

1 CASE NO.

2 DEPT. NO.

3
4 **IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
5 **IN AND FOR CARSON CITY**

6 NEVADA RESORT ASSOCIATION, a
7 Nevada nonprofit corporation,

8 Plaintiff.

9 vs.

10 NEVADA STATE EDUCATION
11 ASSOCIATION, a Nevada nonprofit
12 corporation; LYNN WARNE, an
13 individual; DOUG BACHE, an individual;
14 TIM WEEKLEY, an individual; ROSS
15 MILLER, in his capacity as Secretary of the
16 State of Nevada; and DOES 1 through 20,
17 inclusive.

18 Defendants.

19 **COMPLAINT FOR DECLARATORY RELIEF**

20 For its Complaint, Plaintiff alleges:

21 **INTRODUCTION**

22 1. Plaintiff brings this action pursuant to NRS § 30.030, NRS § 33.010, and NRS
23 § 295.061.¹ NRS § 295.061(1) permits a challenge to whether an initiative embraces but one
24 subject and matters necessarily connected therewith and pertaining thereto, and the description of
25 the effect of an initiative required pursuant to NRS § 295.009(1)(b).

26 2. NRS § 295.009(1)(b) requires that initiative petitions be submitted to the Nevada
27 Secretary of State. A petition must include a description of effect no longer than 200 words
28 which completely and accurately explains the material effects of the initiative to prospective

¹ Nevada Revised Statute § 295.061(1) requires that the Court set this matter for a hearing not later than 15 days after the filing of this Complaint.

1 signers of the petition. The "Description of Effect" submitted with the initiative entitled "Save
2 Our Schools With Additional Funding" (the "Initiative") is misleading and fails to alert the
3 electorate of its material effects or the fact that it would repeal existing Articles of the Nevada
4 Constitution. Accordingly, Plaintiff seeks a declaration from this Court that the Description of
5 Effect fails to comply with the requirements of NRS § 295.009(1)(b).

6 3. NRS § 295.009(1)(a) requires that an initiative embrace but one subject matter.
7 The Initiative fails this requirement as well because it includes at least two subject matters which
8 are not functionally related or germane to the Initiative's primary purpose – namely, (1) it
9 increases the gaming license fee by three percent on gross revenues over one million dollars and
10 (2) it establishes a legislative spending commitment for state funds appropriated for public
11 education. Because it is impermissible for the Initiative to include these separate and distinct
12 provisions, Plaintiff seeks a declaration from this Court that the Initiative fails to comply with the
13 requirements of NRS § 295.009(1)(a).

14 PARTIES

15 4. Plaintiff, Nevada Resort Association (the "Resort Association"), is nonprofit
16 corporation comprised of over sixty-five (65) casino-resorts from both southern and northern
17 Nevada. The Resort Association is the primary advocacy voice for Nevada's gaming and resort
18 industry. It monitors government and regulatory activities in Nevada, adopts and advocates
19 policies regarding state gaming issues, and provides information, perspective and industry insight
20 for decision makers throughout the state. To the extent that the Initiative would increase the
21 current tax rate for gaming licensees, the Resort Association, its affiliates and members, would
22 be directly and adversely affected by the passage of the Initiative through a loss of financial
23 resources and available capital funds.

24 5. Defendant, Nevada State Education Association ("NEA") is, upon information
25 and belief, an organization comprised of over 28,000 teachers and education support
26 professionals from the state of Nevada. Upon information and belief, the primary mission of the
27 NEA is to advocate for the economic security of its members. NEA is, upon information and
28 belief, the organization responsible for sponsoring and filing the Initiative.

1 12. Through the Initiative, the NEA seeks to amend Article 11 of the Nevada
2 Constitution by adding a new section designated Section 3A. The provisions of this new Section
3 are summarized below:

4 13. Subsection 2 of the proposed amendment would require the Nevada Gaming
5 Commission to collect a three percent monthly license fee from gaming licensees on all gross
6 revenue exceeding one million dollars. It would also mandate that the one million dollar
7 baseline be adjusted annually reflect any change in the Consumer Price Index from the
8 proceeding year.

9 14. Subsection 2 of the proposed amendment would require the Gaming Commission
10 to collect this tax in addition to any current taxes against gaming licensees. This tax applies to
11 gaming licensees' gross revenue regardless of actual profits made and regardless of whether or
12 not the Nevada Legislature finds that compliance with the remaining provisions in the proposed
13 amendment is impracticable because of conditions or circumstances constituting an emergency.

14 15. Subsection 4 of the proposed amendment would require the State Treasurer to
15 deposit the proceeds of this tax increase in a newly created "State Supplemental School Support
16 Fund."

