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DISTRICT COURT
CLARK COUNTY, NEVADA

RUBY DUNCAN, an individual; RABBI MEL HECHT, an individual; HOWARD WATTS III, an individual; LEORA OLIVAS, an individual; ADAM BERGER, an individual, *Plaintiffs*, v. STATE OF NEVADA ex rel, the Office of the State Treasurer of Nevada and the Nevada Department of Education; DAN SCHWARTZ, Nevada State Treasurer, in his official capacity; STEVE CANAVERO, Interim Superintendent of Public Instruction, in his official capacity, *Defendants*.	Case No. A-15-723703-C Dept. No. XX **MOTION TO DISMISS FOR LACK OF JURISDICTION AND FAILURE TO STATE A CLAIM** Date of hearing: Time of hearing:

NOTICE OF MOTION

TO: ALL PARTIES AND THEIR COUNSEL OF RECORD

PLEASE TAKE NOTICE that the foregoing motion will be heard before the above-captioned Court on November 25, 2015, at 8:30a.m./p.m., or as soon thereafter as counsel may be heard.

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INTRODUCTION

In this case, Plaintiffs bring a facial challenge to Nevada's new education savings account ("ESA") program, enacted by the Legislature as Senate Bill 302. Plaintiffs claim that Nevada's ESAs violate two provisions of the Nevada Constitution—Article 11, § 2 and Article 11, § 10.

Pursuant to Rules 12(b)(1) and (b)(5), this case should be dismissed because (1) Plaintiffs' taxpayer status does not give them standing to challenge the ESA program; and (2) nothing in Article 11 of Nevada's Constitution prevents the State from creating ESAs. Plaintiffs' proffered interpretations of Sections 2 and 10 have no basis in Nevada's history or legal precedent. Even if those interpretations had some merit, principles of constitutional avoidance would advise reading Nevada's Constitution to avoid bringing its provisions into conflict with the United States Constitution.

BACKGROUND

I. Nevada's New Education Savings Account Program

The State, as part of sweeping education reforms enacted this year, has empowered parents with real choice in how to best 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. *Id.* §§ 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).[1] 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, including tuition, textbooks, tutoring, special education, and fees for achievement, advanced placement, and college-admission examinations. § 9.1(a)-(k).[2] 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.

SB 302 took effect on July 1, 2015, for the purpose of allowing the State to adopt implementing regulations. § 17. SB 302 becomes fully effective on January 1, 2016. *Id.*

II. Legislative History of SB 302

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 schools." *Minutes of the Senate Committee on Education*, 78th Sess. 7

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[1] Under the "Nevada Plan" for public-school funding, the Legislature provides funding "partially on a per pupil basis." NRS 387.121. This involves the calculation of a "basic support guarantee per pupil for each school district." NRS 387.122.

[2] The 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). Any funds spent through the ESA program are paid by the State to a private vendor, who in turn disburses those funds to the recipient chosen by parents.

(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 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.

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, the 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.]

The Legislature specifically considered the issue of SB 302's constitutionality under Article 11, § 10 of the Nevada Constitution. Senator Hammond observed that the ESA program is "consistent with this provision," *Minutes*, Apr. 3, at 9, since the program operates only to "provide families with financial assistance *for the purpose of education*." *Id*. (emphasis added). "Under this program," he added, "no dollar is predestined for any particular institution. Rather, parents have the choice [on how] to spend their education dollars ...." *Id.* He compared the ESA program to state Medicaid expenditures, under which "state funds pay for medical services regardless of religious affiliation." *Id.* Asked whether ESA funds could be spent at religious schools, he said that parents "can choose any private school they wish as long as it is on [the state-approved] list. I am not sure who is going to be on that list ...." *Minutes*, May 28, at 11.

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).[3] Governor Sandoval noted that "far too many of our schools are persistently failing"—10% of Nevada schools are on the 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 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. And the Legislature acted to improve Charter schools. *See* Senate Bill 491. To fund the reform package, the Legislature passed tax increases expected to generate more than $1 billion over the biennium.

In sum, the context in which SB 302 was enacted confirms that the undeniably laudable

[3] Available at http://gov.nv.gov/uploadedFiles/govnvgov/Content/About/2015-SOS.pdf.

purpose of the ESA program is to improve the quality of education services delivered to parents and students in Nevada. *See Minutes of the Senate Committee on Finance*, 78th Sess. 18 (Nev. May 14, 2015) ("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.") (statement of Senate Majority Leader Michael Roberson).

IV. Plaintiffs' Lawsuit

Plaintiffs are five taxpayers who allege that the ESA program violates Sections 2 and 10 of Article 11 of the Nevada Constitution. Section 2 states in pertinent part that the "legislature shall provide for a uniform system of common schools." Section 10—known as the Nevada Blaine Amendment—states that "[n]o public funds of any kind or character whatever, State, County, or Municipal, shall be used for sectarian purpose."

STANDARDS OF REVIEW

"To survive dismissal, 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). 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). Thus, "those attacking a statute [have] the burden of making a clear showing that the statute is unconstitutional." *Id.* at 138, 600 P.2d at 106. "Whether a legislative enactment is wise or unwise is not a determination to be made by the judicial branch." *Koscot Interplanetary, Inc. v. Draney*, 90 Nev. 450, 456, 530 P.2d 108, 112 (1974). Finally, because this is a facial challenge, Plaintiffs must "demonstrat[e] that there is no set of circumstances under which the statute would be valid." *Deja Vu Showgirls v. Nevada Dep't of Tax.*, 130 Nev. Adv. Op. 73, 334 P.3d 392, 398 (2014).

ARGUMENT

I. This Court Lacks Jurisdiction Because the Plaintiffs Lack Standing.

"Standing is the legal right to set judicial machinery in motion." *Heller v. Legislature of State of Nevada*, 120 Nev. 456, 460, 93 P.3d 746, 749 (2004) (quotation marks omitted). It is a jurisdictional requirement. *Id*. at 461, 93 P.3d at 749. In this case, Plaintiffs are five taxpayers who "object to the use of [their] taxes to fund private and religious schools." Compl. ¶¶ 8-12.

Nevada does not recognize taxpayer standing. *Citizens for Cold Springs v. City of Reno*, 125 Nev. 625, 630, 218 P.3d 847, 850 (2009); *Doe v. Bryan*, 102 Nev. 523, 525, 728 P.2d 443, 444 (1986); *Blanding v. City of Las Vegas*, 52 Nev. 52, 280 P. 644, 650 (1929). In particular, as *Blanding* famously explained, a taxpayer cannot maintain a suit "where he has not sustained or is not threatened with any injury peculiar to himself as distinguished from the public generally." *Id.* Further, where declaratory relief is sought, or where constitutional matters arise, this court requires "plaintiffs to meet increased jurisdictional standing requirements." *Stockmeier v. Nevada Dep't of Corr. Psych. Review Panel*, 122 Nev. 385, 393, 135 P.3d 220, 225-26 (2006), *abrogated on other grounds by Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 181 P.3d 670 (2008). And nothing in SB 302's text purports to confer Plaintiffs with standing—unlike many Nevada laws that grant statutory standing where constitutional standing is lacking. *See, e.g., id*. at 394, 135 P.3d at 226; *Hantges v. City of Henderson*, 121 Nev. 319, 323, 113 P.3d 848, 850 (2005).

For Plaintiffs, "increased" standing requirements apply: their attack is constitutional; they seek declaratory relief; they make no pretense to statutory standing. Yet they stake their claim to invoke the judicial machinery on one thing: their status as Nevada taxpayers. Most Nevada adults are taxpayers and all Nevadans possess an interest in seeing State funds expended constitutionally, but this universal condition, by definition, cannot be injury "peculiar to" Plaintiffs. In *Blanding*, 52 Nev. 52, 280 P. at 645, plaintiffs sought to enjoin Las Vegas from vacating part of a street; in affirming the dismissal, the Nevada Supreme Court rejected as "untenable" the plaintiffs' argument that "as taxpayers" they could maintain such an action "without showing special injury." *Id.*

Plaintiffs' objection to SB 302's "use" of their taxes does not establish standing. The complaint must be dismissed. "If [Plaintiffs] do not like the law, the remedy is by an appeal to the Legislature to repeal it rather than to the courts for judicial annulment." *Riter v. Douglass*, 32 Nev. 400, 109 P. 444, 450 (1910).

II. The ESA Program Does Not Violate Nevada's Blaine Amendment.

Plaintiffs' complaint fails to state a claim for relief under Article 11, § 10 of the Nevada Constitution, which provides that "[n]o public funds of any kind or character whatever, State, County, or Municipal, shall be used for sectarian purpose." The ESA program serves educational purposes, not sectarian ones. SB 302 says not one word about religious schools, parochial education, prayer, or faith. To the extent that ESA funds find their way to religious schools, they do so only through a series of private, individual decisions by the families and students who take part in the program, just as if a state worker uses her paycheck to pay for tuition at such schools, or if that state worker uses her state-provided health savings account to pay for medical services at a religiously affiliated private hospital. The United States Supreme Court has recognized that the independent choices of parents break the link between government funding and the schools a child ultimately attends. *See, e.g.*, *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002). Accordingly, the Supreme Court has upheld school-choice initiatives as neutral and generally available programs created for strictly secular, not sectarian, purposes. *See id.*; *infra* at 11-12. And courts in other States have upheld similar programs under constitutional provisions similar to Section 10.

A. No "public funds" are spent for a "sectarian purpose" under Nevada's ESA program.

The ESA program does not use "public funds" for a "sectarian purpose." Indeed, Plaintiffs do not even allege that the Legislature intended to promote or aid any religious sect by passing SB 302. Nor could they. The law contains no requirement that ESA funds be used for sectarian schools. And it does not require recipient schools to promote any religious tenets. In fact, the ESA program is indifferent as to whether or not participating students attend religious schools.

SB 302 was adopted to benefit Nevada schoolchildren and families, regardless of religious creed. The overriding purpose of the ESA program—as set forth in the plain text of the law, the legislative history, and the public record—is to provide Nevadans with a broader array of educational opportunities and thus to improve academic achievement. The law specifically requires that ESA funds be used for enumerated *educational* purposes and "only" those purposes. SB 302, §§ 7.1(c), 9.1. The law's chief sponsor emphasized that the Legislature's goal was to "empowe[r] parents to choose educational placement that best meets their children's unique needs." *See supra* at 3. Numerous organizations urged the Legislature to adopt the bill to improve high-school graduation rates and academic performance across the board. Parents who testified in support of the bill spoke of the educational benefits to their children. There can be no doubt that the purpose of the ESA program is to promote education, not to benefit any religious sect.

The structure of SB 302 bears this out. Rather than transferring funds directly to a chosen set of private schools, SB 302 requires the State to deposit funds into accounts privately controlled by parents and students. Thus, the State "uses" the public funds for an exclusively educational purpose: to empower citizens to make the best choices for their unique educational needs. Private individuals—the students and families who participate in the ESA program—decide how to spend their grants. Other than ensuring that accounts are applied to educational purposes, the State plays no role in their use of the ESA funds.[4]

In fact, the Legislature consciously enacted this policy of private choice to avoid concerns like those raised by Plaintiffs. Senator Hammond assured his colleagues and the public that the law "does not benefit or provide funding to private institutions, sectarian or otherwise"

[4] Plaintiffs misstate how the ESA program operates when they allege that "public funds are transferred to private religious schools." Compl. ¶ 85. *See also id*. ¶ 27 (alleging that ESA grants will be "paid to schools"). SB 302 expressly provides that the grants "must be deposited in the education savings account of the child." SB 302, § 8.1. All money distributed through Nevada's ESA program is distributed by the State to a private vendor. That private vendor distributes those funds to the recipients chosen by parents and students.

because "no dollar is predestined for any particular institution." *Minutes*, Apr. 3, at 9. The ESA program was deliberately designed to ensure that grants would never be paid to a religious school unless and until they are in the control of private individuals.

