with the regulations adopted by the Nevada Interscholastic Activities Association pursuant to NRS 386.430 if a notice of intent of an opt-in child to participate in programs and activities is filed for the child with the school district in which the child resides for the current school year pursuant to section 16.5 of this act.***

3. The provisions of NRS 386.420 to 386.470, inclusive, and the regulations adopted pursuant thereto that apply to pupils enrolled in public schools who participate in interscholastic activities and events apply in the same manner to homeschooled children ***and opt-in children*** who participate in interscholastic activities and events, including, without limitation, provisions governing:

(a) Eligibility and qualifications for participation;
(b) Fees for participation;
(c) Insurance;
(d) Transportation;
(e) Requirements of physical examination;
(f) Responsibilities of participants;
(g) Schedules of events;
(h) Safety and welfare of participants;
(i) Eligibility for awards, trophies and medals;
(j) Conduct of behavior and performance of participants; and
(k) Disciplinary procedures.

Sec. 15.6. NRS 386.463 is hereby amended to read as follows:

386.463 No challenge may be brought by the Nevada Interscholastic Activities Association, a school district, a public school or a private school, a parent or guardian of a pupil enrolled in a public school or a private school, a pupil enrolled in a public school or private school, or any other entity or person claiming that an interscholastic activity or event is invalid because homeschooled children ***or opt-in children*** are allowed to participate in the interscholastic activity or event.

Sec. 15.7. NRS 386.464 is hereby amended to read as follows:

386.464 A school district, public school or private school shall not prescribe any regulations, rules, policies, procedures or requirements governing the:

1. Eligibility of homeschooled children ***or opt-in children*** to participate in interscholastic activities and events pursuant to NRS 386.420 to 386.470, inclusive; or

2. Participation of homeschooled children ***or opt-in children*** in interscholastic activities and events pursuant to NRS 386.420 to 386.470, inclusive,

↳ that are more restrictive than the provisions governing eligibility and participation prescribed by the Nevada Interscholastic Activities Association pursuant to NRS 386.430.

Sec. 15.8. NRS 386.580 is hereby amended to read as follows:

386.580 1. An application for enrollment in a charter school may be submitted to the governing body of the charter school by the parent or legal guardian of any child who resides in this State. Except as otherwise provided in this subsection and subsection 2, a charter school shall enroll pupils who are eligible for enrollment in the order in which the applications are received. If the board of trustees of the school district in which the charter school is located has established zones of attendance pursuant to NRS 388.040, the charter school shall, if practicable, ensure that the racial composition of pupils enrolled in the charter school does not differ by more than 10 percent from the racial composition of pupils who attend public schools in the zone in which the charter school is located. If a charter school is sponsored by the board of trustees of a school district located in a county whose population is 100,000 or more, except for a program of distance education provided by the charter school, the charter school shall enroll pupils who are eligible for enrollment who reside in the school district in which the charter school is located before enrolling pupils who reside outside the school district. Except as otherwise provided in subsection 2, if more pupils who are eligible for enrollment apply for enrollment in the charter school than the number of spaces which are available, the charter school shall determine which applicants to enroll pursuant to this subsection on the basis of a lottery system.

2. Before a charter school enrolls pupils who are eligible for enrollment, a charter school may enroll a child who:

(a) Is a sibling of a pupil who is currently enrolled in the charter school;

(b) Was enrolled, free of charge and on the basis of a lottery system, in a prekindergarten program at the charter school or any

other early childhood educational program affiliated with the charter school;

(c) Is a child of a person who is:

(1) Employed by the charter school;

(2) A member of the committee to form the charter school; or

(3) A member of the governing body of the charter school;

(d) Is in a particular category of at-risk pupils and the child meets the eligibility for enrollment prescribed by the charter school for that particular category; or

(e) Resides within the school district and within 2 miles of the charter school if the charter school is located in an area that the sponsor of the charter school determines includes a high percentage of children who are at risk. If space is available after the charter school enrolls pupils pursuant to this paragraph, the charter school may enroll children who reside outside the school district but within 2 miles of the charter school if the charter school is located within an area that the sponsor determines includes a high percentage of children who are at risk.

➥ If more pupils described in this subsection who are eligible apply for enrollment than the number of spaces available, the charter school shall determine which applicants to enroll pursuant to this subsection on the basis of a lottery system.

3. Except as otherwise provided in subsection 8, a charter school shall not accept applications for enrollment in the charter school or otherwise discriminate based on the:

(a) Race;

(b) Gender;

(c) Religion;

(d) Ethnicity; or

(e) Disability,

➥ of a pupil.

4. If the governing body of a charter school determines that the charter school is unable to provide an appropriate special education program and related services for a particular disability of a pupil who is enrolled in the charter school, the governing body may request that the board of trustees of the school district of the county in which the pupil resides transfer that pupil to an appropriate school.

5. Except as otherwise provided in this subsection, upon the request of a parent or legal guardian of a child who is enrolled in a public school of a school district or a private school, or a parent or legal guardian of a homeschooled child ~~,~~ ***or opt-in child,*** the governing body of the charter school shall authorize the child to participate in a class that is not otherwise available to the child at his

or her school , ~~[or]~~ homeschool ***or from his or her participating entity, as defined in section 5 of this act,*** or participate in an extracurricular activity at the charter school if:

(a) Space for the child in the class or extracurricular activity is available;

(b) The parent or legal guardian demonstrates to the satisfaction of the governing body that the child is qualified to participate in the class or extracurricular activity; and

(c) The child is ~~[a]~~ :

(1) A homeschooled child and a notice of intent of a homeschooled child to participate in programs and activities is filed for the child with the school district in which the child resides for the current school year pursuant to NRS 392.705 ~~[.]~~ ; ***or***

(2) An opt-in child and a notice of intent of an opt-in child to participate in programs and activities is filed for the child with the school district in which the child resides for the current school year pursuant to section 16.5 of this act.

➥ If the governing body of a charter school authorizes a child to participate in a class or extracurricular activity pursuant to this subsection, the governing body is not required to provide transportation for the child to attend the class or activity. A charter school shall not authorize such a child to participate in a class or activity through a program of distance education provided by the charter school pursuant to NRS 388.820 to 388.874, inclusive.

6. The governing body of a charter school may revoke its approval for a child to participate in a class or extracurricular activity at a charter school pursuant to subsection 5 if the governing body determines that the child has failed to comply with applicable statutes, or applicable rules and regulations. If the governing body so revokes its approval, neither the governing body nor the charter school is liable for any damages relating to the denial of services to the child.

