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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,

vs.

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

Defendant.

Case No. 150C002071B

Dept. No.: II

DEFENDANT'S MOTION TO ALTER OR AMEND JUDGMENT; MOTION FOR RECONSIDERATION; MOTION FOR A STAY; NRCP 59(e), 60; FJDCR 15(10)

Treasurer Dan Schwartz respectfully moves this Court to alter and amend its November 18, 2016, order, or, alternatively, to reconsider that order, on grounds that it contradicts the Nevada Supreme Court's decision in *Schwartz v. Lopez,* which gave specific direction:

> [W]e remand the case to the district court to enter a final declaratory judgment and permanent injunction enjoining enforcement of *Section 16 of SB 302* consistent with this opinion.[1]

This Court accepted Plaintiffs' proposed language, which was as follows:

> Senate Bill 302 violates Article 4, Section 19 and Article 11 Sections 2 and 6 of the Nevada Constitution and is permanently enjoined.

The differences, as shown below, are material and are now being improperly used by Plaintiffs to threaten the Treasurer with a contempt motion and to jeopardize future funding efforts by the Legislature of an educational choice program.

Facts and Procedural History

On September 29, 2016, the Nevada Supreme Court decided *Lopez*. It concluded that (1) "the ESA program is not contrary to the Legislature's duty under Article 11, Section 2 to provide for a uniform system of common schools;"[2] (2) "funds placed in education savings accounts under SB 302 belong to the parents and are not 'public funds' subject to Article 11, Section 10;"[3] (3) but that "SB 515 did not appropriate any funds for the education savings accounts."[4] In short, the Nevada Supreme Court found that Nevada's legislature created a lawful ESA program, but never properly funded it. As a result, the Nevada Supreme Court simply enjoined *the use of any money appropriated in SB 515* to fund ESAs. Importantly, the Nevada Supreme Court provided a road map for funding ESAs and repeatedly stressed that *only* Section 16 of SB 302 was being enjoined and that even this discrete subsection was only being enjoined *until* the ESA program received an appropriation consistent with the Court's decision.

On November 10, 2016, Plaintiffs and Defendant submitted to this Court competing proposed orders for judgment.[5] On November 18, this Court adopted Plaintiffs' version.[6] On

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[1] *Schwartz v. Lopez*, 132 Nev. Adv. Op. 73, 382 P.3d 886, 903 (2016) (emphasis added).
[2] *Id.* at 891.
[3] *Id.*
[4] *Id.* at 902.
[5] *See* Declaration of Joseph Tartakovsky, filed concurrently, Attachments A and B.
[6] *See* Attachment C.

November 21, Plaintiffs served this order on Defendant.[7] On December 5, 2016, Plaintiffs sent a letter threatening to move for contempt based upon their claim that Treasurer Schwartz violated the order.[8] The Treasurer has not drawn any funds under Section 16 and does not intend to do so.[9]

Argument

A court may alter or amend a judgment if necessary to correct manifest errors of law or fact on which the judgment rests.[10] A district court may also reconsider an order if the court determines that the order is clearly erroneous.[11]

This Court's order, as submitted and interpreted by Plaintiffs, is clearly erroneous. The Nevada Supreme Court, like this Court, rejected multiple theories challenging the ESA program, and it only accepted one specific argument: that because SB 515 did not specifically reference ESAs, SB 302 could not use funds appropriated by SB 515 for ESAs,[12] and so drawing money *from the DSA*—as Section 16 of SB 302 allows—would violate Article 11, Section 2 and Section 6.[13] Thus the Court enjoined (1) enforcement of Section 16 (2) absent appropriation therefor.[14] But the language adopted in this Court's final injunction is overbroad in *three* crucial respects.

First, Plaintiffs now read this Court's order to enjoin not just Section 16 but "Senate Bill 302" in its *entirety*. Section 16, the money-drawing provision, is only one of SB 302's nearly 40

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[7] *See* Attachment D.

[8] *See* Attachment E.

[9] *See* Attachments F and G.

[10] NRCP 59; *Weinsten v. Autozoners LLC*, No. 2:11-cv-00591-LDG, 2014 WL 4634174, at *6 (D. Nev. Sept. 12, 2014) (citing *Allstate Ins. Co. v. Herron*, 634 F.3d 1101, 1111 (9th Cir. 2011)).