Simply put, the State is not using public funds to promote a sectarian purpose. An analogy illuminates the distinction. No reasonable person would suggest that Section 10 prohibits State employees from spending money in their state-funded health savings accounts for medical services at a private, religious hospital. That money begins as public funds but rests in private control when it is used for medical expenses at a religious hospital. Nor would it make any difference if the government anticipated that some employees might use some of their HSA funds in that fashion. The State has relinquished the funds into their private control, for *medical* (not sectarian) purposes and the money arrives at the religious hospital only through their private choices. The same is true with Nevada's ESAs.

The United States Supreme Court has held in cases going back more than 30 years that educational choice programs are supported by the valid secular purpose of promoting education. In *Mueller v. Allen*, 463 U.S. 388 (1983), the Court rejected a challenge to a Minnesota statute authorizing tax deductions for private-school tuition. The Court held:

> A state's decision to defray the cost of educational expenses incurred by parents—regardless of the type of schools their children attend—evidences a purpose that is both secular and understandable. An educated populace is essential to the political and economic health of any community, and a state's efforts to assist parents in meeting the rising cost of educational expenses plainly serves this secular purpose of ensuring that the state's citizenry is well-educated. [*Id*. at 395.]

The Court also reasoned that "[b]y educating a substantial number of students [private] schools relieve public schools of a correspondingly great burden—to the benefit of all taxpayers" and, "[i]n addition, private schools may serve as a benchmark for public schools." *Id*. The *Mueller* Court noted that a State has "a legitimate interest in facilitating education of the highest quality for all children within its boundaries, whatever school their parents have chosen for them."

Id. (quoting *Wolman v. Walter*, 433 U.S. 229, 262 (1977) (Powell, J. concurring in part)).[5]

Most recently, in *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002), the Court, in reviewing an education-choice program enacted by the State of Ohio, wrote "that the program challenged here was enacted for the valid secular purpose of providing educational assistance to poor children." *Id*. at 649. The fact that "82% of Cleveland's participating private schools [we]re religious schools" and "96% of scholarship recipients … enrolled in religious schools," 536 U.S. at 657, 658, did not affect the validity of that secular purpose in the slightest. *See also Mueller*, 463 U.S. at 401 (acknowledging secular purpose of program even though 96% of the children in private schools attended religious schools).[6] As United States Supreme Court precedent makes clear, programs like Nevada's ESA law do not spend public funds for any sectarian purpose.

Nothing in Nevada's very limited precedent applying Article 11, § 10, supports Plaintiffs' argument or counsels in favor of ignoring the U.S. Supreme Court's well-considered guidance. The Nevada Supreme Court has applied Section 10 only once, and even then to a unique set of facts. In *State of Nevada ex rel. Nevada Orphan Asylum v. Hallock*, 16 Nev. 373 (1882), the Court held that the Legislature's *direct payment* of state funds to an orphanage run by the Catholic Sisters of Charity was unconstitutional. The Court's analysis turned on two key factors: (1) earlier appropriations to that very orphanage provoked Section 10's adoption, and (2) the program at issue would provide *direct* aid to a pervasively sectarian organization, and to that organization alone. *Id.* at 380-83. Neither of those factors is present here, and so the outcome in *Hallock* does not control

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[5] *See also Witters v. Wash. Dep't of Servs. for Blind*, 474 U.S 481, 485 (1986) (noting that a Washington tuition assistance program that allowed assistance to students studying a religious institutions had an "unmistakably secular purpose"); *Zobrest v. Catalina Foothills Sch. Dist.*, 509 U.S. 1, 5 n.4 (1993) (noting that federal program subsidizing sign-language interpreters had a secular purpose, even though it assisted deaf children attending both secular and religious schools).

[6] Thus, Plaintiffs' allegation that "private religious schools currently constitute the majority of private schools in Nevada" is immaterial. Compl. ¶ 36. It is also highly speculative. Nothing in Nevada's ESA program *requires* funds to be used at a private school at all, much less a religious private school.

this case. The *Hallock* Court would have faced a law like this one if it (1) rested on legislative findings that orphans were under-served in Nevada, and (2) created a fund available to those orphans' guardians who could (3) privately choose to obtain the money for a wide variety of approved orphanage services on behalf of their charges. Such facts would have made for a very different case.

But in expressly recognizing what motivated Nevada's Legislature and citizens to enact Section 10—*direct* funding of a specific sectarian institution and no other—*Hallock* does provide this Court with helpful insight. As the Nevada Supreme Court has explained, "[w]hen construing constitutional provisions, we use the same rules of construction used to interpret statutes. Our primary task, then, is to ascertain the intent of those who enacted [the provision] …, and to adopt an interpretation that best captures their objective." *Nevada Mining Ass'n v. Erdoes*, 117 Nev. 531, 538, 26 P.3d 753 (2001); *see also Rogers v. Heller*, 117 Nev. 169, 176 n.17, 18 P.3d 1034 (2001) (same); *Runion v. State*, 116 Nev. 1041, 1046–47, 13 P.3d 52, 56 (2000) ("The intent of the legislature is the controlling factor …."). Nothing in the intent behind Section 10—which, according to the Nevada Supreme Court was to stop the *direct* appropriation of funds to one specific sectarian organization—suggests that Section 10 broadly bars funding that in some remote or incidental way benefits a religious institution when its purpose is clearly secular. In urging the Court to adopt their expansive reading of Section 10, Plaintiffs ask the Court to ignore the actual intent behind the adoption of Section 10 and effectively to apply a strong presumption of *un*constitutionality—both in violation of well-established canons of Nevada law.

B. Similar programs have been upheld in other States against challenges brought under similar constitutional provisions.

Plaintiffs go out of their way to avoid bringing any challenge under the federal Constitution. The reason is obvious: The U.S. Supreme Court has already endorsed school-choice initiatives like this one as neutral programs, available to children regardless of faith, that serve valid secular interests relating to education and are fully compliant with the federal

Religion Clauses. Although Plaintiffs are free to raise only state-law claims, the reasoning of *Zelman* and prior cases in the *Zelman* line cannot be so easily evaded, and they doom Plaintiffs' Section 10 claim. The key insight of *Zelman* is that the intervening decisions of parents break the connection between government funds and the schools that any individual student ultimately attends. This ensures that the funding is only for a valid secular purpose—education—and not any "sectarian purpose." And SB 302 includes numerous features that provide *further* separation than the typical school-choice program between the government's decision to provide funding to parents and the schools that students may ultimately attend.

Given that the reasoning of *Zelman* renders concerns about government funding for "sectarian purposes" inapposite, it is not surprising that a number of decisions from other States support SB 302's constitutionality. To be sure, Nevada's ESA program is not identical to any other State's school-choice program. Its use of individual accounts, its wide range of options, and its availability to virtually all Nevada schoolchildren, creates *less* constitutional concern than voucher programs and direct-aid laws upheld in other States. And Nevada's Blaine Amendment is *less restrictive* than similar provisions found in many other States' constitutions. In Arizona, for instance, the Blaine Amendment bars aid to a "private or sectarian school" and not merely aid that is used for a "sectarian purpose." Ariz. Const. art. IX, § 10. Yet precedents from other States that have rejected Blaine challenges provide a helpful guide for how the Court should address SB 302's constitutionality under Section 10.

The Arizona Court of Appeals just last year upheld Arizona's education savings account program—similar to Nevada's in most respects, though not as universally available—against a challenge like this one. *Niehaus v. Huppenthal*, 233 Ariz. 195, 199-200 (Ariz. Ct. App. 2013), *review denied* (Mar. 21, 2014). The court explained that the ESA law's object was to support the beneficiary families, not sectarian schools. *Id.* "Parents can use the funds deposited in the [education savings] account to customize an education that meets their children's unique educational needs," the court said. "Depending on how the parents choose to educate their

children, this may or may not include paying tuition at a private school." *Id.* The money *might* go to tuition—or to tutoring, online programs, standardized-test training, or innovative educational therapies. *Id.* As here, nothing in the law encourages, let alone requires, a single cent to be delivered to any particular school, sectarian or secular. This holding is particularly significant because five years earlier the Arizona Supreme Court invalidated Arizona's voucher law under its Blaine Amendment. *Cain v. Horne*, 220 Ariz. 77, 83, 202 P.3d 1178, 1884 (Ariz. 2009). That same court denied review of the *Niehaus* decision, thus confirming the meaningful constitutional difference between voucher programs and ESAs.

In *Jackson v. Benson*, 578 N.W.2d 602 (Wis. 1998), the Wisconsin Supreme Court upheld a Milwaukee school-choice program under a state constitutional provision that prohibited the State from drawing "any money … from the treasury for the benefit of religious societies, or religious or theological seminaries." Wis. Const. art. I, § 18. Because "the primary effect of the [law] is not the advancement of a religion," the court held that the funds involved were not drawn for the "benefit" of religious institutions. 578 N.W.2d at 621. In reaching its conclusion, the court stressed that "public funds may be placed at the disposal of third parties so long as the program on its face is neutral between sectarian and nonsectarian alternatives and the transmission of funds is guided by the independent decisions of third parties." *Id.* The requisite third-party choice was present in the Wisconsin law, even though the State would "'send the check to the private school,'" where the parent would then endorse it. *Id.* at 609 (quoting Wis. Act 27 § 4006m).

The Ohio Supreme Court upheld a similar school-choice program under its state constitutional provision providing that "no religious or other sect, or sects, shall ever have any exclusive right to, or control of, any part of the school funds of this state." *Simmons-Harris v. Goff*, 711 N.E.2d 203, 212 (Ohio 1999). Like Wisconsin's program, Ohio sends its voucher checks to the recipient school directly and parents endorse the check over to the schools. *See id.* at 206. Yet the court emphasized that, even under that program, "no money flows directly from the state to a sectarian school and no money can reach a sectarian school based solely on its efforts or

the efforts of the state. Sectarian schools receive money that originated in the School Voucher Program only as the result of independent decisions of parents and students." *Id.* at 212.

Two years ago, in *Meredith v. Pence*, 984 N.E.2d 1213 (Ind. 2013), the Indiana Supreme Court unanimously upheld that State's school-choice program against challenges that are almost identical to Plaintiffs' claims in this case. The Indiana Supreme Court held that the State's program did not violate Indiana's Blaine Amendment because it did not "directly benefit" religious schools, even though, like Ohio and Wisconsin (and unlike Nevada's ESA program), Indiana sends funds directly to the recipient schools. *Id.* at 1227. "Any benefit to program-eligible schools, religious or non-religious," the court explained, "derives from the private, independent choice of the parents of program-eligible students, not the decree of the State, and is thus ancillary and incidental to the benefit conferred on these families." *Id.* at 1229. The court warned that a more restrictive application of the Blaine Amendment "would put at constitutional risk every government expenditure incidentally, albeit substantially, benefiting any religious or theological institution," like fire and police protection, water and sewer services, sidewalks, streets, and other generally available benefits. *Id.* at 1227.

The same conclusion is even more obvious here. Like the programs upheld in Wisconsin, Ohio, and Indiana, SB 302's primary (and only) purpose is to improve education—not to support sectarian institutions or instruction. But unlike the voucher programs upheld in those States, there can be no dispute that ESA funds arrive at schools with religious affiliations *only* through private choice *and* private hands. Parents direct ESA funds in individual accounts through a private vendor. Under Nevada's ESA program, the State never sends any "public funds" to any ultimate recipient—sectarian or otherwise.

For these reasons, the Colorado Supreme Court's recent decision invalidating a school-voucher program is not on point. *See Taxpayers for Pub. Ed. v. Douglas Cty. Sch. Dist.*, 351 P.3d 461 (Colo. 2015). First, Colorado's Blaine Amendment contains more restrictive language

than Section 10.[7] And the Colorado program was a voucher program—the public-school district issued a check directly to the participating student's school of choice, and the student's parent "then endorse[d] the check 'for the sole purpose of paying for tuition at the Private School Partner.'" *Id.* at 465. As the Arizona courts have recognized, this distinction avoids any constitutional concern. *Compare Cain*, 202 P.3d at 1184-85 (invalidating voucher program with direct disbursement), *with Niehaus*, 310 P.3d, 988 (upholding ESA program with private accounts). Perhaps most tellingly, even under those very different facts, the Colorado challengers' Blaine argument failed to garner the support of a majority of the Colorado Supreme Court; the Court evenly split 3-3 on whether Colorado's voucher program violated its Blaine Amendment, with Justice Eid writing a persuasive dissent.

