

**MOT**

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\* Motion for admission *pro hac vice* forthcoming

*Attorneys for Defendants State of Nevada, et al.*

DISTRICT COURT  
CLARK COUNTY, NEVADA

RUBY DUNCAN, an individual; RABBI MEL  
HECHT, an individual; HOWARD WATTS III,  
an individual; LEORA OLIVAS, an individual;  
ADAM BERGER, an individual,

Plaintiffs,

-vs-

STATE OF NEVADA ex rel, the Office of the  
State Treasurer of Nevada and the Nevada  
Department of Education; DAN SCHWARTZ,  
Nevada State Treasurer, in his official capacity;  
STEVE CANAVERO, Interim Superintendent  
of Public Instruction, in his official capacity,

Defendants.

CASE NO. A-15-723703-C

DEPT. NO. XX

**MOTION FOR EXPEDITED  
ARGUMENT AND DECISION**

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2 **NOTICE OF MOTION**

3 **TO: ALL PARTIES AND THEIR COUNSEL OF RECORD**

4 PLEASE TAKE NOTICE that the foregoing motion will be in chambers on the \_\_\_\_ day  
5 of \_\_\_\_\_, 2015.

6 **MOTION FOR EXPEDITED ARGUMENT AND DECISION**

7 Defendants (also referred to as “Nevada”) hereby move this Court for expedited  
8 argument and decision on their Motion to Dismiss this lawsuit. Nevada respectfully requests that  
9 this Court schedule a hearing on its Motion to Dismiss for November 25, 2015. Nevada has  
10 checked with Master Calendar and been advised that this date is available. The Nevada  
11 Government, hundreds of thousands of Nevada parents and schoolchildren, the public and  
12 private schools in Nevada—indeed, all Nevadans have a vital interest in a prompt judicial  
13 determination of the constitutionality of Nevada’s new education savings account (“ESA”)  
14 program. A proposed Order Granting Motion for Expedited Argument and Decision is attached  
15 hereto as **Exhibit A.**

16 1. This case involves a challenge to the constitutionality of the ESA program. The  
17 ESA program was enacted by the Legislature as Senate Bill 302 and approved by Governor  
18 Sandoval on June 2, 2015. On August 27, 2015, Plaintiffs filed their complaint alleging that the  
19 ESA program violates Article 11, §§ 2 and 10 of the Nevada Constitution. Plaintiffs seek  
20 declaratory and injunctive relief to prevent the State from depositing funds into education  
21 savings accounts.

22 2. Nevada filed its Motion to Dismiss on October 16, 2015. By rule, Plaintiffs’  
23 opposition is due within 10 days of service of Nevada’s motion. *See* Eighth Jud. Dist. Ct. R.  
24 2.20(e). Nevada’s reply brief is due not later than five days before the hearing on its motion.  
25 *See id.* 2.20(h). Nevada does not request any truncation of these time periods.

26 3. Nevada Rule of Civil Procedure 16 and other law authorize courts to “[e]xpedit[e]  
27 the disposition of [an] action.” N.R.C.P. 16(a)(1); *see also Las Vegas Taxpayer Accountability*  
28 *Comm. v. City Council of Las Vegas*, 125 Nev. 165, 171 (2009) (noting that “expedited  
29 proceedings are available at the district court level”); Eighth Jud. Dist. Ct. Rule 2.26.

1           4.       Expedited argument and decision is warranted in this case. The Legislature  
2 enacted the ESA program as part of a sweeping overhaul of education in Nevada. It is in the  
3 public interest to have the Nevada courts settle the constitutionality of the ESA program as soon  
4 as practical.

5           5.       SB 302 took effect on July 1, 2015, for the limited purpose of allowing the State  
6 to “adopt[ ] any regulations and perform[ ] any other preparatory administrative tasks necessary  
7 to carry out” the ESA program. SB 302, § 17. SB 302 takes effect “for all other purposes” on  
8 January 1, 2016. *Id.* Thus, the ESA program is scheduled to take full effect in less than three  
9 months.

10          6.       Full implementation of SB 302 will require the time, effort, and resources of, and  
11 coordination between, the Nevada Government and Nevada parents. Under the program, parents  
12 must complete ESA applications, the State Treasurer must review and process applications,  
13 parents and the State Treasurer must enter into agreements, and the State must fund the education  
14 savings accounts. *See* SB 302, §§ 7.1., 7.2., 7.8, 8.1. This process has already started in earnest.

15          7.       Nevada parents have a crucial interest in the urgent resolution of this case. This  
16 litigation’s outcome will determine the decisions of hundreds of thousands of them obligated to  
17 make the best educational choices for their children. Nevada has approximately half a million  
18 school-age residents, more than 450,000 of whom are enrolled in public schools.<sup>1</sup> The state  
19 Treasurer has already had more than 3,500 students apply for ESAs.<sup>2</sup> Right now, parents are  
20 making educational decisions for their children based on the reasonable expectation that ESAs  
21 will be available in early 2016.