7. The governing body of a charter school may, before authorizing a homeschooled child ***or opt-in child*** to participate in a class or extracurricular activity pursuant to subsection 5, require proof of the identity of the child, including, without limitation, the birth certificate of the child or other documentation sufficient to establish the identity of the child.

8. This section does not preclude the formation of a charter school that is dedicated to provide educational services exclusively to pupils:

(a) With disabilities;

(b) Who pose such severe disciplinary problems that they warrant a specific educational program, including, without

limitation, a charter school specifically designed to serve a single gender that emphasizes personal responsibility and rehabilitation; or

(c) Who are at risk.

➥ If more eligible pupils apply for enrollment in such a charter school than the number of spaces which are available, the charter school shall determine which applicants to enroll pursuant to this subsection on the basis of a lottery system.

Sec. 15.9. NRS 387.045 is hereby amended to read as follows:

387.045 ***Except as otherwise provided in sections 2 to 15, inclusive, of this act:***

1. No portion of the public school funds or of the money specially appropriated for the purpose of public schools shall be devoted to any other object or purpose.

2. No portion of the public school funds shall in any way be segregated, divided or set apart for the use or benefit of any sectarian or secular society or association.

Sec. 15.95. NRS 387.1233 is hereby amended to read as follows:

387.1233 1. Except as otherwise provided in subsection 2, basic support of each school district must be computed by:

(a) Multiplying the basic support guarantee per pupil established for that school district for that school year by the sum of:

(1) Six-tenths the count of pupils enrolled in the kindergarten department on the last day of the first school month of the school district for the school year, including, without limitation, the count of pupils who reside in the county and are enrolled in any charter school on the last day of the first school month of the school district for the school year.

(2) The count of pupils enrolled in grades 1 to 12, inclusive, on the last day of the first school month of the school district for the school year, including, without limitation, the count of pupils who reside in the county and are enrolled in any charter school on the last day of the first school month of the school district for the school year and the count of pupils who are enrolled in a university school for profoundly gifted pupils located in the county.

(3) The count of pupils not included under subparagraph (1) or (2) who are enrolled full-time in a program of distance education provided by that school district or a charter school located within that school district on the last day of the first school month of the school district for the school year.

(4) The count of pupils who reside in the county and are enrolled:

(I) In a public school of the school district and are concurrently enrolled part-time in a program of distance education

provided by another school district or a charter school ***or receiving a portion of his or her instruction from a participating entity, as defined in section 5 of this act,*** on the last day of the first school month of the school district for the school year, expressed as a percentage of the total time services are provided to those pupils per school day in proportion to the total time services are provided during a school day to pupils who are counted pursuant to subparagraph (2).

(II) In a charter school and are concurrently enrolled part-time in a program of distance education provided by a school district or another charter school ***or receiving a portion of his or her instruction from a participating entity, as defined in section 5 of this act,*** on the last day of the first school month of the school district for the school year, expressed as a percentage of the total time services are provided to those pupils per school day in proportion to the total time services are provided during a school day to pupils who are counted pursuant to subparagraph (2).

(5) The count of pupils not included under subparagraph (1), (2), (3) or (4), who are receiving special education pursuant to the provisions of NRS 388.440 to 388.520, inclusive, on the last day of the first school month of the school district for the school year, excluding the count of pupils who have not attained the age of 5 years and who are receiving special education pursuant to subsection 1 of NRS 388.475 on that day.

(6) Six-tenths the count of pupils who have not attained the age of 5 years and who are receiving special education pursuant to subsection 1 of NRS 388.475 on the last day of the first school month of the school district for the school year.

(7) The count of children detained in facilities for the detention of children, alternative programs and juvenile forestry camps receiving instruction pursuant to the provisions of NRS 388.550, 388.560 and 388.570 on the last day of the first school month of the school district for the school year.

(8) The count of pupils who are enrolled in classes for at least one semester pursuant to subsection 5 of NRS 386.560, subsection 5 of NRS 386.580 or subsection 3 of NRS 392.070, expressed as a percentage of the total time services are provided to those pupils per school day in proportion to the total time services are provided during a school day to pupils who are counted pursuant to subparagraph (2).

(b) Multiplying the number of special education program units maintained and operated by the amount per program established for that school year.

(c) Adding the amounts computed in paragraphs (a) and (b).

2. Except as otherwise provided in subsection 4, if the enrollment of pupils in a school district or a charter school that is located within the school district on the last day of the first school month of the school district for the school year is less than or equal to 95 percent of the enrollment of pupils in the same school district or charter school on the last day of the first school month of the school district for the immediately preceding school year, the largest number from among the immediately preceding 2 school years must be used for purposes of apportioning money from the State Distributive School Account to that school district or charter school pursuant to NRS 387.124.

3. Except as otherwise provided in subsection 4, if the enrollment of pupils in a school district or a charter school that is located within the school district on the last day of the first school month of the school district for the school year is more than 95 percent of the enrollment of pupils in the same school district or charter school on the last day of the first school month of the school district for the immediately preceding school year, the larger enrollment number from the current year or the immediately preceding school year must be used for purposes of apportioning money from the State Distributive School Account to that school district or charter school pursuant to NRS 387.124.

4. If the Department determines that a school district or charter school deliberately causes a decline in the enrollment of pupils in the school district or charter school to receive a higher apportionment pursuant to subsection 2 or 3, including, without limitation, by eliminating grades or moving into smaller facilities, the enrollment number from the current school year must be used for purposes of apportioning money from the State Distributive School Account to that school district or charter school pursuant to NRS 387.124.

5. Pupils who are excused from attendance at examinations or have completed their work in accordance with the rules of the board of trustees must be credited with attendance during that period.

6. Pupils who are incarcerated in a facility or institution operated by the Department of Corrections must not be counted for the purpose of computing basic support pursuant to this section. The average daily attendance for such pupils must be reported to the Department of Education.

7. Pupils who are enrolled in courses which are approved by the Department as meeting the requirements for an adult to earn a high school diploma must not be counted for the purpose of computing basic support pursuant to this section.

Sec. 16. NRS 387.124 is hereby amended to read as follows:

387.124 Except as otherwise provided in this section and NRS 387.528:

1. On or before August 1, November 1, February 1 and May 1 of each year, the Superintendent of Public Instruction shall apportion the State Distributive School Account in the State General Fund among the several county school districts, charter schools and university schools for profoundly gifted pupils in amounts approximating one-fourth of their respective yearly apportionments less any amount set aside as a reserve. Except as otherwise provided in NRS 387.1244, the apportionment to a school district, computed on a yearly basis, equals the difference between the basic support and the local funds available pursuant to NRS 387.1235, minus all the funds attributable to pupils who reside in the county but attend a charter school, all the funds attributable to pupils who reside in the county and are enrolled full-time or part-time in a program of distance education provided by another school district or a charter school, ~~[and]~~ all the funds attributable to pupils who are enrolled in a university school for profoundly gifted pupils located in the county ~~[.]~~ ***and all the funds deposited in education savings accounts established on behalf of children who reside in the county pursuant to sections 2 to 15, inclusive, of this act.*** No apportionment may be made to a school district if the amount of the local funds exceeds the amount of basic support.