III. Invalidating the ESA Program Based on the State Blaine Amendment Would Raise Serious Constitutional Problems that this Court Should Avoid.

The ESA program does not violate the Nevada Constitution's Blaine Amendment, for the reasons stated above in Part II. But there is another reason this Court should so hold: Adopting Plaintiffs' argument would mean that Section 10 violates the United States Constitution. That is an outcome this Court can and should avoid.

A. Nevada's Blaine Amendment was born of religious bigotry and designed to allow discrimination between religious practices.

Ratified in 1880, Article 11, § 10 states: "No public funds of any kind or character whatever, State, County or Municipal, shall be used for sectarian purposes." Many states have similar language in their state constitutions, and historians refer to these provisions as Blaine Amendments. As the U.S. Supreme Court has recognized, most of these amendments "arose at a

[7] "Neither the general assembly, nor any county, city, town, township, school district or other public corporation, shall ever make any appropriation, or pay from any public fund or moneys whatever, anything in aid of any church or sectarian society, or for any sectarian purpose, or to help support or sustain any school, academy, seminary, college, university or other literary or scientific institution, controlled by any church or sectarian denomination whatsoever ...." Colo. Const. art. IX, § 7.

time of pervasive hostility to the Catholic Church and to Catholics in general, and it was an open secret that 'sectarian' was code for 'Catholic.'" *Mitchell v. Helms*, 530 U.S. 793, 828 (2000) (plurality opinion). History indicates that the notion that "pervasively sectarian schools" be excluded from programs open to non-sectarian schools is an idea "born of bigotry." *Id.* at 829. These Blaine Amendments—named after Representative James G. Blaine, who unsuccessfully proposed a similar amendment to the federal Constitution—sought to preserve the Protestant nature of America's public schools during a time of increasing Catholic influence in civic life.

The Catholic population of the United States increased significantly in the years before the Civil War. The nearly four million Catholic immigrants who arrived altered America's ethnic and religious makeup. As a result, anti-Catholic sentiment "poured forth at an unparalleled rate" such that by the outbreak of the Civil War, Catholic immigration, in the view of some, "threatened to alter traditional patterns of American life." Vincent P. Lannie, *Alienation in America: The Immigrant Catholic and Public Education in Pre-Civil War America*, 32 Rev. Pol. 504, 506 (1970). "[D]istrust of the Irish … as Catholics ran particularly deep." *Id.* One reverend warned that this immigration would turn America into "the common sewer of Ireland." *Id.* at 504.

In nineteenth-century America, no "area of disagreement between Protestants and Catholics caused more friction than the place of religion in the public schools." *Id.* at 507. Christian instruction and Bible readings—from the King James Version—were accepted practices in America's "common schools." *See id.* at 507-08. But Catholics bristled over mandatory "use of the Protestant Bible by Catholic schoolchildren." *Id.* The Protestant public viewed Catholic efforts to excuse Catholic children from reading the King James Bible in schools as "part of a battle against American Protestantism." *Id.* at 511. The 1844 "Bible riots" in Philadelphia resulted in 30 deaths and the destruction of Catholic churches. Steven K. Green, *The Bible, the School, and the Constitution: The Clash that Shaped Modern Church-State Doctrine* 35-36 (2012). In numerous cities, children were whipped for refusing to read the King James Bible in public school. Lannie, *supra*, at 512. Boston, in 1859, expelled 400 Catholic students

in a single week for refusing to say the Lord's Prayer. Green, *supra*, at 40. The School Question "captured public attention to a degree that had never happened before." Green, *supra*, at 4, 8.

The approach of the Catholic community, unsuccessful in obtaining exemptions for students from Protestant instruction, gradually shifted to creating a separate system of Catholic parochial schools mirroring, in many respects, the country's common schools. Lannie, *supra*, 517-18. Catholics began to seek public funding for their new schools. Green, *supra*, at 8.

Nevada, though containing only about 30,000 people at statehood in 1864, did not escape the national controversy about Catholicism and the public schools. The delegates to the Nevada constitutional convention squarely confronted the emotional salience of the issue. Delegate DeLong, of Lyon County, stated that this "matter of religious and sectarian influence in the public schools, is … most calculated to arouse suspicions and jealousies in the public mind." Official Report of the Debates and Proceedings in the Constitutional Convention of the State of Nevada 566 (1866). Delegate Lockwood, of Ormsby County, spoke of "persons so bigoted in their religious faith—as, for example, the Roman Catholics." *Id.* at 572. He cautioned the delegates about the "sectarian schools in Europe," where a majority of instruction was occupied by "the priests." *Id.* at 573. The delegates ultimately created a constitution that called for a "uniform system of common schools" and that denied funding to any school that permitted "instruction of a sectarian character." *Id.* at 845. During the debates, Delegate Warwick, of Lander County, asked directly: "what is meant here by 'sectarian?'" *Id.* at 568. "Does that mean," he continued, "that [school districts] have no right to maintain Catholic schools, for example?" *Id.* Delegate Collins, of Storey County, fought to "keep out sectarianism" from the public schools. *Id.* at 577. Delegate Brosnan, also of Storey County, expressed alarm about "sectarian instruction" and "the inculcation, upon the juvenile mind in the public schools." *Id.* at 660. The delegates were clear about their purpose in enacting Nevada's common-school clause. They were not worried about erecting a high wall of separation between church and state; for they were perfectly happy with Protestant religious exercise in the public schools. Nor were they

concerned about preventing parental choice; they simply wanted to keep "sectarianism"—by which they meant Catholicism—out of public schools.

Whatever impact the enactment of the common-school clause may have had on sectarianism in public schools, it apparently did not have the effect of ending Protestant Bible reading or even prayer. In 1877, Samuel Kelly, the state superintendent of public education, noted that the law, though "prohibit[ing] sectarianism," was silent "as to the reading of the Bible." Report of the Superintendent of Public Instruction of the State of Nevada for the Years 1875 and 1876, 22 (1877) (attached as Exhibit 2). He noted, without alarm, that Bible reading occurred in some public schools and that at least one school offered prayer. Kelly proposed that, going forward, "a fair compromise" would simply entail repeating "the Lord's Prayer" and "the reading of the beatitudes." *Id.* Additionally, the textbook that the State required in public schools had children recite Bible verses, religious hymns, and statements such as: "It is impossible that God should withdraw his presence from anything," "Heaven, though slow to wrath, is never with impunity defied," and "No true Christian can be entirely hopeless." The Pacific Coast Spelling Book 87, 90 (1873) (attached as Exhibit 3).[8]

Controversy over what Americans called the "School Question" reached its apex after the Civil War. Green, *supra*, vii.[9] In 1875, President Grant, speaking to a joint session of Congress, warned that "ignorant men" would "sink into acquiescence to the will of intelligence, whether directed by the demagogue or by priestcraft." 4 Cong. Rec. 175 (Dec. 7. 1875). Grant called for a constitutional amendment requiring every state to create public schools and prohibiting the use of public funds for the benefit of "any religious sect." *Id.* Some in the Republican Party had been searching for a cultural wedge issue to exploit in the election of 1876, and the public-school issue proved effective. Marie Carolyn Klinkhamer, *The Blaine Amendment of 1875: Private Motives for*

[8] *See* May 29, 1879 Order of the State Board of Education (attached as Exhibit 4) ("prescrib[ing] the Pacific Coast Speller for use in the Public Schools of this State").

[9] In 1871, in New York City, Catholic-Protestant tensions resulted in "massive rioting"—the Orange Riots—that killed sixty people. Green, *supra*, at 184-85.

Political Action, 42 Catholic Hist. Rev. 19-20 (1956). The School Question at this time remained heated, with a focus on "how to preserve the public school system while ensuring that Catholic schools did not obtain a share of the school funds." Green, *supra*, at 179. In June 1875, months before Grant's speech to Congress, future-president Rutherford B. Hayes wrote to Representative James Blaine, advising that that the "secret of our enthusiastic convention is the school question" and predicting that Republicans "shall crowd [Democrats] on the school" issue. Klinkhamer, *supra*, at 21. The amendment touted by Blaine passed the House almost unanimously, 180-7, but failed in the Senate. Philip Hamburger, *Separation of Church and State* 298 n.28 (2002). (As it happens, a few years earlier, in 1871, a similar type of amendment had been introduced—by Senator William M. Stewart of Nevada. *Id.*) Twenty-two states would adopt Blaine-like amendments in subsequent decades. Green, *supra*, at 180.

It was in the midst of this division and vitriol that Nevada enacted its Blaine Amendment. The Legislature proposed Article 11, § 10, in February 1877, following President Hayes's election with the smallest electoral-vote margin in history. During the preceding ten years, the Legislature had appropriated funding for the Nevada Orphan Asylum, a Catholic-run institution that sheltered Nevadan orphans. *See* Jay S. Bybee & David W. Newton, *Of Orphans and Vouchers: Nevada's "Little Blaine Amendment" and the Future of Religious Participation in Public Programs*, 2 Nev. L.J. 551, 561-65 (2002); Ronald James, *The Roar and the Silence: A History of Virginia City and the Comstock Lode* 198-99 (1998) (discussing how the State helped the Asylum construct a larger orphanage because it fulfilled a need by housing "hundreds of children"). Parts of Nevada at this time experienced "a good deal of ethnic conflict and anti-Catholicism," like "what much of the rest of the country had undergone in the 1840s and 1850s." James S. Olson, *Pioneer Catholicism in Eastern and Southern Nevada, 1864-1931*, 26 Nev. Hist. Soc'y Q. 159, 163 (1983). A Nevada newspaper article in 1876 described the Catholic Church as seeking "the mastery of the world" and advocated prohibiting all schools that were not public schools. John M. Townley, *Tough Little Town on the Truckee: Reno 1868-1900*, at 210 (1983) (quoting *Nevada State J.*, Sept. 22, 1876, at

2) (attached as Exhibit 5). The Legislature's appropriations became controversial, and the head of the asylum worried about the effect of anti-Catholic sentiment. Bybee & Newton, *supra*, at 565. After the Legislature proposed its Blaine Amendment, the *Nevada Daily Tribune* declared: "[T]his is a stepping stone to the final breaking up of a power that has long cursed the world, and that is obtaining too much of a foothold in these United States." *Id.* at 566.

After Nevada adopted its Blaine Amendment, the Legislature again appropriated funding to the Nevada Orphan Asylum. *Id.* at 567. When the State Controller refused to hand over the appropriated funds, the Asylum sought a writ of mandamus to compel the controller to issue the appropriation. *Hallock*, 16 Nev. at 376. The three Justices of the Nevada Supreme Court denied mandamus. *Id.* at 388. The Court concluded that the Asylum was the only institution in the State "where the question of sectarianism could have been raised" before the Legislature, that the issue of funding the Asylum "greatly, if not entirely, impelled the adoption" of the Blaine Amendment, and that the voters necessarily believed that providing direct appropriations from the state treasury to the Catholic institution "was an evil which ought to be remedied." *Id.* at 380, 383.

B. Striking the ESA program on the grounds urged would cause a collision with the U.S. Constitution.

The ESA program was enacted for the purpose of promoting education and thus does not run afoul of Section 10's ban on the use of public funds for a sectarian purpose. *See* Part II, *supra*. The intervening private choices of parents directing ESA funds in their student's individual account through a private vendor ameliorates any concern that the government is spending "public funds" for any "sectarian purpose." This Court need go no further in this case. Indeed, it should go no further because ruling that the ESA program violates Section 10 would require this Court to confront the "shameful pedigree" underlying Nevada's Blaine Amendment and address its compatibility with the federal Constitution, which demands neutrality as between religions, or between religion and non-religion, and prohibits discrimination against religious

institutions. *Mitchell v. Helms*, 530 U.S. 793, 828 (2000).