17 16. Subsection 5 of the amendment authorizes the Legislature to direct the
18 Superintendent of Public Instruction to distribute these proceeds on a directly per-pupil basis
19 among the school districts and charter schools, rather than on an equalized basis, as educational
20 funding is currently distributed.

21 17. Subsection 6 of the proposed amendment would require each district or charter
22 school to utilize their proportional share in the following manner: (1) at least 40% must be used
23 to pay the salaries and benefits of teachers and other "non-administrative" employees"; (2) at
24 least 40% must be used to add instructional days, reduce overcrowding, provide additional
25 teacher training, provide tutoring, prevent dropouts, "or otherwise improve the achievement of
26 students"; and (3) any remaining money will be used to provide incentive pay for teachers and
27 other "non-administrative" employees and reimburse employment related expenses to such
28 employees.

1 18. In addition to creating the above-described tax increase, Subsections 8 through 11
2 of the proposed amendment would create a permanent spending commitment for education in
3 Nevada, requiring the Legislature to spend a set amount from the State's general fund on K-12
4 public education.

5 19. Subsection 8 states that the purpose of this tax increase is to supplement the
6 money currently provided for education by both the Legislature and other sources. It would
7 prevent the Nevada Legislature from reducing its education spending below the level required in
8 Subsections 9 and 10 of the proposed amendment unless the Legislature finds and declares that
9 compliance is impracticable because of an emergency affecting public schools and other
10 appropriation recipients.

11 20. Subsection 12 of the proposed amendment would grant the Legislature authority
12 to create exclusions and deductions for computing the gross gaming revenue for purposes of the
13 new Section. However, it would also require the Legislature to universally apply any such
14 exclusion or deduction when calculating any other revenue-based gaming tax.

15 21. Finally, Subsection 14 of the proposed amendment adopts definitions for
16 "Administrative employee," "Biennium," "Commission," "Consumer Price Index," "Federal
17 money," "Game," "Gaming," "Gaming device," "Gaming license," "Gaming licensee," Gross
18 revenue," "Inter-casino linked system." and "Slot machine." These definitions differ from those
19 set in the Nevada Revised Statutes and administrative code.

20 **FIRST CLAIM FOR RELIEF**

21 **(Declaratory Relief – Violation of NRS § 295.009(1)(b))**

22 22. Plaintiff incorporates Paragraphs 1 through 21 as though fully set forth herein.

23 23. NRS § 295.009 requires that each petition for initiative set forth a "Description of
24 Effect" of no more than 200 words. The Description of Effect must appear on each signature of
25 the petition and must accurately and fully describe an initiative's consequences. It must not be
26 misleading, false, or fail to disclose any material provisions of the proposed statute or
27 constitutional amendment.

1 24. The Description of the Effect submitted by the NEA for the Initiative is deficient
2 in that it is misleading, false, and fails to inform voters of all its material consequences.

3 25. First, the Description of Effect repeatedly refers to this as a "new" licensing fee.
4 However, a licensing fee of 6.75% is already charged against gaming licensees in this State. As
5 such, the Initiative would actually be an "increase" or "additional" licensing fee. The Initiative's
6 proponents seek to garner support for the Initiative by falsely convincing the public that this
7 would only be an insignificant fee charged against Nevada's casinos. However, potential signers
8 should be alerted to the fact that this is, in actuality, a significant increase in the current tax rate
9 paid by gaming licensees.

10 26. Second, the Description of Effect inaccurately states that that the Legislature may
11 change the definition of "gross revenue" for purposes of the three percent licensing fee only.
12 This statement is untrue. Subsection 12 of the Initiative would mandate that any exclusions or
13 deductions applied to the new amendment must also apply to the calculation of any revenue-
14 based license fee imposed against gaming licensees. Thus, while the description implies that the
15 Legislature can change the definition of gross revenue for purposes of the Initiative's provisions
16 only, the Initiative would actually require that any such change also apply to all other gaming
17 licensee fees based upon gross revenue. This omission of fact is misleading.

18 27. Third, the Description of effect fails to disclose the fact that the Initiative would
19 cause a fundamental changes in the manner by which education is funded in Nevada. The
20 Nevada Legislature is currently vested with total discretion to set education funding. However,
21 the Initiative would eliminate this discretion by requiring the Legislature to abide to a minimum
22 spending commitment for each biennium. Further, the Nevada Legislature has traditionally
23 exercised its discretion to set education funding on an equalized basis. However, proceeds from
24 this tax increase would be required to be spent on a direct per pupil basis instead of an equalized
25 basis. Because the Description of Effect does not disclose these fundamental changes, it is
26 inaccurate and misleading.

27 28. Fourth, the Description of Effect states that the Initiative creates a "minimum-
28 funding requirement." This is false and deceptive because it fails to disclose a resulting spending

1 commitment that could result in a future tax increase or spending cuts. Accordingly, use of the
2 phrase "minimum funding requirement" is false and misleading.

