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6 Attorneys for Plaintiffs

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

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

Plaintiffs,

vs.

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

REC'D & FILED  
2020 OCT -8 PM 1:10  
AUBREY ROWLATT  
CLERK  
BY **C. FRANZ**  
DEPUTY

Case No: 19 OC 00127 1B

Dept. No: I

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

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

7 Defendants.

8 and

9 THE LEGISLATURE OF THE  
10 STATE OF NEVADA,

11 Defendant-Intervenor.

12 \_\_\_\_\_ /  
13 **NOTICE OF ENTRY OF ORDER AFTER HEARING ON  
14 SEPTEMBER 21, 2020, AND FINAL JUDGMENT**

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

18 **AFFIRMATION**

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

21 DATED this 8<sup>th</sup> day of October, 2020.

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26 By: 

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**CERTIFICATE OF SERVICE**

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

- Placing a true copy thereof in a sealed postage prepaid envelope in the United States Mail in Carson City, Nevada [NRCP 5(b)(2)(B)]
- Hand-delivery - via Reno/Carson Messenger Service [NRCP 5(b)(2)(A)]
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- E-filing pursuant to Section IV of District of Nevada Electronic Filing Procedures [NRCP 5(b)(2)(D)]

fully addressed as follows:

Kevin C. Powers, Esq.  
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Aaron D. Ford, Esq.  
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Office of the Attorney General  
[CNewby@ag.nv.gov](mailto:CNewby@ag.nv.gov)

DATED this 8<sup>th</sup> day of October, 2020.

  
SHEILA CONTRERAS

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INDEX OF EXHIBITS

1  
2  
3  
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5  
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<u>Exhibit No.</u>	<u>Description</u>	<u>Number of Pages</u>
"1"	Order After Hearing on September 21, 2020 and Final Judgment	13

4852-0549-6270, v. 1

ALLISON MacKENZIE, LTD.  
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6 Attorneys for Plaintiffs  
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26 Plaintiffs,

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28 STATE OF NEVADA *ex rel.* THE  
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Case No: 19 OC 00127 1B  
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12 VEHICLES; and DOES I-X, inclusive,

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and

THE LEGISLATURE OF THE  
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SEPTEMBER 21, 2020, AND FINAL JUDGMENT**

NOTICE IS HEREBY given that on the 7<sup>th</sup> day of October, 2020, the Court duly entered the  
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above-entitled matter. A copy of said Order is attached hereto as **Exhibit "1"**.

**AFFIRMATION**

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

DATED this 8<sup>th</sup> day of October, 2020.

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By: \_\_\_\_\_

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Attorneys for Plaintiffs

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Craig A. Newby, Esq.  
Office of the Attorney General  
[CNewby@ag.nv.gov](mailto:CNewby@ag.nv.gov)

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1  
2  
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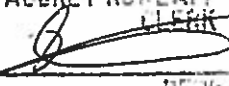
4852-0549-6270, v. 1



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REC'D & FILED

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AUBREY ROWLATT  
BY  CLERK  
DEPUTY

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

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MARSHALL, in her official capacity as  
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Case No: 19 OC 00127 1B  
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**ORDER AFTER HEARING  
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1 SISOLAK, in his official capacity as  
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3 DEPARTMENT OF TAXATION;  
4 NEVADA DEPARTMENT OF MOTOR  
5 VEHICLES; and DOES I-X, inclusive,

6 Defendants.

7 and

8 THE LEGISLATURE OF THE  
9 STATE OF NEVADA,

10 Defendant-Intervenor.

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

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

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

18 **Relevant Procedural History**

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

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

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

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

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

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

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

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

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

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

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

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

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

28

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

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

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

#### 16 **Factual Background**

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

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

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

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

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

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

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

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

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

### 23 Conclusions of Law

#### 24 1. SB 542 and SB 551 are unconstitutional.

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

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

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

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

12 All the language of the Constitutional provision must be given effect and the Court finds the  
13 language to be clear and unambiguous. To determine a constitutional provision’s meaning, a court turns  
14 to the language and gives that language its plain effect. *Miller v. Burk*, 124 Nev. 579, 590-91, 188 P.3d  
15 1112, 1119-20 (2008). A court must give words their plain meaning unless doing so would violate the  
16 spirit of the provision. *McKay v. Bd. of Supervisors*, 102 Nev. 644, 648, 730 P.2d 438, 442 (1986).

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

21 With respect to SB 542, regarding the DMV technology fee, the bill extended the imposition  
22 of this fee from June 30, 2020 to June 30, 2022. The Court finds the purpose of SB 542 was to generate  
23 public revenue for two more years at an estimated \$6.9 million per year. It is clear to the Court that  
24 SB 542 was intended to generate public revenue to the State in the form of fees to be collected by the  
25 DMV. But for the passage of SB 542, those funds would not have been produced; they just would not  
26 exist. The public revenue would not otherwise exist without the passage of SB 542 and, therefore, SB  
27 542 generates public revenue in any form and should have been subject to a two-thirds majority vote.  
28 SB 542, therefore, was passed unconstitutionally and is void and stricken from the law.

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



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

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

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

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

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

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

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

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

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

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

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

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

6 **Order and Final Judgment**

7 Good cause appearing therefor,

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

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

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

27  
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CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of the First Judicial District Court, and that on this 8<sup>th</sup> day of October, 2020, I deposited for mailing, postage paid, at Carson City, Nevada, and emailed a true and correct copy of the foregoing Order addressed as follows:

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