Section 10 was enacted and carefully worded to discriminate against certain religious groups. It did not seek to eradicate religion from the public sphere, as Plaintiffs would have it. Both before and after Section 10 was enacted, Nevada's public schools were full of religious teaching and instruction—generic, "nonsectarian" Protestant teaching. *See* Part III-A, *supra*; *see also* Steven K. Green, *The Insignificance of the Blaine Amendment*, 2008 B.Y.U. L. Rev. 295, 302, 322 (2008) ("That the common schools were consciously Protestant was not denied …. Public schools reinforced … nonsectarian religion."). Rather, Section 10 was enacted to eradicate specific *types* of religion from the public sphere. *See id.*; *see also generally* Bybee & Newton, *supra*.

Hallock confirms this discriminatory history. When the *Hallock* Court evaluated whether the Sisters of Charity qualified as a "sectarian institution," it was not concerned with whether the group was generally *religious*; instead, it focused on whether the group was pervasively *Catholic*. The court emphasized that only Catholic prayers were prayed out loud and that Catholic children were given Catholic instruction by the exclusively Catholic sisters. *See* 16 Nev. at 383-87. Based on these uniquely Catholic aspects of the orphanage, the Nevada Supreme Court held that the appropriation would be an unconstitutional use of funds for a *sectarian* purpose. "The framers of the constitution undoubtedly considered the Roman Catholic a sectarian church," the opinion emphatically proclaimed. *Id.* at 385.

This sort of probing inquiry is unacceptable under modern constitutional doctrine. "[T]he inquiry into the recipient's religious views required by a focus on whether a school is pervasively sectarian is not only unnecessary but also offensive. It is well established, in numerous other contexts, that courts should refrain from trolling through a person's or institution's religious beliefs." *Mitchell*, 530 U.S. at 828; *see also, e.g.*, *Colo. Christian Univ. v. Weaver*, 534 F.3d 1245, 1256, 1259, 1261-1266 (10th Cir. 2008). Thus, even if *Hallock* dictated the result sought by the Plaintiffs in this case, its mode of analysis would be prohibited.

But applying Nevada's Blaine Amendment to prohibit ESAs would have even deeper

problems. A state constitutional provision that was intended to discriminate between religions or religious teachings—and was in fact applied that way in the only case addressing the provision—is largely impermissible under modern constitutional doctrine, and has been so for some time. *See*, *e.g.*, *Larson v. Valente*, 456 U.S. 228, 246 (1982) ("No State can 'pass laws which aid one religion' or that 'prefer one religion over another.'"). Reinterpreting Nevada's Blaine Amendment away from its original intent—discriminating *between* religious practices and particularly against Catholics—to discriminating against religion generally only tortures the provision and violates *the* fundamental canon of constitutional construction; such a reinterpretation doesn't address the provision's original meaning and problematic past.[10]

The federal Constitution prohibits laws, like Section 10, that are neutral on their face but in fact were enacted with a discriminatory animus aimed at specific religions. *See Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 534 (1993). "Official action that targets religious conduct for distinctive treatment cannot be shielded by mere compliance with the requirement of facial neutrality." *Id.* And the "[r]elevant evidence" to consider in this context "includes, among other things, the historical background of the [policy] under challenge, the specific series of events leading to the enactment or official policy in question, and the legislative or administrative history, including contemporaneous statements made by members of the decisionmaking body." *Id*. at 540. Each of those categories of evidence reveals the deep religious animosity that led to Nevada's Blaine Amendment. *See* Part III-A, *supra*.

Moreover, the First and Fourteenth Amendments prohibit States from adopting laws—including state constitutional provisions—that facially discriminate on the basis of religion. *See id.* at 533; *Emp't Div., Dep't. of Human Res. of Or. v. Smith*, 494 U.S. 872, 878-79 (1990). Although the United States Supreme Court has held that a state can exempt university students

[10] It would also perpetuate Article 11, Section 10's conflict with an "irrevocable" ordinance in Nevada's Constitution that requires that "perfect toleration of religious sentiment shall be secured, and [that] no inhabitant of said state shall ever by molested, in person or property, on account of his or her mode of religious worship." Nev. Const. Ordinance, § 2.

who pursue degrees in devotional theology from "otherwise inclusive aid program[s]," *Locke v. Davey*, 540 U.S. 712, 715 (2004), it has not sanctioned more broad discrimination against religiously motived private choice, nor has it sanctioned reinterpreting constitutionally problematic provisions to discriminate against religion more generally. "[T]he State's latitude to discriminate against religion … does not extend to the wholesale exclusion of religious institutions and their students from otherwise neutral and generally available government support." *Colo. Christian Univ.*, 534 F.3d at 1255; *see also*, *e.g.*, *Mitchell*, 530 U.S. at 828 ("[O]ur decisions … have prohibited governments from discriminating in the distribution of public benefits based upon religious status or sincerity.").

Plaintiffs' position inverts *Locke*. That case held that a State could choose not to subsidize "[t]raining someone to lead a congregation" because that is an "essentially religious" endeavor and there is a long history, dating back to the founding, of States denying special benefits to ministers. *Locke*, 540 U.S. at 721, 723. Here, by contrast, SB 302 offers a generally available benefit to the entire population, for purposes of education. On Plaintiffs' view, Section 10 would require the State to offer that benefit to everyone except those whose choice of school is religious. Unlike *Locke*'s narrow exception, this would lay a special burden on the religious—and would thus cross the line into unconstitutional discrimination.

But this Court need not confront Section 10's troubling past. To the extent its reach is unclear, Section 10 should be applied to avoid any federal constitutional concerns. Evaluating the constitutionality of a statute is the "gravest and most delicate duty that" the courts are "called on to perform." *Rust v. Sullivan*, 500 U.S. 173, 191 (1991) (quoting *Blodgett v. Holden*, 275 U.S. 142, 148 (1927) (opinion of Holmes, J.)). Because the task is so sensitive, the Nevada Supreme Court has long cautioned that "[e]very reasonable presumption must be indulged in support of the controverted statute with any doubts being resolved against the challenging party, who has the substantial burden of showing that the act is constitutionally unsound." *Koscot Interplanetary*, 90 Nev. at 456, 530 P.2d at 112. Among those presumptions is the rule that, "[w]henever possible,"

Nevada courts "must interpret statutes so as to avoid conflicts with the federal or state constitutions." *Mangarella v. State*, 117 Nev. 130, 134-35, 17 P.3d 989, 992 (2001).

The canon of constitutional avoidance applies with double force in this case. *First*, just as a majority of other states' courts have interpreted analogous provisions in their state constitutions, this Court should avoid an interpretation of SB 302 that would treat the use of *private* funds by individual participants in the program for an *educational* purpose as an expenditure of *public* funds for a *sectarian* purpose. Any benefit to religious institutions is incidental, remote, attenuated—a byproduct of a valid and secular law. To the extent that this raises a close question under the Nevada Constitution, the court must err on the side of saving the statute. *Second*, the Court should avoid applying Nevada's Blaine Amendment in a manner that would invite federal constitutional problems. Section 10 cannot bear the breadth that Plaintiffs would ascribe it. At most, it prohibits the sort of direct appropriation of funds to sectarian organizations invalidated in *Hallock*. Extending it any further to discriminate against parents who freely decide to send their children to a private school of their choosing would raise serious federal constitutional questions that this Court is best to avoid.

IV. The ESA Program Does Not Violate the "Uniform System of Common Schools" Language of Article 11, § 2.

As a fallback to their Blaine Amendment claim, Plaintiffs claim that the ESA program violates that portion of Article 11, § 2 of the Nevada Constitution which authorizes and requires the Legislature to establish a "uniform system of common schools." But the ESA program does not violate Section 2. Indeed, the program does not even implicate Section 2. The program is instead fully authorized by Article 11, § 1 of the Nevada Constitution, which empowers the Legislature to "encourage education" by "all suitable means." Plaintiffs' claim under Section 2 has no merit and should be dismissed.

Article 11, § 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.

Section 2 confers on the Legislature both the power and the duty to establish a public-school system. The only limits imposed by Section 2 are that the Legislature must establish a "uniform" public-school system with a school in every district open at least six months per year.

The Legislature derives broad power in the area of education from the Section 1 of Article 11, which is titled "Legislature to encourage education." It provides:

> 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). Section 1 authorizes the Legislature to encourage and promote education by "all" means that the Legislature deems to be "suitable." The Lawmakers are not limited to the encouragement of 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). Quite the contrary, the Legislature is required by Section 1 to "encourage" education by "*all* suitable means." Nev. Const. art. 11, § 1 (emphasis added).

Plaintiffs nonetheless claim that the ESA program violates Section 2 because "it promotes a non-uniform system by providing public funding to private and religious schools whose curricula, instruction, and educational standards diverge dramatically from those in public schools." Compl. ¶ 7. Plaintiffs also claim that the ESA program violates Section 2 because "it undermines the public school system ... by diverting funds from the public schools and supporting a parallel system of private schools, including religious schools, which teach a religious curriculum and are not open to all on equal terms." *Id.*; *see also id.* ¶¶ 90-92.

Plaintiffs' two theories completely ignore Section 1.[11] The Legislature did not create Nevada's 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. Plaintiffs' first theory—that the ESA program allegedly "promotes a non-uniform system" by funding private schools that differ from the public schools—fails because Section 2 requires only that *the public schools* be uniform. Section 2 does not apply to private schools and does not impose any uniformity requirement on such schools. *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 (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 education savings accounts 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 the ESA program allegedly "undermines" public schools

[11] Even Plaintiffs' reading of the Legislature's Section 2 powers is crabbed. In *State of Nevada v. Tilford*, 1 Nev. 240 (1865), the Court upheld the Legislature's power under Section 2 to abolish the Storey County board of education as part of the creation of a new public-school system. "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." *Id*. at 245. Thus, "[i]t 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." *Id*. "Certainly," the Court held, "the legislature was not restricted in the choice of these three alternatives." *Id*. *Tilford* thus confirms that, even as to Section 2's "uniform[ity]" requirement, the Legislature has broad authority to restructure the public-school system. The Legislature may alter the existing public-school system or even adopt a "new system" in place of the old, so long as its policy applies in every county.

by "diverting" funds to private schools—fares no better than their first. By its terms, the "uniform system of common schools" language in Section 2 does not impose any restriction on the Legislature with respect to public school funding. It mandates uniformity, not any particular funding level.[12] 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, and Section 6's provision of comprehensive and exclusive authority to the Legislature to determine the adequacy of school funding.

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 that case 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 that

> the 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 (1) "encourage"

[12] Indeed, Section 6 of Article 11 makes very clear that it is the Legislature, and only the Legislature, that decides the adequacy of public school funding: "the Legislature shall enact one or more appropriations to provide the money *the Legislature* deems to be sufficient …." Nev. Const. Art. 11, § 6 (emphasis added). Plaintiffs' second theory is effectively an unpled collateral attack on the Legislature's discretionary determination under Section 6.

education by "all suitable means" and (2) establish a "uniform system of common schools."[13] Rejecting the plaintiff's "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 this. 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 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 Plaintiffs make here. *See* Compl. ¶ 7.

[13] 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.

* * *

Nevada's new ESA program was enacted for a valid secular purpose—the improvement of the education system in Nevada—and it is available to all Nevadans, regardless of creed. It does not involve the use of public funds for a sectarian purpose. Therefore, it does not violate Section 10 of the Nevada Constitution. Nor does the program violate the Legislature's duty under Section 2 to establish a uniform system of common schools. It gives parents and students the choice of attending a uniform public school, private school, or even pursue other educational options. And it falls well within the Legislature's broad Section 1 power to encourage education by all suitable means.

CONCLUSION

For the foregoing reasons, Defendants' motion to dismiss should be granted.

Respectfully submitted,

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Attorneys for Defendants

Dated: October 19, 2015

EXHIBIT 1

EXHIBIT 1

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

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.

EXHIBIT 2

EXHIBIT 2

REPORT

OF THE

Superintendent of Public Instruction

OF THE

STATE OF NEVADA,

FOR

THE YEARS 1875 AND 1876.

REPORT.

