“EXHIBIT A”

Dan Schwartz v. Hellen Quan Lopez et al.
NSC Case No. 69611

Exhibit to:
Notice re: Consolidation of the ESA Cases for Oral Argument and Expedition of Briefing in *Duncan*

“EXHIBIT A”

Lawrence VanDyke

From: Lawrence VanDyke
Sent: Tuesday, June 14, 2016 8:38 AM
To: 'Amy Rose'
Cc: Ketan D. Bhirud; Jordan T. Smith; ACLU-Vouchers@cov.com; Heather Weaver; Richard Katskee
Subject: RE: Notice of Appeal

Thank you, Amy. Understood. As already explained below, we will not represent to the Court that you have informed us whether or not you plan to file an appeal. We will only apprise the Court of the State's expectation—i.e., that we believe you will appeal, but that we don't know when.

Regarding the rest of your email, all of our discussions were based on the shared assumption that you would file a Notice of Appeal on either Friday or Monday. Given that you have not done so, and cannot definitively say when you will, we need to return to our original plan of filing our motion in the Lopez case right away to avoid prejudicing the Court in deciding our motion. We cannot delay any longer. Once you file your appeal, we can attempt to again coordinate on submitting an agreed-upon expedited briefing schedule to the Court, or we can file our own proposals if we cannot timely reach agreement.

Thank you again!

Lawrence VanDyke
Nevada Solicitor General

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T: (775) 684-1233 • LVanDyke@ag.nv.gov

- Lawrence

From: Amy Rose [mailto:rose@aclunv.org]
Sent: Monday, June 13, 2016 3:45 PM
To: Lawrence VanDyke
Cc: Ketan D. Bhirud; Jordan T. Smith; ACLU-Vouchers@cov.com; Heather Weaver; Richard Katskee
Subject: Re: Notice of Appeal
Importance: High

Hi Lawrence,

Please understand that I did not, and do not, give you authority to represent to the Court that the *Duncan* plaintiffs will or will not file an appeal**.** All of my discussions with you have been about the potential of filing, and I have never represented that we will in fact file or given you a hard date that we will file, if we chose to do so. In fact, you and I both discussed that everything we said would have to be taken back to our respective teams for final decision.

When we last spoke on Friday, we discussed possible briefing and oral argument schedules should the court choose to consolidate the *Duncan* case with the *Lopez* case, if the *Duncan* plaintiffs filed an appeal. We also discussed that you would draft a joint request for a proposed briefing schedule and would not file it before we had a chance to review it. These discussions were made in light of the Court's indication that if the *Duncan* case filed an appeal, it would like to hear the case together with the *Lopez* appeal at the already scheduled July 8th oral argument. You and I both determined that this

presented a potential for an incredibly short briefing period - something adverse to both of us - and thus engaged in the conversation regarding the joint request.

You and I also discussed the fact that you had already represented to the Court in your motion for expedited hearing that you needed a decision by July 8th to implement the voucher program by August 1st. As the *Lopez* oral argument is only scheduled to be heard July 8th, and this is when you represented you needed a decision by, you said you would inform the court in the joint request, something to the effect of, moving the hearing date to the last week of July or shortly thereafter, will have no more effect on the implementation of the program than a July 8th hearing will have.

Please feel free to call me if you would like to discuss.

Thanks,

Amy M. Rose
Legal Director

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From: Lawrence VanDyke <LVanDyke@ag.nv.gov>
Date: Monday, June 13, 2016 at 2:53 PM
To: Amy Rose <rose@aclunv.org>
Cc: Ketan Bhirud <KBhirud@ag.nv.gov>, "Jordan T. Smith" <JSmith@ag.nv.gov>
Subject: RE: Notice of Appeal

Amy – As I mentioned last week, while we would like to coordinate on this with you all if possible, we are very concerned with any further delay in getting this teed up to the Supreme Court. We have already delayed filing our motion by more than a week to try to coordinate with you, and you keep pushing back your anticipated date for filing your Notice of Appeal.

We can't delay getting this before the Court any longer, so whether or not you file your Notice of Appeal today, we will be filing our motion first thing tomorrow morning asking the Court to move the Lopez argument date from July 8 to the last week of July, and notifying the Court that we have conferred with counsel for the Duncan plaintiffs and, while we expect that you all will file an appeal, you have not yet filed it and have not been able to commit to a date by which you will do so. That way the Court has the opportunity to move the oral argument date to facilitate the consolidated argument that it has asked for, and we will just have to file another motion in the Duncan case to set an expedited briefing schedule once you all file your Notice of Appeal.