[11] *Masonry & Tile Contractors Ass'n of S. Nevada v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997).

[12] *Lopez*, 382 P.3d at 901 ("SB 515 does not mention, let alone appropriate, any funds for the education savings accounts"); *id.* at 901 ("we necessarily conclude that SB 302 does not contain an appropriation to fund its operation").

[13] *Id.* at 902 ("Having determined that SB 515 did not appropriate any funds for the education savings accounts, the use of any money appropriated in SB 515 for K–12 public education to instead fund the education savings accounts contravenes the requirements in Article 11, Section 2 and Section 6 and must be permanently enjoined.").

[14] *Id.* at 903.

sections; it alone was enjoined by the Nevada Supreme Court.[15] One would normally read an order of judgment after appeal to harmonize with the appellate decision, but Plaintiffs disagree and now rely on the differences in the language used by this Court and the Nevada Supreme Court as the basis for offensive legal action. Plaintiffs' cease-and-desist letter emphasizes the substitution in this Court's order of the whole of the SB 302 law instead of the particular provision in Section 16. In doing so, Plaintiffs specifically argue that this Court "rejected" the content of our proposed order,[16] when, in fact, our proposed language did nothing more than copy-and-paste, verbatim, the text from the relevant portion of the Nevada Supreme Court decision. Plaintiffs are therefore explicitly relying on an interpretation of this Court's final injunction order that is broader than the Nevada Supreme Court's language, and threatening contempt proceedings based on this unwarranted interpretation. The Treasurer respectfully submits that this Court should revise its final order language to more closely hew to the Nevada Supreme Court's language to avoid just this type of overbroad reading of the final injunction.

Second, this Court's order could be interpreted to foreclose any funding fix altogether. The Nevada Supreme Court, like this Court in its original preliminary-injunction order, left open the possibility that the Legislature could appropriate money where SB 515 did not. Yet under Plaintiffs' overbroad interpretation of this Court's order, even if the Legislature made this appropriation, the ESA law would *still* be read as blocked, since Plaintiffs believe the Court's order treats the violation as inhering not in the lack of funding but apparently in the whole of SB 302 itself.

Third, this Court's order is ambiguous as to the nature of enjoinment under "Section 2." The Nevada Supreme Court distinguished two arguments made by Plaintiffs under Article 11, Section 2. One was that SB 302 violates Section 2's uniformity interest. The other was that SB 302

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[15] *Id.* at 891 ("we remand each case for the entry of a final declaratory judgment and a permanent injunction enjoining the use of any money appropriated for K–12 public education in the State Distributive School Account to instead fund the education savings accounts").

[16] *See* Attachment E at 1.

violates Section 2's anti-diversion interest.[17] Plaintiffs made these claims separately. Like this Court, the Nevada Supreme Court rejected their uniformity claim.[18] Yet this Court's order makes no such distinction and is in fact could be read to declare that SB 302 violates the *uniformity* provision of Section 2. Plaintiffs spent considerable effort arguing this position. So did this Court and the Nevada Supreme Court in rejecting it.

Conclusion

For these reasons, Defendant respectfully moves this Court to amend its order to adopt the language in the Nevada Supreme Court's decision. Plaintiffs are already attempting to use this Court's language to obtain what the Nevada Supreme Court denied them. Should this Court disagree with Defendant, Defendant requests that the Court stay enforcement of its order pending an appeal.[19]

Dated: December 6, 2016

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[17] *Lopez*, 382 P.3d at 893 ("The complaint alleged that SB 302 violates the requirement for a uniform school system under Article 11, Section 2; diverts public school funds contrary to Article 11, Section 2 and Section 6; and seeks a permanent injunction enjoining the State Treasurer from implementing the ESA program").

[18] *Id.* at 896 ("SB 302 is not contrary to Section 2's mandate to provide for a uniform system of common schools"); *id.* at 898 ("We conclude that as long as the Legislature maintains a uniform public school system, open and available to all students, the constitutional mandate of Section 2 is satisfied"); *id.* at 898-99 ("we conclude that the plaintiffs have not established that the creation of an ESA program violates Section 2"); *id.* at 891 ("the ESA program is not contrary to the Legislature's duty under Article 11, Section 2 to provide for a uniform system of common schools").

[19] *See* NRAP 8.

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the personal information of any person.

DATED this 6th day of December, 2016.