STATE OF NEVADA, DEPARTMENT OF PUBLIC INSTRUCTION,
CARSON CITY, January 1st, 1877.

To His Excellency,
L. R. BRADLEY,
Governor of Nevada:

SIR: In accordance with the requirements of the school law of this State, I have the honor herewith to present the fourth biennial exhibit of the condition of public instruction coming under the supervision of this department, covering the school years of eighteen hundred and seventy five and eighteen hundred and seventy-six, it being the eighth report issued from this office.

I have the honor to be, very truly, your obedient servant,

SAMUEL P. KELLY,
Superintendent of Public Instruction.

FOURTH BIENNIAL REPORT

OF THE

SUPERINTENDENT OF PUBLIC INSTRUCTION

FOR THE

Fiscal Years of 1875 and 1876.

A brief reference to the condition of the schools and school matters in the several counties shows a marked improvement in all departments of education. Each county has been visited, in each year, according to law (with the single exception of Lyon, my second visit for eighteen hundred and seventy-six being prevented by a severe illness), and I have endeavored, as far as the appropriation would permit, to visit every school in the State. This I expect to accomplish during the ensuing two years.

CHURCHILL,

Which returns the smallest number of children, and which for a long time possessed the most limited advantages for the prosecution of the work of education, has, during the past two years, placed herself in the front rank. Taking into consideration her remote location, the unnumbered drawbacks incident to a sparsely settled community, and the difficulties standing in her way, she is, in proportion, in advance of any county in the State in interest, energy, and results. The principal drawback to the successful conduct of the school work was the apparent impossibility of providing a sufficient length of school term for all the children entitled to school benefits. When the present Superintendent took charge, there were three districts in the county, located at long distances, in each of which school was maintained three months in the year, by the same teacher. The disadvantages under which he labored will be readily seen. There would be in each school a vacation of nine months in each year, and the possibility of the advancement of the scholar exceedingly small, with no time for thorough training. That which was acquired in the shorter time would be forgotten during the

who, as a general thing, are not easily terrified. Truant officers are employed in both Virginia and Gold Hill, vested with extraordinary powers, and their action in dealing with truants would not stand the test of law, in all probability, if the matter were brought before the Courts. It is to be hoped that the next Legislature will amend the law so as to reach the guilty parties themselves, and compel attendance at school during the years specified. The law, as it now stands, is inoperative and practically a dead letter. No actual test of its constitutionality has been made as yet in the State. We earnestly hope that our next Legislature will take the matter into serious consideration."

THE GENERAL INTEREST

Of the people in public education was never more manifest than it is at present. From personal association and conversation with citizens and parents throughout the State, I am satisfied that the strong interest taken is born of the practical working of our free schools. Their importance and benefit are being acknowledged by those who never before gave the subject a thought. Money is liberally contributed for school purposes, where it could not be raised for any other public object. There has been only one instance in which a school tax has been voted down, and that was in the interest of a corporation, against the wishes of the people most interested. This interest produces a healthy feeling which reacts upon the schools, inciting the teachers to activity and the children to industry. As the parents are interested, the children are the more so.

EMPLOYMENT OF TEACHERS.

In his report for eighteen hundred and seventy-four, my predecessor most forcibly says:

"After eight years of personal inspection of methods and results in the different counties of the State, I am obliged to record the opinion that the greatest need of the educational system of Nevada is the adoption of measures securing the exclusion of manifest incompetence from the place of authority in the school-room. It is conceded that the success of the system depends almost entirely upon the skillful tact of instructors 'apt to teach,' and yet it employs many persons of meager ability and of limited acquirements."

While I have been able to report the schools in a flourishing condition, it is by no means to be inferred that our teachers are all competent. While we have some of the very best, we have some of the very worst; I have in some instances been compelled to advise removals on account of incompetency. I recommend that the State Superintendent, by and with the consent of the State Board of Education, be empowered to remove incompetent teachers, even if it be against the will of district Trustees. The employing power—the Trustees—do not correct the error, and it demands prompt action to correct it. Owing to urgent solicitation of friends, influence, relationship, and at times culpable carelessness, teachers are placed and kept in charge of schools, who need to be themselves taught. Even the requirement of the law in regard to the possession of a good moral character, is passed unnoticed and unquestioned. A higher standard is demanded, we have the means to pay

well qualified teachers, a superabundance of applications, yet the favoritism of friendship, or prejudices in regard to locality, prevents vacancies from being filled by any but the favored ones. The plan adopted by some of the Examining Boards of the State, of competitive examinations, was a step in the right direction. It will be well for the Legislature to consider whether the establishment of a State Board of Examination will remedy the evil.

METHODS OF INSTRUCTION.

In the general system of teaching it is conceded that the most simple and direct plan is the best. Teachers can advantageously learn from each other. An arrangement made in each county for the teachers to visit the schools of the others, would be of great benefit. I am glad to note the adoption of the plan, of having the children learn their spelling lessons at the blackboard, now introduced in many of our schools. The usefulness of the plan will be manifest, when we remember that in practice the question of correct spelling occurs in writing almost entirely. The old system of spelling by rote is simply a school exercise of but little effect, compared with the former.

I especially commend a plan of teaching, or rather reviewing geography, successfully adopted in the Belmont school by a former teacher, and now being introduced into other schools. The idea is that of the spelling match intensified. Two classes are formed, the object being, that the members of one *point the others down*. There are three ways of failure: First, in location; second, in description; third, in spelling. *E. g.*, a place is given—say Carson. The first one points to it, describes it, spells it. The next one, in the opposite class, takes the last letter, *n*, and selects any place he knows of commencing with that letter—say Nubia—points, describes, and spells as before, announcing the last letter, *a*, for the next scholar in the opposite class, and so on. The real interest occurs when the number is reduced to two or three. I witnessed, at the above named school, an exercise of this kind, in which two children, a boy and girl, kept their positions for over an hour; during which time intense interest was expressed by all present. The plan is worth a trial and a test, and can be varied to almost any extent.

I have also noticed particular attention paid to reading and elocution in several of the schools; the peculiar feature being the occasional looking from the book in reading, and the declamation of the story or article just read, from memory.

COÖPERATION OF PARENTS.

Under this head, much has been said by teachers, Trustees, and general school talkers; that is, in regard to interest in studies, regularity of attendance, etc. Excellent advice, always. But, there are other ways of coöperating with the teacher, without special reference to studies. Too little care is exercised in the selection and arrangement of time for pleasure and amusement out of school hours. There is nothing which so demoralizes a school as the attendance of the scholars at a ball or party in the middle of the week. The day before, anticipation and excitement detract from the ordinary interest in school duties; and, the day after, weariness and inertia prevent attention. While I see the necessity of diversion and amusement, and have nothing to urge against parties held so as not to interfere with school work, I do

know, that the duties of the scholar, and the advancement of the school, have been seriously interfered with by parents allowing their children to attend balls and parties at such unseasonable times. The mistake is widespread, affecting alike large and small schools. I visited one school, in which over half the girls had their hair in curl papers for "a church (?) festival and dance;" and the teacher apologized for their lack of preparation and interest in their studies, confessing herself unable to interest them that day. A little attention to and appreciation of school duties, *as duties*, will enable parents to forbid such pleasures and recreations until a more fitting time. It is a very serious question, whether it is safe to allow young girls to assume the places of their elders before their education is completed, to say nothing of the insipid talk of the ball room, and the temptations to which they are subjected.

THE BIBLE IN THE SCHOOLS.

The question of religious instruction in the public schools has brought out some sensible thought, but much more meaningless talk. That the morals of the children should be watched over and cared for all agree. That the religious element should be fostered most people advise, a few deny. Our statutes prohibit sectarianism, but do not decide as to the reading of the Bible. In some schools it is read, in others it is not. I know of but one school in which prayer is publicly offered. Public education is clearly secular. The question of public morals is a secular one. If there be in the Bible that which will improve public morals without interfering with the principles of those dependent on the schools for educational privileges, that help is desirable. I respectfully submit that the singing or repeating in concert of the Lord's Prayer, and the reading of the beatitudes and psalms responsively by teacher and scholars (upon which Jews and Gentiles agree, and to which non-religionists do not object), would be a fair compromise, satisfying the conscientious convictions of some, and not offending the prejudices of others.

VACANCIES IN BOARDS OF TRUSTEES.

Great inconvenience has been suffered in some counties by the enactment of the Legislature of eighteen hundred and seventy-five, requiring vacancies as above to be filled by the County Commissioners. It works a great disadvantage in remote districts. The law should be repealed.

THE STATE UNIVERSITY

Was opened October twelfth, eighteen hundred and seventy-four, with seven pupils. When I visited Elko in eighteen hundred and seventy-five, there were sixteen in attendance, and in eighteen hundred and seventy-six, twenty-three. With the closing of last term, thirty were reported, being more than a fourfold increase in two years. The building erected by the citizens of Elko continues in use for educational purposes.

IMPROVEMENTS.

The music room has been furnished and placed in charge of a competent instructor. A new building has been erected for the residence of the Principal and for dormitories for the students. It is two and a half

EXHIBIT 3

EXHIBIT 3

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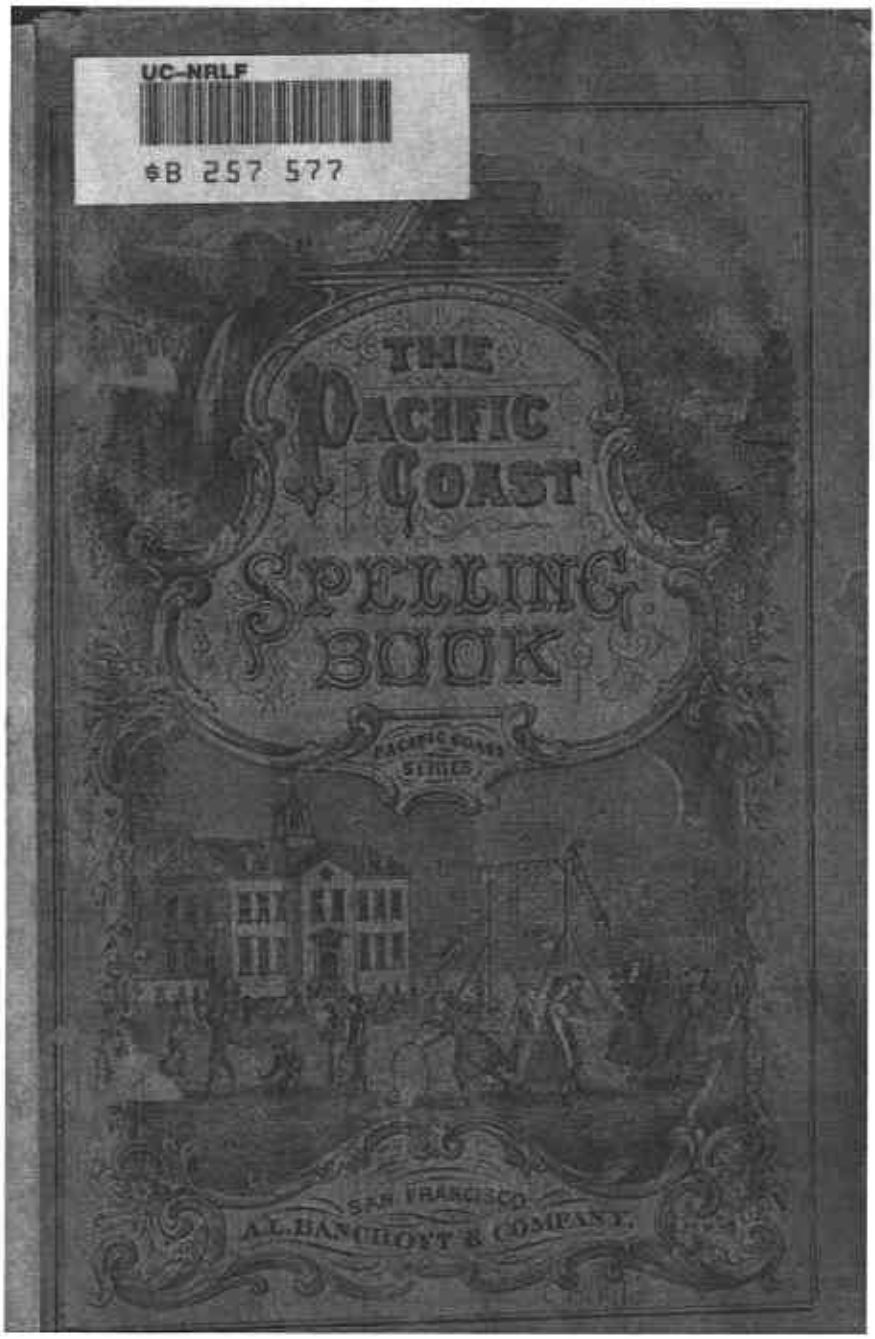

Pacific Coast Series.