2. Except as otherwise provided in subsection 3 and NRS 387.1244, the apportionment to a charter school, computed on a yearly basis, is equal to the sum of the basic support per pupil in the county in which the pupil resides plus the amount of local funds available per pupil pursuant to NRS 387.1235 and all other funds available for public schools in the county in which the pupil resides minus the sponsorship fee prescribed by NRS 386.570 and minus all the funds attributable to pupils who are enrolled in the charter school but are concurrently enrolled part-time in a program of distance education provided by a school district or another charter school. If the apportionment per pupil to a charter school is more than the amount to be apportioned to the school district in which a pupil who is enrolled in the charter school resides, the school district in which the pupil resides shall pay the difference directly to the charter school.

3. Except as otherwise provided in NRS 387.1244, the apportionment to a charter school that is sponsored by the State Public Charter School Authority or by a college or university within the Nevada System of Higher Education, computed on a yearly basis, is equal to the sum of the basic support per pupil in the county

in which the pupil resides plus the amount of local funds available per pupil pursuant to NRS 387.1235 and all other funds available for public schools in the county in which the pupil resides, minus the sponsorship fee prescribed by NRS 386.570 and minus all funds attributable to pupils who are enrolled in the charter school but are concurrently enrolled part-time in a program of distance education provided by a school district or another charter school.

4. Except as otherwise provided in NRS 387.1244, in addition to the apportionments made pursuant to this section, an apportionment must be made to a school district or charter school that provides a program of distance education for each pupil who is enrolled part-time in the program. The amount of the apportionment must be equal to the percentage of the total time services are provided to the pupil through the program of distance education per school day in proportion to the total time services are provided during a school day to pupils who are counted pursuant to subparagraph (2) of paragraph (a) of subsection 1 of NRS 387.1233 for the school district in which the pupil resides.

5. The governing body of a charter school may submit a written request to the Superintendent of Public Instruction to receive, in the first year of operation of the charter school, an apportionment 30 days before the apportionment is required to be made pursuant to subsection 1. Upon receipt of such a request, the Superintendent of Public Instruction may make the apportionment 30 days before the apportionment is required to be made. A charter school may receive all four apportionments in advance in its first year of operation.

6. Except as otherwise provided in NRS 387.1244, the apportionment to a university school for profoundly gifted pupils, computed on a yearly basis, is equal to the sum of the basic support per pupil in the county in which the university school is located plus the amount of local funds available per pupil pursuant to NRS 387.1235 and all other funds available for public schools in the county in which the university school is located. If the apportionment per pupil to a university school for profoundly gifted pupils is more than the amount to be apportioned to the school district in which the university school is located, the school district shall pay the difference directly to the university school. The governing body of a university school for profoundly gifted pupils may submit a written request to the Superintendent of Public Instruction to receive, in the first year of operation of the university school, an apportionment 30 days before the apportionment is required to be made pursuant to subsection 1. Upon receipt of such a request, the Superintendent of Public Instruction may make the

apportionment 30 days before the apportionment is required to be made. A university school for profoundly gifted pupils may receive all four apportionments in advance in its first year of operation.

7. The Superintendent of Public Instruction shall apportion, on or before August 1 of each year, the money designated as the "Nutrition State Match" pursuant to NRS 387.105 to those school districts that participate in the National School Lunch Program, 42 U.S.C. §§ 1751 et seq. The apportionment to a school district must be directly related to the district's reimbursements for the Program as compared with the total amount of reimbursements for all school districts in this State that participate in the Program.

8. If the State Controller finds that such an action is needed to maintain the balance in the State General Fund at a level sufficient to pay the other appropriations from it, the State Controller may pay out the apportionments monthly, each approximately one-twelfth of the yearly apportionment less any amount set aside as a reserve. If such action is needed, the State Controller shall submit a report to the Department of Administration and the Fiscal Analysis Division of the Legislative Counsel Bureau documenting reasons for the action.

Sec. 16.2. NRS 388.850 is hereby amended to read as follows:

388.850 1. A pupil may enroll in a program of distance education unless:

(a) Pursuant to this section or other specific statute, the pupil is not eligible for enrollment or the pupil's enrollment is otherwise prohibited;

(b) The pupil fails to satisfy the qualifications and conditions for enrollment adopted by the State Board pursuant to NRS 388.874; or

(c) The pupil fails to satisfy the requirements of the program of distance education.

2. A child who is exempt from compulsory attendance and is enrolled in a private school pursuant to chapter 394 of NRS or is being homeschooled is not eligible to enroll in or otherwise attend a program of distance education, regardless of whether the child is otherwise eligible for enrollment pursuant to subsection 1.

3. ***An opt-in child who is exempt from compulsory attendance is not eligible to enroll in or otherwise attend a program of distance education, regardless of whether the child is otherwise eligible for enrollment pursuant to subsection 1, unless the opt-in child receives only a portion of his or her instruction from a participating entity as authorized pursuant to section 7 of this act.***

4. If a pupil who is prohibited from attending public school pursuant to NRS 392.264 enrolls in a program of distance education, the enrollment and attendance of that pupil must comply with all

requirements of NRS 62F.100 to 62F.150, inclusive, and 392.251 to 392.271, inclusive.

Sec. 16.3. Chapter 392 of NRS is hereby amended by adding thereto the provisions set forth as sections 16.35, 16.4 and 16.5 of this act.

Sec. 16.35. ***As used in this section and sections 16.4 and 16.5 of this act, unless the context otherwise requires, "parent" has the meaning ascribed to it in section 4 of this act.***

Sec. 16.4. ***1. The parent of an opt-in child shall provide notice to the school district where the child would otherwise attend or the charter school in which the child was previously enrolled, as applicable, that the child is an opt-in child as soon as practicable after entering into an agreement to establish an education savings account pursuant to section 7 of this act. Such notice must also include:***

(a) The full name, age and gender of the child; and

(b) The name and address of each parent of the child.

2. The superintendent of schools of a school district or the governing body of a charter school, as applicable, shall accept a notice provided pursuant to subsection 1 and shall not require any additional assurances from the parent who filed the notice.