LAWRENCE VANDYKE
Solicitor General
Counsel for Defendant Dan Schwartz

EXHIBIT INDEX

Exhibit	Description	Number of Pages
A	Proposed Final Declaratory Judgment and Order Granting Permanent Injunction and Release of Surety Bond	2
B	Proposed Final Declaratory Judgment and Order Granting Permanent Injunction and Release for Surety Bond	2
C	Final Declaratory Judgment and Order Granting Permanent Injunction and Release for Surety Bond	2
D	Notice of Entry of Final Declaratory Judgment and Order Granting Permanent Injunction and Release of Surety Bond	5
E	Letter to Attorney General Laxalt, dated December 5, 2016	3
F	ESA Question and Answers to ESA Parents	2
G	Notice to ESA Parents	2

ATTACHMENT "A"

FIRST JUDICIAL DISTRICT COURT

IN AND FOR CARSON CITY, NEVADA

HELLEN QUAN LOPEZ, individually and on behalf of her minor child, C.Q.; MICHELLE GORELOW, individually and on behalf of her minor children, A.G. and H.G.; ELECTRA SKRYZDLEWSKI, individually and on behalf of her minor child, L.M.; JENNIFER CARR, individually and on behalf of her minor children, W.C., A.C., and E.C.; LINDA JOHNSON, individually and on behalf of her minor child, K.J.; SARAH and BRIAN SOLOMON, individually and on behalf of their minor children, D.S. and K.S., Plaintiffs, vs. DAN SCHWARTZ, IN HIS OFFICIAL CAPACITY AS TREASURER OF THE STATE OF NEVADA, Defendant.	Case No. 150C002071B Dept. No.: II **[PROPOSED] FINAL DECLARATORY JUDGMENT AND ORDER GRANTING PERMANENT INJUNCTION AND RELEASE OF SURETY BOND**

Pursuant to the Supreme Court's opinion in *Schwartz v. Lopez*, 132 Nev. Adv. Op. 73 (2016) affirming the order of this Court of January 11, 2016,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. Judgment is entered in favor of Plaintiffs in this matter as follows: Senate Bill 302 violates Article 4, Section 19 and Article 11 Sections 2 and 6 of the Nevada Constitution and is permanently enjoined.

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2. The Clerk of the Court shall return the security posted by Plaintiffs by issuing a check payable to WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP CLIENT TRUST ACCOUNT, 3556 E. Russell Road, 2nd Floor, Las Vegas, Nevada 89120.

IT IS SO ORDERED.

Dated: _____

_____
JAMES E. WILSON, JR., DISTRICT JUDGE

ATTACHMENT "B"

FIRST JUDICIAL DISTRICT COURT

IN AND FOR CARSON CITY, NEVADA

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

Plaintiffs,

vs.

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

Defendant.

Case No. 150C002071B

Dept. No.: II

[PROPOSED] FINAL DECLARATORY JUDGMENT AND ORDER GRANTING PERMANENT INJUNCTION AND RELEASE OF SURETY BOND

Pursuant to the Supreme Court's opinion in *Schwartz v. Lopez*, 132 Nev. Adv. Op. 73 (2016), and superseding the order and judgment of this Court dated November 18, 2016,

IT IS HEREBY ORDERED, ADJUGED AND DECREED that:

1. A final declaratory judgment and permanent injunction is entered enjoining enforcement of Section 16 of SB 302 absent appropriation therefor consistent with *Schwartz v. Lopez*, 132 Nev. Adv. Op. 73 (2016).

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IT IS SO ORDERED.

Dated: _____

_____
JAMES E. WILSON, JR., DISTRICT JUDGE

DATED this ____ day of December, 2016

Submitted by:

Adam Paul Laxalt (Bar No. 12426)
Attorney General
Lawrence VanDyke (Bar No. 13643C)
Solicitor General
Ketan Bhirud (Bar No. 10515)
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ATTACHMENT "C"

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

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

Plaintiffs,

vs.

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

Defendant.

Case No. 15 OC 00207 1B

Dept. No.: II

~~[PROPOSED]~~ **FINAL DECLARATORY JUDGMENT AND ORDER GRANTING PERMANENT INJUNCTION AND RELEASE OF SURETY BOND**

Pursuant to the Supreme Court's opinion in *Schwartz v. Lopez*, 132 Nev. Adv. Op. 73 (2016) affirming the order of this Court of January 11, 2016,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. Judgment is entered in favor of Plaintiffs in this matter as follows: Senate Bill 302 violates Article 4, Section 19 and Article 11 Sections 2 and 6 of the Nevada Constitution and is permanently enjoined.