THE

PACIFIC COAST

SPELLER.

By A. W. PATTERSON, M. D.

SAN FRANCISCO:
A. L. BANCROFT & COMPANY,
PUBLISHERS, BOOKSELLERS AND STATIONERS.
1873.

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PART SECOND.

Lesson I.

PREFIXES AND SUFFIXES.

A PREFIX is one or more syllables placed before a word to form with it another word.
A SUFFIX is one or more syllables placed after a word to form with it another word.

LATIN PREFIXES.

A, AB, *from;* as, *a*vert, to turn *from; ab*stract, to draw from.

AD, *to;* as, *ad*vert, to turn *to; ad*here, to cling *to.*

ANTE, *before;* as, *ante*diluvian, *before* the flood.

CONTRA, *against;* as, *contra*dict, to speak *against.*

DE, *from;* as, *de*duct, to take *from; de*duce, to draw *from.*

DIS, *separation, a parting from;* as, *dis*arm, to take away one's arms; *dis*connect, to separate.

IN, *not;* as, *in*correct, *not* correct.

INTER, *between;* as *inter*vene, to come *between.*

PRO, *for, forth;* as, *pro*noun, *for* a noun; *pro*duce, to bring *forth.*

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RETRO, *backward;* as, *retro*grade, going *backward.*

SUPER, *over;* as, *super*abundant, more than enough.

SUB, *under;* as, *sub*scribe, to write *under.*

SEMI, *half;* as, *semi*-annually, every *half* year.

TRANS, *over, beyond;* as, *trans*port, to carry *over* the sea; *trans*atlantic, *beyond* the Atlantic.

ULTRA, *beyond;* as, *ultra*marine, *beyond* the sea.

Lesson II.

GREEK PREFIXES.

A, AN, *without;* as, *a*pathy, *without* feeling; *an*archy, *without* government.

AMPHI, *both;* as, *amphi*bious, living *both* on land and in water.

ANA, *to loose;* as, *ana*lyze, to separate into its parts.

ANTI, *against, opposite to;* as, *anti*-Christ, *against* Christ, *anti*pode, one who lives on the opposite side of the earth.

APO, *from;* as, *apo*graph, to copy *from; apo*gee, *from* the earth.

DIA, *through;* as, *dia*meter, a straight line passing through the center of a circle.

EPI, *upon, or among;* as, *epi*demic, prevailing *among* the people, *epi*taph, something written *upon* a tomb.

HYPER, *beyond;* as, *hyper*critic, one who is critical *beyond* reason.

HYPO, *under;* as *hypo*crite, one who keeps *under,* or conceals, his real character.

SYM, SYN, *together;* as, *sym*bolism, to cast *together, syn*agogue, a place where Jews assemble *together* to worship.

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Lesson III.

ENGLISH PREFIXES.

A, *at, in* or *on;* as, *a*far, at a distance; *a*beam, on the beam.

BE, *before, to make;* as, *be*times, *before* it is too late; *be*numb, *to make* torpid.

EN, or EM, *in, into;* as, *en*gage, to take part *in; em*peril, to put *in* peril.

FORE, *before;* as, *fore*doom, to doom *before*hand.

IM, IN, *to make;* as, *im*part, *to make* known; *in*crease, *to make* greater.

MIS, *wrong;* as, *mis*call, to call by a wrong name.

OUT, *beyond;* as, *out*bid, to bid more than another.

UN, *not, to loose;* as, *un*lucky, *not* lucky; *un*hand, *to loose* from the hand.

WITH, *against, from;* as, *with*stand, to stand *against; with*hold, to hold *from.*

Lesson IV.

DICTATION EXERCISE.

"Thou shalt not avenge the children of thy people." How often we run to meet what we should most avoid! An antediluvian is one who lived before the flood. No truth can contradict another truth. Let us decide our quarrels without the intervention of a foreign power. There is not a more worthy sight, than a man who is superior to

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his sufferings. "The way of the transgressor is hard." Crocodiles are amphibious animals. "All the hypocrite's hope shall perish." How pleasant it is, to find kind friends who will sympathize with us in our afflictions. "Shall we to men benighted the lamp of life deny?"

"Be not forgetful to entertain strangers." Heaven, though slow to wrath, is never with impunity defied. Tea is a cup that cheers but not inebriates.

A man may mistake the love of virtue for the practice of it. Moral evil is an action unconformable to our duty. It is impossible that God should withdraw his presence from anything.

Lesson IV.

SUFFIXES.

ABLE, IBLE, *that may be;* as, navig*able*, *that may be* navigated; contract*ible*, that may be contracted.

AGE, *state or act of, a collection;* as, hom*age*, the *act of* doing reverence; assembl*age*, a collection of individuals.

AN, AL, IC, *pertaining, or belonging to;* as, Mexic*an*, belonging to Mexico; nation*al*, *belonging to* the nation; rust*ic*, *belonging to* the country.

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AR, *one who; pertaining to;* as, begg*ar*, *one who* begs.

ARD, *state, character, one who;* as, dot*ard*, one who is in the state of dotage; wiz*ard*, one having the character of a sorcerer; drunk*ard*, *one who* drinks to excess.

ARY, *relating to; one who is;* as milit*ary*, *relating to* the affairs of war; advers*ary*, *one who* is opposed to another.

ARY, ERY, ORY, *a place for;* as, herb*ary*, *a place for* herbs; rook*ery*, *a place for* rooks; dormit*ory*, *a place for* sleeping.

ATE, *to make;* as, termin*ate*, *to make* an end.

INE, ILE, *belonging to;* as, femin*ine*, *belonging to* women, infant*ile*, *belonging to* a child.

DOM, *possession of, state;* as, wis*dom*, the *state* of being wise; duke*dom*, the *possessions of* a duke.

EE, *one who is;* as, absent*ee*, *one who is* absent.

ER, OR, *one who;* as, accus*or*, *one who* accuses.

EN, *made of;* as, wood*en*, *made of* wood.

Lesson V.

ENCE, *state of being;* as, turbul*ence*, *the state of being* turbulent.

ENT, *one who*, the *state of being;* as, presid*ent*, *one who* presides; flu*ent*, the *state of being* eloquent.

ETY, TY, *state of being;* as, propri*ety*, *the state of being* proper.

ESS, denotes the feminine gender; as, lion*ess*, the female of the lion kind.

FUL, *full of;* as, hope*ful*, *full of* hope.

FY, *to make;* as puri*fy*, *to make* pure.

HOOD, *state or office;* as, priest*hood*, the *office* of a priest; boy*hood*, the *state* of being a boy.

CLE, *little;* as, parti*cle*, a *little* portion of matter.

IZE, *to make;* as fertil*ize*, *to make* fertile.

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ISM, *doctrine, state;* as, Calvin*ism*, the *doctrine* of Calvin; barbar*ism*, the *state* of being savage.

ITE, *a descendant, a follower, one who has;* as, Israel*ite*, a *descendant* of Israel; Jacob*ite*, a *follower* of James the Second of England; favor*ite*, *one who* has favor.

LESS, *without;* as, thought*less*, *without* thought.

SOME, OUS, *full of;* as trouble*some*, *full of* trouble, danger*ous*, *full of* danger.

ULE, *very small;* as, animal*cule*, a *very small* animal.

WARD, *toward;* as, west*ward*, *toward* the west.

URE, *that which does, a condition;* as, legisla*ture*, a body of men who make our laws; pleas*ure*, the *condition* of being pleased.

Y, *full of;* as, sand*y*, *full of* sand.

Lesson VI.

DICTATION EXERCISE.

By common law, a river is considered navigable only so far as the tide ebbs and flows in it. Civil war is a national calamity. There is on earth no greater object for commiseration, than the drunkard; "he puts an enemy into his mouth, that steals away his brains." Satan is the avowed adversary of all mankind. A kingdom is a country ruled by a king or queen. The golden-pheasant is a species of bird that is a native of China; it is very beautiful. George

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Washington was the first President of the United States.

Prosperity can be best enjoyed by those who fear not to lose it. Purify your heart of all evil thoughts. No true Christian can be entirely hopeless.

"Westward the Star of Empire takes its way." The Legislature is a body of men in any state or kingdom, invested with the power to make or repeal laws.

RULES FOR PREFIXES AND SUFFIXES.

Lesson VII.

RULE I.—When monosyllables, and words accented on the last syllable, end with a single consonant which is preceded by a single vowel, they double their final consonant before an additional syllable that begins with a vowel. As.

com-mĭt′	com-mĭt′ting
ac-quĭt	ac-quit-ting
rŏb	rŏb′ber-y
co-quĕt′	co-quĕt′ting
oc-cûr	oc-cûr-ring
re-fĕr	re-fĕr-ring
rē-grĕt	rē-grĕt-ted
com-pel.	com-pel-ling
rē-pĕl	rē-pĕl-lent

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RULE II.—A final consonant should remain single before an additional syllable, when it is not preceded by a single vowel, or when the accent is not on the last syllable. As:

vĭs′it	vĭs′it-or
dĭf-fer	dĭf-fer-ing
pĕr-il	pĕr-il-ous
ē-qual	e-qual-ize
vĭt-ri-ol	vĭt-ri-ŏl′ic
re-pēal′	re-pēal′ing
un-sēal	un-sēal-ing
con-çēal	con-çēal-ing

Lesson VIII.

RULE III.—Words ending with any double letter, preserve it double in all derivatives formed from them by means of prefixes. As:

see	fōre-see′	tĕll	fōre-tell′
pȧss	rē-pȧss	sĕll	ŭn′der-sell′
prĕss	de-prĕss	ădd	sū′per-ădd′
mĭss	re-mĭss	swĕll	ō′ver-swĕll′
cạll	re-cạll	rōll	rent′roll
stạll	fōre-stạll	fĭll	fụl-fĭll′

RULE IV.—The double letter is retained at the end of words before any suffix not beginning with the same letter. As:

wōō′er	free-ly	cârе′lĕss-ness
see-ing	coo-ing	reck-less-ness
flee-ing	free-dom	im-press′-i-ble
pȧss-ing	free-man	re-press-ive-ly
pȧss-port	pull-ing	com-press-i-ble
glȧss-y	drōll-ness	em-băr-rass-ment
mȧss-ive	blĭss-ful	suc-çess-fụl-ly

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Lesson IX.

DICTATION EXERCISE.

"Thieves for their robbery have authority, when judges steal themselves." The jury acquitted the prisoner, when they found he was innocent. We do not realize how swiftly time passes away. Minds differ, as rivers differ. "One star differeth from another star in glory." Our souls are in constant peril. To cross the ocean is a perilous undertaking. We cannot recall the days that are past. No man can foretell the future. "If ye fulfill the law according to the Scriptures, 'Thou shalt love thy neighbor as thyself,' ye do well." "From life without freedom, oh, who would not fly?" A reformation was successfully carried on. Carelessness in any act is inexcusable. Water is compressible in a small degree. He saw no hope of being extricated from his embarrassments. The scenery of the Rocky Mountains is surpassingly grand. 'Tis better to die as freemen, than to live as slaves. Recklessness in the use of money, is a vice.

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EXHIBIT 4

EXHIBIT 4

N. B. In accordance with an order of the Board at last meeting the following circular has been issued and distributed among the school people and newspapers of the State.

D. R. Sessions
Secretary.

Carson June 7, 1879.