3. The school district or the charter school, as applicable, shall provide to a parent who files a notice pursuant to subsection 1, a written acknowledgement which clearly indicates that the parent has provided the notification required by law and that the child is an opt-in child. The written acknowledgment shall be deemed proof of compliance with Nevada's compulsory school attendance law.

4. The superintendent of schools of a school district or the governing body of a charter school, as applicable, shall process a written request for a copy of the records of the school district or charter school, as applicable, or any information contained therein, relating to an opt-in child not later than 5 days after receiving the request. The superintendent of schools or governing body of a charter school may only release such records or information:

(a) To the Department, the Budget Division of the Department of Administration and the Fiscal Analysis Division of the Legislative Counsel Bureau for use in preparing the biennial budget;

(b) To a person or entity specified by the parent of the child, or by the child if the child is at least 18 years of age, upon suitable proof of identity of the parent or child; or

(c) If required by specific statute.

5. If an opt-in child seeks admittance or entrance to any public school in this State, the school may use only commonly used practices in determining the academic ability, placement or eligibility of the child. If the child enrolls in a charter school, the charter school shall, to the extent practicable, notify the board of trustees of the resident school district of the child's enrollment in the charter school. Regardless of whether the charter school provides such notification to the board of trustees, the charter school may count the child who is enrolled for the purposes of the calculation of basic support pursuant to NRS 387.1233. An opt-in child seeking admittance to public high school must comply with NRS 392.033.

6. A school shall not discriminate in any manner against an opt-in child or a child who was formerly an opt-in child.

7. Each school district shall allow an opt-in child to participate in all college entrance examinations offered in this State, including, without limitation, the SAT, the ACT, the Preliminary SAT and the National Merit Scholarship Qualifying Test. Each school district shall upon request, provide information to the parent of an opt-in child who resides in the school district has adequate notice of the availability of information concerning such examinations on the Internet website of the school district maintained pursuant to NRS 389.004.

Sec. 16.5. *1. The Department shall develop a standard form for the notice of intent of an opt-in child to participate in programs and activities. The board of trustees of each school district shall, in a timely manner, make only the form developed by the Department available to parents of opt-in children.*

2. If an opt-in child wishes to participate in classes, activities, programs, sports or interscholastic activities and events at a public school or through a school district, or through the Nevada Interscholastic Activities Association, the parent of the child must file a current notice of intent to participate with the resident school district.

Sec. 16.6. NRS 392.033 is hereby amended to read as follows:

392.033 1. The State Board shall adopt regulations which prescribe the courses of study required for promotion to high school, including, without limitation, English, mathematics, science and social studies. The regulations may include the credits to be earned in each course.

2. Except as otherwise provided in subsection 4, the board of trustees of a school district shall not promote a pupil to high school if the pupil does not complete the course of study or credits required for promotion. The board of trustees of the school district in which

the pupil is enrolled may provide programs of remedial study to complete the courses of study required for promotion to high school.

3. The board of trustees of each school district shall adopt a procedure for evaluating the course of study or credits completed by a pupil who transfers to a junior high or middle school from a junior high or middle school in this State or from a school outside of this State.

4. The board of trustees of each school district shall adopt a policy that allows a pupil who has not completed the courses of study or credits required for promotion to high school to be placed on academic probation and to enroll in high school. A pupil who is on academic probation pursuant to this subsection shall complete appropriate remediation in the subject areas that the pupil failed to pass. The policy must include the criteria for eligibility of a pupil to be placed on academic probation. A parent or guardian may elect not to place his or her child on academic probation but to remain in grade 8.

5. A homeschooled child ***or opt-in child*** who enrolls in a public high school shall, upon initial enrollment:

(a) Provide documentation sufficient to prove that the child has successfully completed the courses of study required for promotion to high school through an accredited program of homeschool study recognized by the board of trustees of the school district ~~[.]~~ ***or from a participating entity, as applicable;***

(b) Demonstrate proficiency in the courses of study required for promotion to high school through an examination prescribed by the board of trustees of the school district; or

(c) Provide other proof satisfactory to the board of trustees of the school district demonstrating competency in the courses of study required for promotion to high school.

6. As used in this section, "participating entity" has the meaning ascribed to it in section 5 of this act.

Sec. 16.7. NRS 392.070 is hereby amended to read as follows:

392.070 1. Attendance of a child required by the provisions of NRS 392.040 must be excused when:

(a) The child is enrolled in a private school pursuant to chapter 394 of NRS; ~~[or]~~

(b) A parent of the child chooses to provide education to the child and files a notice of intent to homeschool the child with the superintendent of schools of the school district in which the child resides in accordance with NRS 392.700 ~~[.]~~ ***; or***

(c) The child is an opt-in child and notice of such has been provided to the school district in which the child resides or the

charter school in which the child was previously enrolled, as applicable, in accordance with section 16.4 of this act.

2. The board of trustees of each school district shall provide programs of special education and related services for homeschooled children. The programs of special education and related services required by this section must be made available:

(a) Only if a child would otherwise be eligible for participation in programs of special education and related services pursuant to NRS 388.440 to 388.520, inclusive;

(b) In the same manner that the board of trustees provides, as required by 20 U.S.C. § 1412, for the participation of pupils with disabilities who are enrolled in private schools within the school district voluntarily by their parents or legal guardians; and

(c) In accordance with the same requirements set forth in 20 U.S.C. § 1412 which relate to the participation of pupils with disabilities who are enrolled in private schools within the school district voluntarily by their parents or legal guardians.

3. Except as otherwise provided in subsection 2 for programs of special education and related services, upon the request of a parent or legal guardian of a child who is enrolled in a private school or a parent or legal guardian of a homeschooled child ~~[,]~~ ***or opt-in child,*** the board of trustees of the school district in which the child resides shall authorize the child to participate in any classes and extracurricular activities, excluding sports, at a public school within the school district if:

(a) Space for the child in the class or extracurricular activity is available;

(b) The parent or legal guardian demonstrates to the satisfaction of the board of trustees that the child is qualified to participate in the class or extracurricular activity; and

(c) If the child is ~~[a]~~ :

(1) A homeschooled child, a notice of intent of a homeschooled child to participate in programs and activities is filed for the child with the school district for the current school year pursuant to NRS 392.705 ~~[.]~~ ***; or***

(2) An opt-in child, a notice of intent of an opt-in child to participate in programs and activities is filed for the child with the school district for the current school year pursuant to section 16.5 of this act.