3 29. Fifth, the Description of Effect states that the "minimum-funding requirement"
4 excludes "money from the new fee and *certain* federal money" However, the Initiative
5 would actually exclude all federal money from the calculation of the "minimum-funding
6 requirement." Accordingly, voters will be misled into believing that some or even most of the
7 money that is currently received from federal sources will still be included in the calculation of
8 this spending minimum.

9 30. Sixth, the Description of Effect fails to inform voters of the fact that the Initiative
10 will implicitly repeal provisions of Article 11, Section 6 of the Nevada Constitution.
11 Subsection 2 of Article 11, Section 6 states that the "Legislature shall enact one or more
12 appropriations to provide the money *the Legislature deems to be sufficient*, when combined with
13 the local money reasonably available for this purpose, to fund the operation of the public schools
14 in the State. . . ." (emphasis added). Moreover, Subsection 1 of Article 11, Section 6 provides
15 that the Legislature will provide for the support and maintenance of the public schools "by direct
16 legislative appropriation from the general fund." Together, these two constitutional provisions
17 grant the Legislature total discretion when funding public education in Nevada. However, as
18 shown above, the Initiative would repeal these provisions by setting a minimum spending
19 commitment and requiring that the proceeds be spent on a per pupil basis. Additionally, the
20 Initiative would also repeal Subsection 5 of Article 11, Section 6 which states that "[a]ny
21 appropriation of money enacted in violation of subsection 2, 3 or 4 is void." The State
22 Supplemental School Support Fund created in Subsection 4 of the Initiative is an appropriation
23 of money not subject to the discretion of the legislature provided by subsection two.
24 Accordingly, the Initiative would implicitly repeal this limitation on appropriations. Because the
25 repeal of these Constitutional provisions is not disclosed or referenced anywhere in the
26 Description of Effect, the description is deceptive and misleading.

27 31. There presently exists a ripe case and controversy between the parties whose
28 interests are adverse concerning the Initiative.

1 32. This dispute is in need of prompt judicial determination, declaring the Initiative in
2 violation of the requirements of NRS § 295.009(1)(b).

3 33. Pursuant to NRS § 30.030 and NRS § 295.061, Plaintiff is entitled to a declaration
4 that the Initiative fails to comply with the requirements of NRS Chapter 295.

5 **SECOND CLAIM FOR RELIEF**

6 **(Declaratory Relief – Violation of NRS §§ 295.009(1)(a) & (2))**

7 34. Plaintiff incorporates Paragraphs 1 through 33 as though fully set forth herein.

8 35. NRS § 295.009(1)(a) requires that an initiative be limited to "one subject and
9 matters necessarily connected therewith and pertaining thereto." In order to satisfy this
10 requirement, the distinctive parts of the proposed initiative must be "functionally related and
11 germane to each other in a way that provides sufficient notice of the general subject of, and of
12 the interests likely to be affected by, the proposed initiative. . . ." The purpose of this mandate is
13 to assure that unpopular measures are not bundled with more popular measures to ensure an
14 increased positive vote.

15 36. The Initiative violates this mandate by including distinctive portions which are
16 not functionally related and germane to one-another.

17 37. The Initiative's primary purpose – the purpose which is being sold to Nevada
18 voters – is to raise additional money for education by taxing gaming licensees. However,
19 separate and apart from these provisions, the Initiative also establishes a minimum State
20 spending commitment for education.

21 38. This spending commitment is entirely unrelated to, and not dependent upon, the
22 increase in the gaming license fee. As such, it should be presented as a separate question from
23 the proposal to increase gaming taxes.

24 39. There presently exists a ripe case and controversy between the parties whose
25 interests are adverse concerning the Initiative.

26 40. This dispute is in need of prompt judicial determination, declaring the Initiative in
27 violation of the requirements of NRS §§ 295.009(1)(a) and (2).

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41. Pursuant to NRS § 30.030 and NRS § 295.061, Plaintiff is entitled to a declaration that the Initiative fails to comply with the requirements of NRS Chapter 295.

WHEREFORE Plaintiff prays for relief as follows:

1. Declaratory relief, declaring that the Initiative fails to comply with NRS Chapter 295 and Nevada common law because the Description of Effect is false and materially misleading.
2. Declaratory relief, declaring that the Initiative fails to comply with NRS Chapter 295 because it embraces multiple subjects.
3. Declaratory relief, declaring that the Initiative is void because it embraces administrative matters.
4. For an award of attorneys' fees and costs incurred in this proceeding.
5. For any additional relief this Court deems just and proper.

DATED this 10th day of December 2007.

BROWNSTEIN HYATT FARBER SCHRECK

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