Thank you,

Lawrence

From: Amy Rose [mailto:rose@aclunv.org]
Sent: Monday, June 13, 2016 1:14 PM
To: Lawrence VanDyke
Cc: Ketan D. Bhirud; Jordan T. Smith
Subject: Re: Notice of Appeal

Thanks Lawrence. Still working some things out on our end. Can you send the draft as soon as you're done? I know our whole legal team will want to review it and a number of people are on east coast time.

Amy M. Rose
Legal Director

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From: Lawrence VanDyke <LVanDyke@ag.nv.gov>
Date: Monday, June 13, 2016 at 11:44 AM
To: Amy Rose <rose@aclunv.org>
Cc: Ketan Bhirud <KBhirud@ag.nv.gov>, "Jordan T. Smith" <JSmith@ag.nv.gov>
Subject: Notice of Appeal

Amy – just checking in to confirm that you all are still planning to file your Notice of Appeal today. We are putting the final touches on our draft unopposed motion to consolidate oral argument and set an expedited briefing schedule, which we plan to file today after you file our NoA. I plan to send a draft of that document to you and the Lopez plaintiffs later today before we file.

Thank you!

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IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Appellant,

v.

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., and SARAH SOLOMON AND BRIAN SOLOMON, individually and on behalf of their minor children, D.S. and K.S.,

Respondents.

Supreme Court No. 69611

District Court No. 15-OC-00207-1B

Electronically Filed
Jun 22 2016 08:41 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

NOTICE RE: CONSOLIDATION OF THE ESA CASES FOR ORAL ARGUMENT AND EXPEDITION OF BRIEFING IN *DUNCAN*

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On June 17, 2016, the Plaintiffs who challenged the constitutionality of Nevada's Educational Savings Account (ESA) program in *Duncan v. Nevada* filed their notice of appeal (attached). The State of Nevada, by and through the Attorney General of Nevada, respectfully notifies the Court (1) that the State understands the Court's preference for consolidated arguments on July 29, 2016 in the two ESA matters, *Duncan* and *Lopez;* (2) that the State weeks ago proposed a briefing schedule to *Duncan* Plaintiffs in order to honor this preference; and (3) that the *Duncan* Plaintiffs, today, have rejected that schedule without ever having provided a counter-proposal that would allow consolidated argument on the date set by this Court on July 29. Nevertheless, the proposed schedule, below, gives the Court the opportunity to set a schedule that would accomplish its preference for expedited, consolidated argument, if it so pleases.[1]

BACKGROUND

The first ESA case, *Schwartz v. Lopez*, involves Nevada's defense of its new ESA program against constitutional challenges brought under Article XI, Sections 2 and 6. The *Lopez* appeal is fully briefed and ready for oral argument. The second ESA case, *Duncan v. Nevada*, involves challenges brought under Sections 2 and 10 of Article XI. On May 18, 2016, the district court in that case granted Nevada's motion to dismiss on all claims.

[1] This notice is filed in *Lopez* because the *Duncan* matter is not yet docketed and the State wishes to ensure that the Court has ample time to consider this notice. The State will serve this document on the *Duncan* Plaintiffs.

On May 20, 2016, the State filed in this Court a notice regarding the ruling in *Duncan* and moved this Court to schedule oral argument in *Lopez* for June 6 or 7, 2016. On May 24, 2016, this Court issued a notice setting oral argument in *Lopez* for July 8, 2016. The next day, May 25, 2016, this Court issued an order stating, with respect to an appeal in *Duncan*, that "this court would prefer to hear oral argument in that case on July 8, 2016, as well."[2] Given the Court's preference to hear argument in both cases at the same time and also to accommodate the schedule of counsel, the State filed on June 14, 2016 an Unopposed Motion to Reset Oral Argument in *Lopez* for the last week of July 2016. The Court granted the State's motion the next day, scheduling oral argument in *Lopez* on July 29, 2016.