➥ If the board of trustees of a school district authorizes a child to participate in a class or extracurricular activity, excluding sports, pursuant to this subsection, the board of trustees is not required to provide transportation for the child to attend the class or activity. A homeschooled child ***or opt-in child*** must be allowed to participate in

interscholastic activities and events governed by the Nevada Interscholastic Activities Association pursuant to NRS 386.420 to 386.470, inclusive, and interscholastic activities and events, including sports, pursuant to subsection 5.

4. The board of trustees of a school district may revoke its approval for a pupil to participate in a class or extracurricular activity at a public school pursuant to subsection 3 if the board of trustees or the public school determines that the pupil has failed to comply with applicable statutes, or applicable rules and regulations of the board of trustees. If the board of trustees revokes its approval, neither the board of trustees nor the public school is liable for any damages relating to the denial of services to the pupil.

5. In addition to those interscholastic activities and events governed by the Nevada Interscholastic Activities Association pursuant to NRS 386.420 to 386.470, inclusive, a homeschooled child ***or opt-in child*** must be allowed to participate in interscholastic activities and events, including sports, if a notice of intent of a homeschooled child ***or opt-in child*** to participate in programs and activities is filed for the child with the school district for the current school year pursuant to NRS 392.705 ~~[.]~~ ***or section 16.5 of this act, as applicable.*** A homeschooled child ***or opt-in child*** who participates in interscholastic activities and events at a public school pursuant to this subsection must participate within the school district of the child's residence through the public school which the child is otherwise zoned to attend. Any rules or regulations that apply to pupils enrolled in public schools who participate in interscholastic activities and events, including sports, apply in the same manner to homeschooled children ***and opt-in children*** who participate in interscholastic activities and events, including, without limitation, provisions governing:

(a) Eligibility and qualifications for participation;
(b) Fees for participation;
(c) Insurance;
(d) Transportation;
(e) Requirements of physical examination;
(f) Responsibilities of participants;
(g) Schedules of events;
(h) Safety and welfare of participants;
(i) Eligibility for awards, trophies and medals;
(j) Conduct of behavior and performance of participants; and
(k) Disciplinary procedures.

6. If a homeschooled child ***or opt-in child*** participates in interscholastic activities and events pursuant to subsection 5:

(a) No challenge may be brought by the Association, a school district, a public school or a private school, a parent or guardian of a pupil enrolled in a public school or a private school, a pupil enrolled in a public school or a private school, or any other entity or person claiming that an interscholastic activity or event is invalid because the homeschooled child ***or opt-in child*** is allowed to participate.

(b) Neither the school district nor a public school may prescribe any regulations, rules, policies, procedures or requirements governing the eligibility or participation of the homeschooled child ***or opt-in child*** that are more restrictive than the provisions governing the eligibility and participation of pupils enrolled in public schools.

7. The programs of special education and related services required by subsection 2 may be offered at a public school or another location that is appropriate.

8. The board of trustees of a school district:

(a) May, before providing programs of special education and related services to a homeschooled child ***or opt-in child*** pursuant to subsection 2, require proof of the identity of the child, including, without limitation, the birth certificate of the child or other documentation sufficient to establish the identity of the child.

(b) May, before authorizing a homeschooled child ***or opt-in child*** to participate in a class or extracurricular activity, excluding sports, pursuant to subsection 3, require proof of the identity of the child, including, without limitation, the birth certificate of the child or other documentation sufficient to establish the identity of the child.

(c) Shall, before allowing a homeschooled child ***or opt-in child*** to participate in interscholastic activities and events governed by the Nevada Interscholastic Activities Association pursuant to NRS 386.420 to 386.470, inclusive, and interscholastic activities and events pursuant to subsection 5, require proof of the identity of the child, including, without limitation, the birth certificate of the child or other documentation sufficient to establish the identity of the child.

9. The Department shall adopt such regulations as are necessary for the boards of trustees of school districts to provide the programs of special education and related services required by subsection 2.

10. As used in this section ~~[, "related]~~ :

(a) "Participating entity" has the meaning ascribed to it in section 5 of this act.

(b) "Related services" has the meaning ascribed to it in 20 U.S.C. § 1401.

Sec. 16.8. NRS 392.466 is hereby amended to read as follows:

392.466 1. Except as otherwise provided in this section, any pupil who commits a battery which results in the bodily injury of an employee of the school or who sells or distributes any controlled substance while on the premises of any public school, at an activity sponsored by a public school or on any school bus must, for the first occurrence, be suspended or expelled from that school, although the pupil may be placed in another kind of school, for at least a period equal to one semester for that school. For a second occurrence, the pupil must be permanently expelled from that school and:

(a) Enroll in a private school pursuant to chapter 394 of NRS , ***become an opt-in child*** or be homeschooled; or

(b) Enroll in a program of independent study provided pursuant to NRS 389.155 for pupils who have been suspended or expelled from public school or a program of distance education provided pursuant to NRS 388.820 to 388.874, inclusive, if the pupil qualifies for enrollment and is accepted for enrollment in accordance with the requirements of the applicable program.

2. Except as otherwise provided in this section, any pupil who is found in possession of a firearm or a dangerous weapon while on the premises of any public school, at an activity sponsored by a public school or on any school bus must, for the first occurrence, be expelled from the school for a period of not less than 1 year, although the pupil may be placed in another kind of school for a period not to exceed the period of the expulsion. For a second occurrence, the pupil must be permanently expelled from the school and:

(a) Enroll in a private school pursuant to chapter 394 of NRS , ***become an opt-in child*** or be homeschooled; or

(b) Enroll in a program of independent study provided pursuant to NRS 389.155 for pupils who have been suspended or expelled from public school or a program of distance education provided pursuant to NRS 388.820 to 388.874, inclusive, if the pupil qualifies for enrollment and is accepted for enrollment in accordance with the requirements of the applicable program.

➥ The superintendent of schools of a school district may, for good cause shown in a particular case in that school district, allow a modification to the expulsion requirement of this subsection if such modification is set forth in writing.

3. Except as otherwise provided in this section, if a pupil is deemed a habitual disciplinary problem pursuant to NRS 392.4655, the pupil must be suspended or expelled from the school for a period equal to at least one semester for that school. For the period of the pupil's suspension or expulsion, the pupil must:

(a) Enroll in a private school pursuant to chapter 394 of NRS , ***become an opt-in child*** or be homeschooled; or

(b) Enroll in a program of independent study provided pursuant to NRS 389.155 for pupils who have been suspended or expelled from public school or a program of distance education provided pursuant to NRS 388.820 to 388.874, inclusive, if the pupil qualifies for enrollment and is accepted for enrollment in accordance with the requirements of the applicable program.