22          8.       The ESA program is open to all school-age children in Nevada. The only  
23 requirement for participation in the program is that a student must have been enrolled in a  
24 Nevada public school during the period immediately preceding the opening of an ESA for at  
25 least 100 consecutive school days. *See* SB 302, § 7.1. Families withdrawing children from  
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28 <sup>1</sup> *See* U.S. Census Bureau, State & County QuickFacts: Nevada,  
29 <http://quickfacts.census.gov/qfd/states/32000.html>; Nevada Legislative Counsel Bureau, *Nevada  
Education Data Book* 16 (2015).

<sup>2</sup> <https://twitter.com/NVTreasury/status/654425704684085248> (*last accessed* Oct. 18, 2015).

1 public school—or planning to withdraw them—in reliance on SB 302 could be irreparably  
2 injured, financially and educationally, by prolonged litigation over SB 302.

3 9. The need for a quick resolution of this case is broadly acknowledged, including  
4 by Governor Brian Sandoval. “It is clear that parents want the freedom to choose the best school  
5 to meet the needs of their students,” he said. “The uncertainty and legal gridlock created by this  
6 lawsuit will significantly impact student success.” He added that an “expedited hearing on this  
7 matter ... will allow students, parents, educators, and the state to move forward and properly  
8 direct our focus toward collectively creating a system that provides children with the resources  
9 and learning environment they need to thrive and succeed.”<sup>3</sup>

10 Accordingly, Nevada respectfully requests that this Court expedite the argument and  
11 decision on Nevada’s Motion to Dismiss and schedule a hearing for November 25, 2015 and  
12 render a decision as soon thereafter as is practicable consistent with the Court’s workload and  
13 availability.

14 Respectfully submitted,

15 Adam Paul Laxalt  
16 *Attorney General*

17 By: /s/ Lawrence VanDyke

18 Lawrence VanDyke  
19 *Solicitor General*

20 Joseph Tartakovsky  
21 *Deputy Solicitor General*

22 Ketan Bhirud  
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30 <sup>3</sup> See Press Release, Office of the Governor, Governor Brian Sandoval Requests Nevada  
31 Attorney General to Seek Expedited Hearing in Education Savings Accounts Case (Sept. 4,  
32 2015), [http://gov.nv.gov/News-and-Media/Press/2015/Sandoval-Requests-Nevada-Attorney-  
33 General-to-Seek-Expedited-Hearing-in-Education-Savings-Accounts-Case/](http://gov.nv.gov/News-and-Media/Press/2015/Sandoval-Requests-Nevada-Attorney-General-to-Seek-Expedited-Hearing-in-Education-Savings-Accounts-Case/) (*last accessed* Oct.  
34 18, 2015).

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8 \*Motion for admission *pro hac vice*  
9 forthcoming

10 *Attorneys for Defendants*

11 **CERTIFICATE OF SERVICE**

12 Pursuant to Nevada Rule of Civil Procedure 5(b) and L.R. 8.05, I certify that on October  
13 19, 2015, a true and correct copy of the forgoing document was electronically served via the  
14 court's electronic filing system to the following attorneys associated with this case:

15 **ACLU of Nevada**

16 Amy Rose rose@aclunv.org  
17 Shawn Meerkamper meerkamper@aclunv.org

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27 /s/ Lawrence VanDyke

28 Lawrence VanDyke  
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**EXHIBIT A**

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**ORDG**

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STATE OF NEVADA ex rel, the Office of the  
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STEVE CANAVERO, Interim Superintendent  
of Public Instruction, in his official capacity,

Defendants.

CASE NO. A-15-723703-C

DEPT. NO. XX

**[PROPOSED] ORDER GRANTING  
MOTION FOR EXPEDITED  
ARGUMENT AND DECISION**

The Court has reviewed the points and authorities on file regarding Defendants' Motion  
for Expedited Argument and Decision.

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1 GOOD CAUSE APPEARING, the Court ORDERS that Defendant's Motion to Dismiss  
2 for Lack of Jurisdiction and Failure to State a Claim shall be heard on November 25, 2015, and  
3 the Court will render a decision as soon thereafter as is practicable consistent with the Court's  
4 workload and availability.

5 DATED this \_\_\_\_ day of \_\_\_\_\_ 2015.

6  
7 \_\_\_\_\_  
8 JUDGE ERIC JOHNSON

9 Respectfully submitted,

10 Adam Paul Laxalt  
*Attorney General*

11 By: /s/ Lawrence VanDyke  
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