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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. 15-0C-00207-1B

Dept. No: II

OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION AND COUNTERMOTION TO DISMISS

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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. Salerno*, 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.

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

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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." Pl 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]

[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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CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General, State of Nevada, and on November 5, 2015, I deposited for mailing, first class, postage prepaid, a true and correct copy of the foregoing document, addressed as follows:

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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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4	Senate Bill 302 Fiscal Note	Four (4)

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

EXHIBIT 1

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 ~~[.]~~ ***, 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

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

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.