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///

2. The Clerk of the Court shall return the security posted by Plaintiffs by issuing a check payable to WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP CLIENT TRUST ACCOUNT, 3556 E. Russell Road, 2nd Floor, Las Vegas, Nevada 89120.

Dated: November 17, 2016

JAMES E. WILSON, JR.,
DISTRICT JUDGE

ATTACHMENT "D"

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

Plaintiffs,

vs.

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

Defendant.

Case No.: 15 OC 002071 B

Dept. No: II

NOTICE OF ENTRY OF FINAL DECLARATORY JUDGMENT AND ORDER GRANTING PERMANENT INJUNCTION AND RELEASE OF SURETY BOND

TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that the **FINAL DECLARATORY JUDGMENT AND ORDER GRANTING PERMANENT INJUNCTION AND RELEASE OF SURETY BOND**

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was filed with the First Judicial District Court on the 18th day of November 2016, a true and correct copy of which is attached hereto.

DATED: November 21, 2016

WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP

By: _____

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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of November, 2016, a true and correct copy of NOTICE OF ENTRY OF FINAL DECLARATORY JUDGMENT AND ORDER GRANTING PERMANENT INJUNCTION AND RELEASE OF SURETY BOND was placed in an envelope, postage prepaid, addressed as stated below, in the basket for outgoing mail before 4:00 p.m. at WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP. The firm has established procedures so that all mail placed in the basket before 4:00 p.m. is taken that same day by an employee and deposited in a U.S. Mail box.

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By Christie Rehfeld
Christie Rehfeld, an Employee of
WOLF, RIFKIN, SHAPIRO, SCHULMAN &
RABKIN, LLP

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

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

Plaintiffs,

vs.

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

Defendant.

Case No. 15 OC 00207 1B

Dept. No.: II

~~[PROPOSED]~~ **FINAL DECLARATORY JUDGMENT AND ORDER GRANTING PERMANENT INJUNCTION AND RELEASE OF SURETY BOND**

Pursuant to the Supreme Court's opinion in *Schwartz v. Lopez*, 132 Nev. Adv. Op. 73 (2016) affirming the order of this Court of January 11, 2016,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. Judgment is entered in favor of Plaintiffs in this matter as follows: Senate Bill 302 violates Article 4, Section 19 and Article 11 Sections 2 and 6 of the Nevada Constitution and is permanently enjoined.

///

///

2. The Clerk of the Court shall return the security posted by Plaintiffs by issuing a check payable to WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP CLIENT TRUST ACCOUNT, 3556 E. Russell Road, 2nd Floor, Las Vegas, Nevada 89120.

Dated: November 17, 2016

JAMES E. WILSON, JR.,
DISTRICT JUDGE

ATTACHMENT "E"

LAW OFFICES
WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP

Bradley S. Schrager
bschrager@wrslawyers.com

LV4242-002

December 5, 2016

Mr. Adam Laxalt
Office of the Attorney General of Nevada
100 North Carson Street
Carson City, NV 89701

Re: ***Lopez, et al. v Schwartz, First Judicial District in and for Carson City, Nevada, Dept. II, Case No. 15 OC 002071 B***

Dear Attorney General Laxalt:

As counsel to the Plaintiff parents in *Lopez, et al. v. Schwartz*, we write to bring to your attention recent actions by your client, Nevada Treasurer Dan Schwartz, which constitute a violation of the order entered in *Lopez* permanently enjoining Senate Bill 302. As we explain below, any further implementation of SB 302 must immediately cease. In the event the Treasurer does not comply with this request, Plaintiffs will seek judicial relief to enforce the *Lopez* injunction by filing for an Order to Show Cause why his office should not be held in contempt of court, including a request for appropriate sanctions against him.

The order in *Lopez* entered on November 17, 2016 states that "***Senate Bill 302*** violates Article 4, Section 19 and Article 11 Sections 2 and 6 of the Nevada Constitution and ***is permanently enjoined.***" (emphases added). This order finalizes the Nevada Supreme Court ruling on September 21, 2016 holding that SB 302 violates the explicit prohibition in the Nevada Constitution against using public school funds for any other purpose by diverting that funding to Education Savings Accounts (ESAs) for private schools and other private education expenses. *See Schwartz v. Lopez, et al.*, 382 P.3d 886 (Nev. 2016).