4. This section does not prohibit a pupil from having in his or her possession a knife or firearm with the approval of the principal of the school. A principal may grant such approval only in accordance with the policies or regulations adopted by the board of trustees of the school district.

5. Any pupil in grades 1 to 6, inclusive, except a pupil who has been found to have possessed a firearm in violation of subsection 2, may be suspended from school or permanently expelled from school pursuant to this section only after the board of trustees of the school district has reviewed the circumstances and approved this action in accordance with the procedural policy adopted by the board for such issues.

6. A pupil who is participating in a program of special education pursuant to NRS 388.520, other than a pupil who is gifted and talented or who receives early intervening services, may, in accordance with the procedural policy adopted by the board of trustees of the school district for such matters, be:

(a) Suspended from school pursuant to this section for not more than 10 days. Such a suspension may be imposed pursuant to this paragraph for each occurrence of conduct proscribed by subsection 1.

(b) Suspended from school for more than 10 days or permanently expelled from school pursuant to this section only after the board of trustees of the school district has reviewed the circumstances and determined that the action is in compliance with the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400 et seq.

7. As used in this section:

(a) "Battery" has the meaning ascribed to it in paragraph (a) of subsection 1 of NRS 200.481.

(b) "Dangerous weapon" includes, without limitation, a blackjack, slungshot, billy, sand-club, sandbag, metal knuckles, dirk or dagger, a nunchaku, switchblade knife or trefoil, as defined in NRS 202.350, a butterfly knife or any other knife described in NRS 202.350, or any other object which is used, or threatened to be used,

in such a manner and under such circumstances as to pose a threat of, or cause, bodily injury to a person.

(c) "Firearm" includes, without limitation, any pistol, revolver, shotgun, explosive substance or device, and any other item included within the definition of a "firearm" in 18 U.S.C. § 921, as that section existed on July 1, 1995.

8. The provisions of this section do not prohibit a pupil who is suspended or expelled from enrolling in a charter school that is designed exclusively for the enrollment of pupils with disciplinary problems if the pupil is accepted for enrollment by the charter school pursuant to NRS 386.580. Upon request, the governing body of a charter school must be provided with access to the records of the pupil relating to the pupil's suspension or expulsion in accordance with applicable federal and state law before the governing body makes a decision concerning the enrollment of the pupil.

Sec. 17. This act becomes effective on:

1. July 1, 2015, for the purposes of adopting any regulations and performing any other preparatory administrative tasks necessary to carry out the provisions of this act; and

2. January 1, 2016, for all other purposes.

DISTRIBUTIVE SCHOOL ACCOUNT - SUMMARY FOR 2015-17 BIENNIUM

	2014 Legislatively Approved	2014 Actual	2015 Legislatively Approved	2015 Estimated	2016 Legislatively Approved	2017 Legislatively Approved
WEIGHTED ENROLLMENT	432,346.00	435,522.00	434,023.00	443,123.80	449,505	455,124
ADDITIONAL ENROLLMENT FOR HOLD HARMLESS	0	1,468.70	0	3,029.20	0	0
TOTAL ENROLLMENT *	432,346.00	436,990.70	434,023.00	446,153.00	449,505	455,124
BASIC SUPPORT	$ 5,590	$ 5,592	$ 5,676	$ 5,676	$ 5,710	$ 5,774
TOTAL REGULAR BASIC SUPPORT **	$ 2,417,007,180	$ 2,443,787,084	$ 2,463,498,518	$ 2,532,364,428	$ 2,566,646,043	$ 2,628,011,292
CATEGORICAL FUNDING:						
SPECIAL EDUCATION ***	126,862,792	126,862,792	130,329,505	130,329,505	138,591,298	168,125,519
CLASS-SIZE REDUCTION	159,936,204	159,936,204	164,661,271	164,661,271	151,066,029	155,210,241
CLASS-SIZE REDUCTION - AT-RISK KINDERGARTEN	1,768,669	1,768,669	1,806,665	1,806,665	0	0
SPECIAL UNITS/GIFTED & TALENTED	169,616	169,616	174,243	174,243	0	0
SCHOOL LUNCH PROGRAM STATE MATCH	588,732	588,732	588,732	588,732	588,732	588,732
SPECIAL TRANSPORTATION	128,541	128,541	128,541	128,541	128,541	128,541
TOTAL REQUIRED STATE SUPPORT	$ 2,706,461,734	$ 2,733,241,638	$ 2,761,187,475	$ 2,830,053,385	$ 2,857,020,643	$ 2,952,064,325
LESS						
LOCAL SCHOOL SUPPORT TAX - 2.60%	(1,095,455,672)	(1,098,543,712)	(1,155,705,575)	(1,171,027,000)	(1,239,007,000)	(1,306,988,000)
1/3 PUBLIC SCHOOLS OPERATING PROPERTY TAX	(193,681,840)	(201,492,754)	(201,117,251)	(199,742,000)	(206,203,000)	(213,380,000)
ADJUSTMENT FOR EUREKA AND LANDER REVENUE	0	11,700,910	0	3,900,000	0	0
TOTAL STATE SHARE	$ 1,417,324,222	$ 1,444,906,082	$ 1,404,364,649	$ 1,463,184,385	$ 1,411,810,643	$ 1,431,696,325
STATE SHARE ELEMENTS						
GENERAL FUND	$ 1,134,528,570	$ 1,134,528,570	$ 1,110,133,915	$ 1,110,133,915	$ 1,093,556,243	$ 1,101,624,225
MEDICAL MARIJUANA EXCISE TAX (75%)	0			0	494,000	1,057,900
DSA SHARE OF SLOT TAX	31,658,547	30,453,730	32,305,032	29,787,800	29,237,400	29,168,200
PERMANENT SCHOOL FUND	1,000,000	1,628,282	1,000,000	2,000,000	2,000,000	2,000,000
FEDERAL MINERAL LEASE REVENUE	7,874,977	7,285,801	7,874,977	6,000,000	7,000,000	7,000,000
OUT OF STATE LSST - 2.60%	110,329,328	114,029,109	116,397,425	117,940,000	124,787,000	131,634,000
IP1 (2009) ROOM TAX REVENUE TRANSFER	131,932,800	141,236,516	136,653,300	151,040,000	154,736,000	159,212,000
GENERAL FUND SUPPLEMENTAL APPROPRIATION	0	0	0	62,026,744	0	0
BALANCE FORWARD TO NEXT FISCAL YEAR	0	15,744,074	0	(15,744,074)	0	0
TOTAL SHARE STATE ELEMENTS	$ 1,417,324,222	$ 1,444,906,082	$ 1,404,364,649	$ 1,463,184,385	$ 1,411,810,643	$ 1,431,696,325