[Circular]

STATE OF NEVADA

OFFICE OF THE

SUPERINTENDENT OF PUBLIC INSTRUCTION,

Carson, May 29, 1879.

To the School Officers and
Teachers of Nevada:

You are hereby notified that the Board of Education, at its meeting to-day, prescribed the Pacific Coast Speller for use in the Public Schools of this State, on and after Sept. 1, 1879.

The Publishers, A. L. Bancroft & Co., San Francisco, have entered into an agreement to furnish Pupils with said Speller at ten cents per copy during a period of six months from the first day of September; after this, at the introductory price, twenty-five cents per copy.

The Board of Education, at its second regular semi-annual meeting on the third Monday of next October, propose to discuss the merits of all the text books now in use, with reference to making any change therein that they may deem essential to the welfare and improvement of the schools

It is proposed, especially, to substitute some better book for the Arithmetic in use, at present; and it will be a matter for consideration, also, whether a better reader can not be found with which to replace Sheldon's

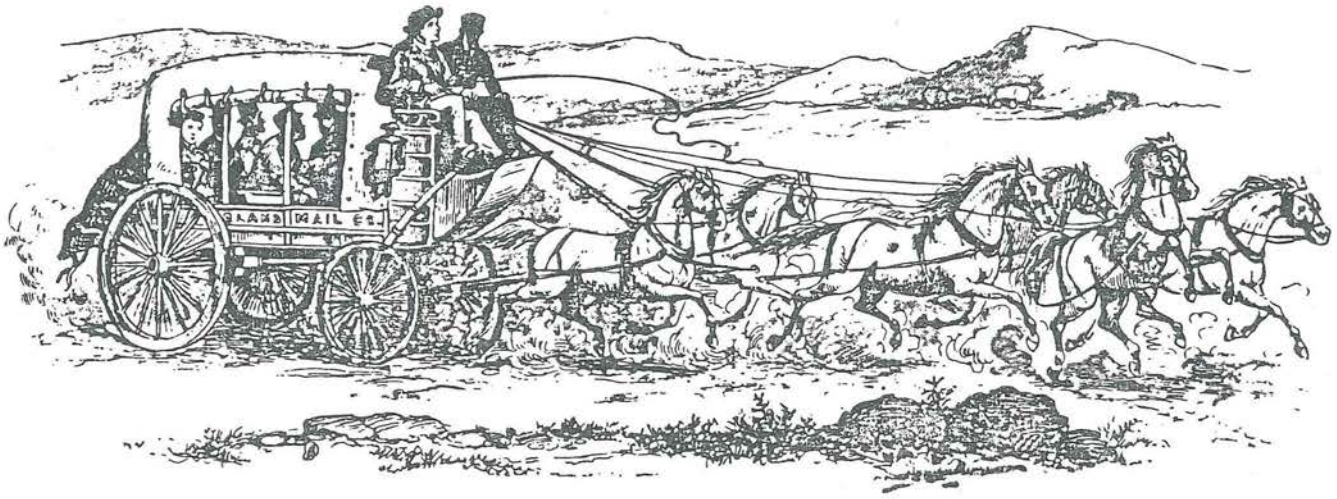
It is the earnest desire of the Board of Education that the Teachers, School officers, and all others throughout the State who are interested in the cause of education, express their views in this matter, whereby the most valuable practical results may be reached. Communications of the nature intimated, containing suggestions of experienced and thoughtful educators, will be heartily received and carefully considered.

J. H. Kinkead,
A. J. Hatch,
D. R. Sessions,
} State Board of Education.

EXHIBIT 5

EXHIBIT 5

TOUGH



HISTORY OF RENO SERIES - VOLUME I

Also By Author: *Alfalfa Country: Nevada Land, Water and Politics in the 19th Century*
Conquered Provinces: Nevada Moves Southeast, 1864-1871
Turn This Water Into Gold: The Story of the Newlands Project

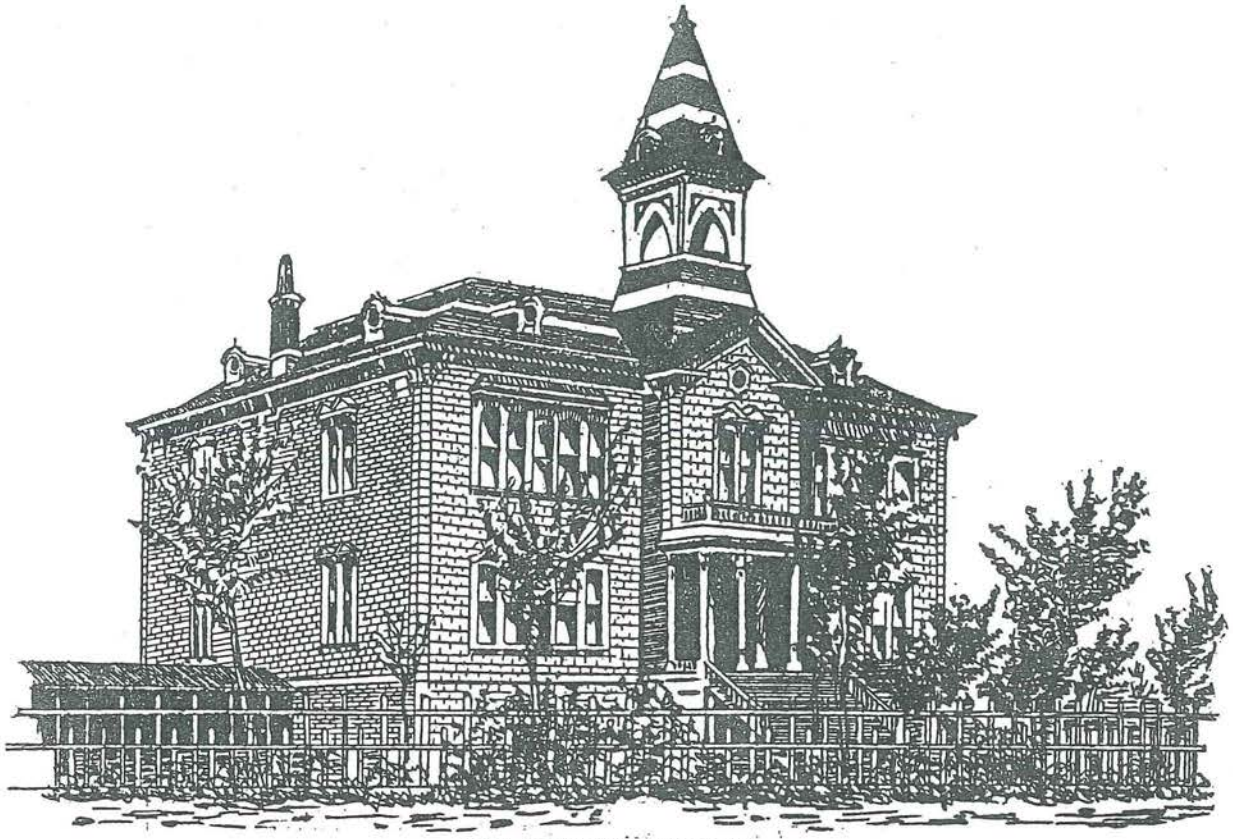
LITTLE TOWN ON THE TRUCKEE: RENO 1868-1900

OCT 8 2 200

John M. Townley

DIRECTOR, Great Basin Studies Center

RENO: GREAT BASIN STUDIES CENTER, 1983



Reno Public School Building.

12 ATTITUDES, INSTITUTIONS, AND SOCIETY

Now we are quite free to own that we do not like Reno. There is an oer-smart, railroadish, hurry-scurry air about the place, and a paucity of comforts which fail to commend it to any tastes of our own. We are almost tempted to confess that we have the kind of dislike for it that we have for an upstart; but there is an energy and public spirit about its people sadly wanting in Carson... If the truth be stated, Reno *is* impudent; but also its citizens are enterprising and alive to the things and interests which invite prosperity.

(from) *Carson Appeal*
Nevada State Journal
May 30, 1877, p. 1.

THOSE WHO examine frontier communities remark of the speed at which such towns acquired necessary institutions, social organizations and local traditions. Reno was no exception to this process and sported schools, lodges, and all the other characteristics of Small Town America within months of its birth. Incoming residents brought these qualities in tow with family and household goods. The Truckee resembled thousands of other incipient metropoli and newcomers demanded such familiar amenities as homes rose in the Meadows.

A finite, commonly defined and understood set of functions was provided by any town - regardless of location - and newcomers undertook the task of creating them by taxes or volunteer effort. Otherwise, Reno could hardly maintain a reputation for Yankee spirit or drive. By today's standards, these community services might be both limited and exclusive, but mainstream 19th century Americans relied on their presence to give a sense of continuity.

Schools

The first public institution established

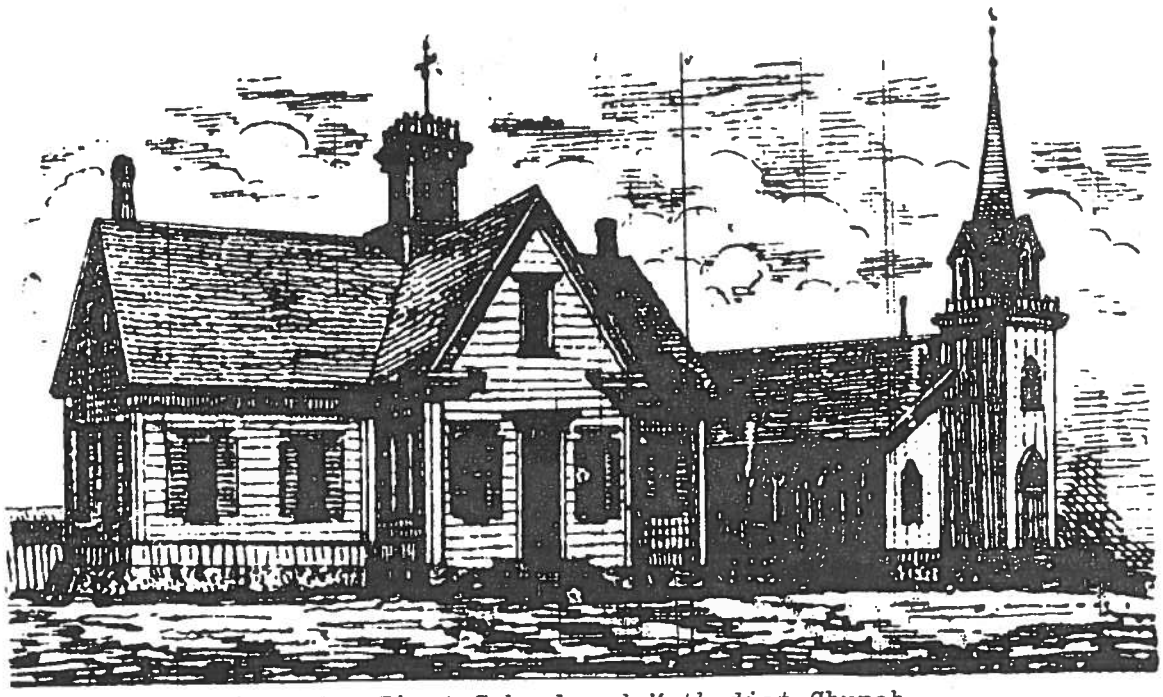


Fig. 57. First School and Methodist Church

in Reno was its school. Built midway betwixt Sierra and West streets, on First Street's north side, the "Gothic" style building doubled as town hall and church. Completed late in 1868, the 26'x40' structure housed about 100 scholars and one teacher. Abandoned as a classroom in the late 1870's, it stood until April, 1914 when razed as downtown expanded into residential districts.[1]

Benefit dances, box suppers and lotteries raised funds for an ornamental belfrey and bell added in April, 1869. A bystander at dedication ceremonies observed "the belfrey is not as fine as the one on St. Peter's, at Rome, neither is the bell as large, but it is pretty good for Reno!" Private classes in family homes offered penmanship, art and the graces.