NOTICE

The district court ruled in *Duncan* on May 18, 2016. Since then the State has tried persistently to arrange a fair briefing schedule with the *Duncan* Plaintiffs. (*See* Exhibit A.) The State's interest was to honor this Court's preference to hear the two ESA cases together, while ensuring the parties ample time to brief these crucial issues. Yet Plaintiffs not only refused to agree to a schedule or propose one of their own to enable consolidated argument, they refused even to inform Nevada about *whether* they planned to appeal. Nevertheless, the State continued to reach out to Plaintiffs about a briefing schedule, and finally, only today, on June 21, did the Plaintiffs inform the State that they are unwilling to agree to a schedule that

[2] May 25, 2016 Order at 2 n.1.

would allow completed briefing before July 29. The schedule below, in substantial form first proposed to Plaintiffs weeks ago (and now modified to offer them more time), is the only schedule that will allow this to happen:

July 5 – Opening brief for Appellants Ruby Duncan et al. due

July 8 – Amici briefs in support of Appellants due

July 18 – Response brief for Respondents State of Nevada et al. due

July 20 – Amici briefs in support of Respondents due

July 25 – Appellants' reply brief due

If the Court chooses to enter this or a similar schedule, the State would respectfully request that the Court bar extension of these deadlines, including telephonic extensions under NRAP 26 or 31, and require email courtesy copies of all pleadings to opposing counsel on the day they are submitted to the Court for filing.

The timeframe that this would require is similar to that already followed in the *Lopez* matter. In *Lopez*, the Court, by order dated May 25, set argument for July 8. Between that order and that argument date was 44 days. Between today, June 21, and the date now set for argument, July 29, is 38 days. If briefing begins immediately, moreover, the total briefing time set for the *Duncan* matter will be only 14 days shorter than the briefing originally set for the *Lopez* matter. The *Duncan* issues have been briefed, in fact many times, in the district court. And the *Duncan* Plaintiffs had over a month before finally filing their notice of appeal.

The State appreciates this Court's statement that it "will expedite a decision

in this matter to the extent this court's docket permits."[3] The State remains committed to resolving these challenges expeditiously.

Dated: June 21, 2016

ADAM PAUL LAXALT

By: /s/ Lawrence VanDyke

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Counsel for Appellant

[3] May 25, 2016 Order at 2.

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the Nevada Supreme Court by using the appellate CM/ECF system on June 21, 2016.

The following participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

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I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, for delivery within three calendar days to the following non-CM/ECF participants:

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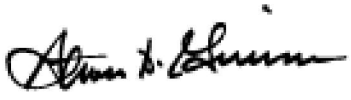
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/s/ Janice M. Riherd

JANICE M. RIHERD
An employee of the State of Nevada

Electronically Filed
06/17/2016 11:09:42 AM



CLERK OF THE COURT

NOAS

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DISTRICT COURT
CLARK COUNTY, NEVADA

Ruby Duncan, an individual; Rabbi Mel Hecht, an individual; Howard Watts III, an individual; Leora Olivas, an individual; Adam Berger, an individual,

Plaintiffs,

v.

State of Nevada *ex rel*, the Office of the State Treasurer of Nevada and the Nevada Department of Education; Dan Schwartz, Nevada State Treasurer, in his official capacity; Steve Canavero, Interim Superintendent of Public Instruction, in his official capacity,

Defendants,

and

Case No.: A-15-723703-C
Dept. No.: 20

NOTICE OF APPEAL

Aimee Hairr; Aurora Espinoza; Elizabeth Robbins; Lara Allen; Jeffrey Smith; and Trina Smith,

Parent-Intervenors.

NOTICE OF APPEAL

Notice is hereby given that Ruby Duncan, Rabbi Mel Hecht, Howard Watts III, Leora Olivas, and Adam Berger, Plaintiffs above named, hereby appeal to the Supreme Court of Nevada from the Order granting Defendants' Motion to Dismiss for Lack of Jurisdiction and Failure to State a Claim, entered in this action on the 18th day of May, 2016.

Respectfully Submitted this June 17th, 2016

/s/ *Amy M. Rose*
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**Admitted via Pro Hac Vice*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the17th of June, 2016, I served a true and correct copy of the foregoing Notice of Appeal upon the following parties hereto, by the WIZNET electronic service provided by the court and via depositing it in the U.S. Mail:

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/s/ Tamika Shauntee
An employee of the ACLU of Nevada