*** Special Education Units	No. of Units	$ per Unit		No. of Units	$ per Unit
	2013-2014	3,049	41,608.00	2015-2016	3,049	45,455
	2014-2015	3,049	42,745.00	2016-2017	3,049	55,141

** Totals May Not Balance Due to Rounding

*** Special Education Unit funded separately from Basic Support

Highlighting Added

EXHIBIT 2

PETR000380

FIRST JUDICIAL DISTRICT COURT

IN AND FOR CARSON CITY, NEVADA

HELLEN QUAN LOPEZ, individually and on behalf of her minor child, C.Q.; MICHELLE GORELOW, individually and on behalf of her minor children, A.G. and H.G.; ELECTRA SKRYZDLEWSKI, individually and on behalf of her minor child, L.M.; JENNIFER CARR, individually and on behalf of her minor children, W.C., A.C., and E.C.; LINDA JOHNSON, individually and on behalf of her minor child, K.J.; SARAH and BRIAN SOLOMON, individually and on behalf of their minor children D.S. and K.S.,

Plaintiffs,

v.

DAN SCHWARTZ, IN HIS OFFICIAL CAPACITY AS TREASUERE OF THE STATE OF NEVADA,

Defendant.

CASE NO. 150C002071B

Dept. No: II

DECLARATION OF STEVE CANAVERO

Office of the Attorney General
100 North Carson Street
Carson City, NV 89701-4717

I, STEVE CANAVERO, being first duly sworn, state under penalty of perjury that the following is true:

1. I am the Interim Superintendent of Public Instruction for the State of Nevada, and have been serving the State in that capacity since September 4, 2015.

2. As Interim Superintendent of Public Instruction for the State of Nevada, I am the educational leader for the system of K-12 public education in this state and am required by Nevada Revised Statutes (NRS) Section 385.175 to execute, direct, or supervise all administrative technical and procedural activities of the Department of Education (Department), including the calculation and funding of the Distributive School Account (DSA) in accordance with NRS 387.030 and other relevant sections of the Nevada Revised Statutes.

EXHIBIT 3

3. Also within my required duties as prescribed by the Nevada Revised Statutes is oversight of the Department's obligations under Senate Bill (SB) 302 establishing the Education Savings Account (ESA) program in Nevada, as well as the Department's obligations under SB 515 establishing a Basic Support Guarantee for all Nevada Public School Pupils.

4. As Interim Superintendent of Public Instruction for the State of Nevada, I have personal knowledge of the Department's annual budgets and DSA calculations. I have also read SB 302 and oversaw meetings regarding its lawful implementation.

5. In enacting SB 515, the legislature determined the Basic Support Guarantee for all pupils in Nevada. SB 515 established the Basic Support Guarantee as a "per-pupil" amount, meaning that School Districts are guaranteed a certain amount of funding for each pupil who attends a public school in that district, which varies between School Districts in accordance with the historical cost of educating a child in each District. The establishment of a per-pupil Basic Support Guarantee in 2015 is the same method that the legislature has historically used to determine funding for each of Nevada's School Districts and Charter Schools.

6. Prior to the enactment of SB 302 School Districts were funded on a per-pupil basis. Nothing in SB 302 changed the per-pupil Basic Support Guarantee; Districts will continue to be funded based on the number of pupils enrolled. Any decrease in student enrollment because one or more students left a public school to participate in the ESA program will have no different effect on School District funding than if one or more students left a public school for any other reason whatsoever, including because their family moved out-of-state or to a different school district, they left to attend a private school or homeschool without participating in the ESA program, or they simply dropped out of public school. Before ESAs, public school districts received funding based on their enrollment multiplied by the per-pupil Basic Support Guarantee. After ESAs, public school districts continue to receive funding based on their enrollment multiplied by the per-pupil Basic Support Guarantee.

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7. The per-pupil Basic Support Guarantee as established by the legislature has the advantage of protecting School Districts or Charter Schools that experience unexpected increases in enrollment by providing additional funding on a per-pupil basis. Thus the per-pupil method of calculating a basic support guarantee has no funding ceiling limiting the amount of funding that a District or Charter School may receive.

8. School Districts and Charter Schools are also protected by Nevada's Hold Harmless provision contained in NRS 387.1233 from an unexpected, significant loss in funding due to decreases in enrollment. The Hold Harmless provision entitles any School District or Charter School that experiences more than a five percent (5%) reduction in enrollment to receive funding based on its prior year's enrollment. Thus Nevada's Hold Harmless provision establishes a funding floor of ninety-five percent (95%) of the prior year's enrollment. As with Nevada's per-pupil funding system, Nevada's Hold Harmless provision is unaffected by the ESA program. Before ESAs, Nevada's Hold Harmless provision guaranteed public school districts a minimum level of funding. After ESAs, the same provision continues to guarantee public schools a minimum level of funding: ninety-five percent of the prior year's enrollment.

9. I have read the declaration of Paul Johnson attached to Plaintiff's Motion for a Preliminary Injunction, including the assumptions made and the funding hypotheticals that are contained in paragraph 5(a) and (b).

10. The assumptions contained in paragraphs 5(a) and (b) of Mr. Johnson's declaration are not correct. Neither of the speculative scenarios described in Mr. Johnson's declaration could come to pass given how the Department is actually implementing SB 302.

11. The Department's implementation of SB 302 will preserve the per-pupil Basic Support Guarantee established by the legislature in SB 515 and ensure that no School District receives less than the per-pupil Basic Support Guarantee as a result of the ESA program. The Department's current plan to implement SB 302 will treat children whose parents enter into an Education Savings Account Agreement with the State Treasurer simply as if they are not enrolled in a School District, no differently than if that student moved out of state or left to

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attend a private or home school without participating in the ESA program. Thus, funding for ESAs and funding to School Districts will be calculated and distributed independently. A child whose parents choose to enter into an ESA Agreement with the State Treasurer will not be counted as enrolled in a School District, and whichever School District the child was formerly enrolled in will see their enrollment drop just as if that student had left the School District because he or she had dropped out of school, chosen to be home schooled, enrolled in a private school, relocated to a new District or State, or for any other reason.

12. The Department currently has no plan to track the District of residence of children whose parents enter into an ESA contract with the State Treasurer and would be unable to implement either of the hypothetical scenarios that are described in Mr. Johnson declaration.