During the 1870's, new classrooms were added and space rented in Virginia Street storefronts as enrollment reached 400 and the teaching staff rose to five full-time professionals. While all county schools were a responsibility of the county's superintendent, in actuality control rested with boards, elected or appointed from each district. There were no consolidated schools, with separate boards for Reno, Glendale, North Truckee, Brown's, Anderson and Huffaker's. Boards hired and fired teachers, approved all expenditures and arranged for construction of any new classroom facilities. Teachers conformed precisely to local codes of conduct, since contracts ran but a single term and tenure unknown.

Support for schools was both widespread and hesitant. Classrooms were not only the arena for learning but also for instruction in values and behavior. There was little doubt in the minds of most Meadows residents that the Constitution of the United States was God-given and the nation's laws and attitudes, which had brought it to world prominence, must be taught and deified in the public schools. Private schools, particularly parochial insttutions, were suspect. They undermined that uniformity and common bond that characterized the young, brash nation. In the Centennial Year of 1876, a *Journal* editorial lambasted the Roman Catholic church for seeking "the mastery of the world," and argued for elimination of all schools other than public.[2] Reno, thoroughly smug in the superiority of white, Anglo-Saxon, protestant traditions, insisted that the school perpetuate its prejudices.

At the same time, while accepting that the future depended on educational quality, teachers were considered second-class citizens working part-time jobs. Gradually, single women became tied to the classroom, while men occupied the few administrative positions. If a schoolmarm married, which was often as most were in their upper teens or twenties, they resigned immediately - obeying the tradition that limited married ladies

to fulltime responsibility for home and children. Some few widows, or married women without support, were provided teaching jobs as sinecures. However, when things got tough, as in the late 1870's, the county commission economized by reducing the superintendent of schools' salary and school budget, without touching any other county department. It was a typical example of continuing public distrust of the school system.

MAY DAY SOCIAL AND ENTERTAINMENT.

— FOR THE BENEFIT OF —

THE RENO HIGH SCHOOL.

AT THE PAVILION.

Friday Evening, May 1, 1891.

GRAND MAY-POLE DANCE

At the same time, the teaching staff was called on to show proof of student attainment and accomplishment. Several times each semester, evening programs displayed pupil progress. Spelling bees, debates, holiday pageants, plays and musical recitals pulled heavy attendance from parents without many other entertainments. To satisfy taxpayer scrutiny, 19th century schools had to do more than field winning athletic teams.

Victorian schools never achieved that perfection so fondly, but erroneously assumed today. Absenteeism averaged 25%, one in four eligible children never enrolled and rare applicants for college revealed many gaps in training.

Last evening Miss Parish's private school gave an exhibition in Pioneer Hall. The programme called for vocal and instrumental music, recitations, dialogues, tableaux, etc.; in all of which the pupils acquited themselves satisfactorily, and clearly demonstrated the fact that they had well and profitably improved their opportunities during the first term under Miss Parish's tuition.

RENO CRESCENT
May 23, 1870, p. 2.

1492. 1892.

COLUMBUS DAY!

Four Hundredth Anniversary of the Discovery of America.

OCTOBER 21, 1892

THE procession will form at 9 A. M. on Chestnut, Fifth and West streets, with right resting on Fourth. The line of march will be east on Fourth street to Sierra; south on Sierra to River Front; east on River Front to Virginia street; north on Virginia street to Commercial Row; west on Commercial Row; thence to place of exercises.

— ORDER OF PARADE. —

Bicyclists.
Grand Marshal and Aids.
Juvenile Band.
Veterans.
Reno Guards, Co. C.
School Children.
Parochial School Children.
Young Ladies of the Seminary.
Citizens on Foot.
Relief Corps in Carriages.
Teachers in Carriage
of the Day in Carriages.
Officers
Citizens in Carriages.

After which will be rendered the following

— PROGRAMME —

Music, "Columbia, the Gem of the Ocean," Band
Raising of the Flag..... Veterans
Salute to Flag..... Pupils
Music, "America," ..... All
Music..... Band
Prayer..... Rev. J. Maglit
Reading of President's Proclamation.....

Although an additional frame classroom had been added in September, 1874 to Reno's original schoolhouse, the town's first true educational center rose in 1880. Bonds approved in 1878 paid for a three-story, basemented school designed by architect A. A.

Cook of Sacramento and built by Reno contractor I. T. Benham for $14,000. Its cornerstone was placed at Fifth & West in October, 1879 and the sixty-eight foot square, eight classroom building dominated its campus and the neighboring residential area. Its bell first called students on September 6, 1880.[3] Grades one through four remained at the old school, now styled Reno Primary, while Intermediate and High School departments met at 5th Street.

No sooner had the board signed contracts for its new building than residents south of the Truckee presented petitions asking for their own elementary school. A site was purchased from A. J. Hatch on South Virginia's east side, near the intersection with Ryland, in October, 1880. A frame classroom opened there in 1881 for about twenty pupils.

Addition of the Southside School completed 19th century Reno's educational establishment. Until the town's unforeseen and chaotic population boom after 1900, the three plants met classroom demands. Reno boasted of its schools - without much proof of their efficacy - and proudly claimed the title, "Athens of Nevada." Boosters even insisted that Athens was but the "Reno of Greece." If compared with other state schools, Reno's might have been better, but well below the standards of Midwest or East.

Teachers and board members never had a bed of roses. Regularly, an irate father might bushwhack a male instructor who dared lay hands on fond offspring. In 1884, after one father was convicted of assault and battery for bouncing his son's teacher off the wall, the unhappy parent filed charges against the instructor. He lost and was laughed out of town.[4] Teachers faced such situations for the grand total of $100 a month, a salary common until after 1900.

The "Back to Basics" controversy is nothing new. Taxpayers complained that the schools produced "functional illiterates" as early as 1885:

> The constant tendency of the schoolbook makers is to a redundancy of language, and of school boards to multiply the number of studies in the schools, so that the graduates are only superficially educated at best. The school term is too short for them to wade through the rubbish which their minds are expected to digest. Notwithstanding... educators seem indifferent to the introduction of such reforms into the schools as are manifestly needed.[5]

Sex education, too, had its own furor:

> The legislature of two years ago passed a law that in all of the public schools of this state there must be taught physiology and hygiene. The teaching of this science becomes very embarrassing to the teacher when constantly in receipt of messages orally or on paper similar to those sent by the Old Lady which read, "I don't want you to teach my gal any more about her insides."[6]

Kindergartens, opened as private morning or afternoon sessions in the 1890's for the children of affluent parents, proved popular and became part of the public school program at the turn of the century.

Outside Reno, valley school systems operated as the traditional one-room, all grades, one-teacher institution. Local boards raised funds for books or other equipment by parties, picnics or other function. Local pride and custom insisted on the plethora of districts. In general, population on the Meadows grew more slowly than in Reno and enabled rural districts to absorb pupils without difficulty. Ranch schools were also social centers, town halls, precinct stations or even homes during periods of overcrowding. Rural schools even had their own folklore. At Huffaker's, Napoleon, an old wagon horse, ran loose in the valley fed by anyone on whose fields the pet wandered. Napoleon, like Mary's Little Lamb, appeared at school each morning when the bell rang, giving children by the half-dozen a ride to the schoolhouse on his broad back. Each afternoon Napoleon magically stood outside the door just when class dismissed and romped with his friends before taking them home. One November morning in 1899, he brought the Questa family's offspring to school and fell down, dead. The whole lower end of the valley turned out to bury him, accompanied by the school's student body and choir.

Libraries

While Reno took pride in its schools, culture - in the form of the written word - could never claim the same loyalty. For over three decades, abortive attempts to create public or subscription libraries rose and fell in cycles. The problem was financing. Town government refused to support a library and individuals behind the concept lacked the money to sustain fledgling reading rooms or book lending clubs. Each effort began with contributions from businessmen and library members who paid monthly dues. After a while gifts slowed to a trickle and members fell away; resulting in the library's collections being

afternoons. In 1887, after a decade of trying to convert Nevada husbandmen to intensive farming, Chapin and his family left Reno for San Diego. A year later, Jane Lake purchased the "Arlington Nursery Ranch" for $8000 and planted its rich fields in clover, keeping a dairy herd on the place.

Reno's one contribution to medical science came in 1879 when druggists Pinniger and Queen devised a laxative they proudly labelled "Syrup of Figs." After advertising in western newspapers brought in a flood of orders, the *Gazette*'s reporter quoted Mr. Queen as authority for a tongue-in-cheek statement that demand "had cleaned him out." Over three-quarters of company stock was held by Renoites, and, by the mid-1890's, they split $50,000 in dividends annually. Business increased about twenty percent each year, and franchises were sold in London, Paris, Honolulu and South America. Sales-oriented, the company spent $300,000 yearly for advertising; far more than for raw materials. By the turn of the century, Syrup of Figs was the valley's leading industrial giant.

GEN. C. C. POWNING.

FOOTNOTES - Chapter XII

[1]Reno Crescent, October 3, 1868, p. 3.
[2]Nevada State Journal, September 22, 1876, p. 2.
[3]For construction detail, see Ibid., October 5, 1879, p. 3. Weekly Reno Evening Gazette, August 7, 1879, p. 7. Ibid., August 28, 1879, p. 4. Reno Evening Gazette, September 7, 1880, p. 3.
[4]Nevada State Journal, June 15, 1884, p. 3.
[5]Reno Evening Gazette, May 6, 1885, p. 2.
[6]Ibid., August 10, 1887, p. 2.
[7]Ibid., July 25, 1876, p. 2.
[8]Ibid., March 19, 1890, p. 3.
[9]Nevada State Journal, March 17, 1876, p. 3. Ibid., May 7, 1876, p. 3.
[10]Ibid., May 22, 1890, p. 3.
[11]Ibid., October 8, 1896, p. 3.
[12]Ibid., August 18, 1877, p. 3. Reno Evening Gazette, September 5, 1877, p. 3.
[13]Nevada State Journal, October 11, 1878, p. 3. Ibid., February 27, 1879, p. 3.
[14]Ibid., May 23, 1893, p. 3.
[15]Details of church buildings and activities can be seen in Reno Crescent, August 7, 1873, p. 3. Nevada State Journal, February 1, 1873, p. 3. Ibid., May 30, 1875, p. 3. Weekly Reno Evening Gazette, June 12, 1879, p. 7. Reno Evening Gazette February 2, 1892, p. 3. Nevada State Journal, April 28, 1894, p. 3.
[16]Reno Evening Gazette, December 4, 1895, p. 3.
[17]Nevada State Journal, December 31, 1870, p. 3.
[18]Reno Evening Gazette, February 21, 1881, p. 3.
[19]Nevada State Journal, November 14, 1878, p. 3.
[20]Weekly Reno Evening Gazette, February 5, 1880, p. 7.
[21]Reno Crescent, May 7, 1870, p. 3. Reno Evening Gazett October 16, 1880, p. 3. Ibid., May 10, 1881, p. 3. Nevada State Journal, May 24, 1899, p. 2.
[22]Ibid., May 3, 1882, p. 3.
[23]Reno Evening Gazette, September 17, 1884, p. 3.
[24]Reno Crescent, December 22, 1871, p. 3.
[25]Nevada State Journal, November 17, 1898, p. 3.
[26]Ibid., January 3, 1896, p. 3.
[27]Reno Evening Gazette, June 19, 1895, p. 3.
[28]Ibid., June 10, 1895, p. 3.
[29]Nevada State Journal, August 5, 1895, p. 3.
[30]Reno Evening Gazette, January 26, 1881, p. 2.
[31]Ibid., June 16, 1884, p. 3.
[32]Nye County News, August 26, 1865, p. 2.
[33]Belmont Courier, March 26, 1892, p. 2.
[34]Reno Evening Gazette, May 21, 1897, p. 3. Ibid., December 12, 1898, p. 3.
[35]Nevada State Journal, February 11, 1898, p. 3.
[36]Reno Crescent, January 23, 1869, p. 1.
[37]Reno Evening Gazette, January 3, 1889, p. 3.
[38]Ibid., October 25, 1898, p. 2.
[39]Ibid., July 30, 1888, p. 1.
[40]Ibid., November 22, 1880, p. 2.