Despite the express terms of the *Lopez* permanent injunction—and the district court's rejection of your narrower proposed order—the Treasurer continues to attempt to implement SB 302's ESA program. Specifically, his office continues to maintain information about ESAs on its website, including an invitation to families to "sign up" for ESAs through a "portal" for that purpose. Nevada State Treasurer, Education Savings Accounts, http://www.nevadatreasurer .gov/SchoolChoice/Home/.

In addition, on November 23, 2016, the Treasurer released information to the public in an email stating that the "Nevada ESA Portal is now Available to sign up for your Education

Savings Account!" The e-mail details how the Treasurer's staff is actively processing ESA applications:

> For those parents who utilized our online portal, your information has been migrated to our new ESA Account System, while those who applied via mail our staff has entered your paper application into the new ESA Account System. This migration/upload is the first major step to finalizing your ESA accounts, however some additional information may be needed for our office to officially accept your application.

The email also states that the Treasurer "will approve [ESA] application[s]" which it describes as "an exciting moment for many families." Ralston Reports, *AG advises Treasurer to go forward with school choice despite Supreme Court ruling*, https://www.ralstonreports.com/blog /ag-advises-treasurer-go-forward-school-choice-despite-supreme-court-ruling.

Through these actions, the Treasurer is (1) continuing to solicit new applications for ESAs through "open enrollment;" (2) advising applicants that the Treasurer's office will process and approve ESA applications; (3) accepting applications for "participating entities" to receive ESA funds; and (4) maintaining an active website to provide information on ESAs and publicize the program's purported availability. This conduct is a direct violation of the permanent injunction entered by Judge Wilson on November 23rd. These actions undermine the prerogatives of the Nevada Legislature, first and foremost, but also reveal an awkward attempt by the Treasurer to gain some imaginary political advantage by pressing forward with a defunct program.

Surely the Treasurer is aware, as are you, that SB 302 can only be administered pursuant to express statutory authority. There now exists no such authority for SB 302 and, consequently, for the Treasurer's actions. Furthermore, it is obvious that the Treasurer's SB 302 regulations are now also invalid, not only because the statute has been permanently enjoined but because each of their provisions relied upon a funding mechanism that no longer exists. The Treasurer's office is deliberately misleading Nevadans by acting as though the SB 302 program remains in effect.

Additionally, the Treasurer continues to expend public funds on these unlawful activities. Substantial public funds to administer the ESA program were *loaned* to the Treasurer's office as an advance upon the fees SB 302 authorized him to deduct from eventual ESA accounts—fees that cannot be collected now due to the *Lopez* injunction. As the Treasurer's Chief of Staff Grant Hewitt explained to Governor Sandoval on October 13, 2015, the Treasurer's office borrowed hundreds of thousands of dollars of Nevada tax money to implement SB 302, while expressly admitting that the Treasurer had no plan or ability to repay these funds in the event of an injunction against SB 302. Minutes, Meeting of Nevada Board of Examiners, page 9 (Oct. 13, 2015).

With a permanent injunction now in place, and with disregard for the conscientious and proper use of public tax dollars, the Treasurer has launched headlong into an effort to publicize a program that no longer exists. The Treasurer should immediately stop the expenditure of these loaned funds on the ESA program, provide a full accounting of expenditures to date, and make arrangements to promptly repay all such monies that still remain under his control.

We demand that the Treasurer immediately halt any further actions or spending any more money to administer or implement SB 302's ESA program. We ask that you reply to this request no later than Friday, December 9, 2016 with confirmation that the Treasurer will comply with the *Lopez* injunction by halting the above-specified actions—and any other conduct—implementing or administering SB 302. If you cannot provide such confirmation and assurance, our clients will seek relief and sanctions from the First Judicial District Court, as necessary to ensure full compliance with the express terms of the permanent injunction.