13. To the extent that children do enroll in public school for the first 100 days of a school year and then leave (as Mr. Johnson speculates in paragraph 6 of his declaration), those students will increase the funding 'floor' established by Nevada's Hold Harmless provision, providing increased funding to the School District not only for the time they are enrolled in public school, but also raising the ninety-five percent Hold Harmless floor for the following year.

14. In addition to funding from the DSA, School Districts and Charter Schools also receive funding from other sources, including local funds described in NRS 387.195, 387.328, and NRS 482.181. These funds are not reduced by students whose parents enter into an ESA contract with the State Treasurer. So, every student who leaves a School District or Charter School because their parents enter into an ESA contract increases the per-pupil local funding amount for pupils remaining the in School District or Charter School.

15. The Department's implementation of SB 302 will preserve the per-pupil Basic Support Guarantee for each child who attends a Nevada Public School. To the extent that enrollment in some School Districts or Charter Schools decreases as a result of additional education options contained in SB 302, the School Districts and Charter Schools will be protected from excessive decreases in absolute DSA funding the same way they were before

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the ESA program—by Nevada's Hold Harmless provision.

I declare under penalty of Perjury under the laws of Nevada that the foregoing is true and correct.

DATED this 5 day of November, 2015

STEVE CANVERO PhD.,
Interim Superintendent of Public Instruction.

Office of the Attorney General
100 North Carson Street
Carson City, NV 89701-4717

BDR 34-567
SB 302

LOCAL GOVERNMENT
FISCAL NOTE

AGENCY'S ESTIMATES

Date Prepared: March 30, 2015

Agency Submitting: Local Government

Items of Revenue or Expense, or Both	Fiscal Year 2014-15	Fiscal Year 2015-16	Fiscal Year 2016-17	Effect on Future Biennia
Total	0	0	0	0

Explanation (Use Additional Sheets of Attachments, if required)

See attached.

Name Michael Nakamoto

Title Deputy Fiscal Analyst

The following responses from local governments were compiled by the Fiscal Analysis Division. The Fiscal Analysis Division can neither verify nor comment on the figures provided by the individual local governments.

FN 8283

EXHIBIT 4

PETR000386

Local Government Responses
S.B. 302 / BDR 34 - 567

School District: **Carson City School District**
Approved by: Andrew J Feuling, Director of Fiscal Services
Comment: Every student lost to a private school would be a loss of per pupil revenue ($6,630), and if handled like charter schools, a loss of "outside revenues"per pupil ($1,007)as well. We are not currently receiving monies for the students attending private schools, so this would directly reduce general fund monies we receive, solely based on the kids that do attend Carson City School District. We believe there are approximately 300 resident children that attend private schools. This would reduce our general fund revenues by $2,000,000 if it is only the per pupil amount, by $2,300,000 if the "outside revenues" were considered as well. We would have to reduce staffing dramatically, with no change in our current enrollment. With current Class-Size Reduction laws, that would mean class sizes of 40 kids in the middle and high schools.

Impact	FY 2014-15	FY 2015-16	FY 2016-17	Future Biennia
Has Impact	$0	($2,000,000)	($2,000,000)	($2,000,000)

School District: **Clark County School District**
Approved by: Nikki Thorn, Deputy CFO
Comment: CCSD expects effect in the amount of $5,520 per pupil plus associated local funds per student that chooses a private school.

Impact	FY 2014-15	FY 2015-16	FY 2016-17	Future Biennia
Has Impact	$0	$0	$0	$0

School District: **Lincoln County School District**
Approved by: Steve Hansen, Superintendent
Comment: All licensed private schools in Lincoln County are on-line. But we do have about 10 students who attend those on-line schools. If they are already enrolled in those on-line schools then Lincoln CSD currently does not get those funds. If grant money was awarded to those individuals but they are not enrolled in Lincoln CSD, then the money should not be deducted from the school district. Only if they are enrolled students on count day of the school district and funding was received to the school district, then they are approved for a grant to choose another school, should the money be deducted from the total apportionment to the school district.
Under section 16 of this bill, the amount of the grant must be deducted from the total apportionment to the resident school district of the child on whose behalf the grant is made doesn't make sense if the student is not enrolled in the local school district because the local SD didn't get the money in the first place.

Impact	FY 2014-15	FY 2015-16	FY 2016-17	Future Biennia
Has Impact	$0	$100,000	$100,000	$100,000

School District: **Lyon County School District**
Approved by: Philip Cowee, Director of Finance
Comment: The impacts of BDR 34-567 will have significant impact depending on the number of students that will enroll in a private school. This voucher program will continue to take resources from the DSA fund that is already not sufficient to fund the current operations of the district.

Impact	FY 2014-15	FY 2015-16	FY 2016-17	Future Biennia
Has Impact	$0	$0	$0	$0

School District: **Nye County School District**
Approved by: Kerry Paniagua, Executive Secretary
Comment: Any loss in DSA due to lower student numbers will result in the loss of teachers & staff in addition to an increased staff to student ratio. Impact will depend on the number of student losses. Unable to determine impact.

Impact	FY 2014-15	FY 2015-16	FY 2016-17	Future Biennia
Cannot Be Determined	$0	$0	$0	$0

School District: **Pershing County School District**
Approved by: Dan Fox, Superintendent
Comment: This has the potential of reducing the district's overall revenue, but it cannot be determined as to how much since the number of students who might participate in it is unknown.

Impact	FY 2014-15	FY 2015-16	FY 2016-17	Future Biennia
Cannot Be Determined	$0	$0	$0	$0

School District: **Storey County School District**
Approved by: Robert Slaby , Superintendent
Comment: Reductions in DSA.

Impact	FY 2014-15	FY 2015-16	FY 2016-17	Future Biennia
Has Impact	$0	$0	$0	$0

School District: **Washoe County School District**
Approved by: Lindsay E. Anderson, Director of Government Affairs
Comment: Washoe County School District cannot determine the cost to our district as we cannot anticipate how many children would take advantage of this program.

Impact	FY 2014-15	FY 2015-16	FY 2016-17	Future Biennia
Cannot Be Determined	$0	$0	$0	$0

School District: **White Pine County School District**
Approved by: Paul Johnson, CFO
Comment: There are no private schools at this time in White Pine County so there would be no impact at this time. However, the impact would be similar to the opening or a charter school.

Impact	FY 2014-15	FY 2015-16	FY 2016-17	Future Biennia
No Impact	$0	$0	$0	$0

The following school district did not provide a response: Churchill County School District, Douglas County School District, Esmeralda County School District, Elko County School District, Eureka County School District, Humboldt County School District, Lander County School District, and Mineral County School District.