Thank you very much for your immediate attention to this matter, and we remain—

Sincerely yours,

WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP

BRADLEY S. SCHRAGER
Counsel for Plaintiffs

BSS/cr

ATTACHMENT "F"

Subject: ESA Question and Answers

Dan Schwartz
State Treasurer

Grant Hewitt
Chief of Staff

STATE OF NEVADA
OFFICE OF THE STATE TREASURER

Education Savings Accounts

ESA Parents,

I want to thank the thousands of parents who have already accessed the new ESA system. I know some families have experienced some minor hiccups or confusion when utilizing the new site, and for that I want to personally apologize. Our goal is to bring you a top notch product that can be the road map for future ESA programs across the country. With everything new (especially in the technology world) we expect to find minor problems that we will fix along the way. Today I want to just bring you up to speed on a couple of the more common pieces of feedback we are receiving.

Q. All of my children are not listed in the system?

A. Since many families submitted their applications via Mail and our old online system, not all applications have been migrated over to the new system. We are currently working through the backlog of applications to ensure they all get moved over. Do not be alarmed if you are missing an application, we will notify you once our backlog has been reduced to zero, if your child is still missing our team will troubleshoot those on a case by case basis.

Q. I see my child's application in the system but it is out of date now, should I update it?

A. Please do not update to the current date, remember you applied maybe a year ago, the information in the application should be the same as when you applied. Now, that does not mean you cannot update your address or phone number if you moved. An example of what you should not change is, your child was in K when you applied but is now in 1st grade... the application should indicate they are in K because that is when you applied, do not update to 1st grade.

Q. I see that I can identify where I plan to use my ESA funds, but my private school is not listed, does that mean they will not accept my ESA funds?

A. Only schools who register to be a participating entity can receive ESA funds, however not every school has applied yet, so just because they are not listed does not mean they do not plan on applying. I would also note that this is not required at this time, so you can leave it blank.

Q. I applied early on the old online system but I am not seeing my documents that I uploaded?

A. This is a system glitch that our IT team is working to fix right now and hope to have resolved by 12/5. If you happen to upload new documents, the update will not override your new documents.

Q. My application says complete, what do I do now?

A. While your application may indicate it is complete there are a small number of items that still need to be updated, please click on edit and go through and fill in the required blank fields and submit the application for review. We are currently correcting this issue to show any application that has not been submitted for review to show as pending. This way it will be very easy for you to know if you need to take action.

We will be sending out these helpful hints as we continue to improve the ESA portal so that you can stay up to date on all new information. Please make sure Accounts@NevadaTreasurer.net is not listed in your spam filter.
I again want to thank all the families who continue to wait for Nevada's ESA program; I appreciate your patience as we try to build a model for the nation.
Sincerely,
Grant Hewitt
Chief of Staff

ATTACHMENT "G"

Subject: The Nevada ESA Portal is now Available to sign up for your Education Savings Account!

Dan Schwartz
State Treasurer

Grant Hewitt
Chief of Staff

STATE OF NEVADA
OFFICE OF THE STATE TREASURER

Education Savings Accounts

ESA Parent,

I wanted to thank you for applying for an ESA Account sometime over the past year, many of you filled out paper applications, while others utilized our early online portal. For those parents who utilized our online portal, your information has been migrated to our new ESA Account System, while those who applied via mail our staff has entered your paper application into the new ESA Account System. This migration/upload is the first major step to finalizing your ESA accounts, however some additional information may be needed for our office to officially accept your application. I should note that if you applied for multiple children they will all be listed under a single log in, if you happened to apply for some children online and others by mail, your mail applications may still be uploaded, please do not add these children at this time only an Administrator in our office can ensure the application is valid on the date it was originally received.

I hope you will take a moment in the near future and to follow the instructions below to finish and verify that the information in your application is correct. It should not take very long, but will go a long way for our staff to be able to formally approve your application in the new ESA Account System. While I know getting approved will be an exciting moment for many families, *I must remind you that at this time a funding source for Nevada's ESA program has not yet been found*, until that happens while we will approve your application there is no guarantee of funding.

To login into the ESA.Nevadatreasurer.gov Portal go to http://esa.nevadatreasurer.gov. Use the Email Address we used to contact you in this Email as your username. If you do not remember or ever have had a password to the ESA portal click on the "Forgot Password" tab and enter your email address. We will send you an email with a Link to reset your password.

If you have any problems or concerns please contact our office at NevadaSchoolChoice@NevadaTreasurer.gov

Thank you for your patience with our office over the past year.

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Grant A. Hewitt

Chief of Staff – Nevada State Treasurer's Office
Email: ghewitt@nevadatreasurer.gov