

REC'D & FILED
2015 SEP -9 PM 2:01
SUSAN MERRIWETHER
CLERK
BY [Signature]
DEPUTY

1 Don Springmeyer (Nevada Bar No. 1021)
Justin C. Jones (Nevada Bar No. 8519)
2 Bradley S. Schrager (Nevada Bar No. 10217)
WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP
3 3556 E. Russell Road, Second Floor
Las Vegas, Nevada 89120
4 (702) 341-5200/Fax: (702) 341-5300
dspringmeyer@wrslawyers.com
5 bschrager@wrslawyers.com
jjones@wrslawyers.com
6 *Attorneys for Plaintiffs*
(Additional counsel appear on signature page)
7
8

9 **FIRST JUDICIAL DISTRICT COURT**
10 **IN AND FOR CARSON CITY, NEVADA**

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

18 Plaintiffs,

19 vs.

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

22 Defendant.

Case No.: 150C002071B

Dept. No: II

COMPLAINT

23 Plaintiffs, parents of children attending Nevada public schools, allege as follows:
24
25
26
27
28

1 **I. INTRODUCTION**

2 1. In the last biennium session, the Nevada Legislature established the most expansive
3 voucher program ever instituted in the United States. The new statute, Senate Bill 302, directs the
4 State Treasurer to deposit funds appropriated by the Legislature for the operation of the Nevada
5 public schools into private accounts to pay for private school tuition, online classes, home-based
6 curriculums and related expenses, tutoring, transportation to and from private schools, and other
7 private expenses. The Education Article of the Nevada Constitution expressly prohibits the use of
8 public school funds for anything other than the operation of Nevada's public schools. The
9 voucher statute plainly violates this and other provisions of the Nevada Constitution and will have
10 serious deleterious effects on Nevada and its children.

11 2. Under the voucher statute, every child in any private school (including on-line
12 programs), and every child taught at home, will be entitled to receive over \$5,000 a year in state
13 public school funds after attending 100 days in a public school (part time or full time) once in their
14 academic career. This requirement is easily met. Simply enrolling a student in 100 days of public
15 kindergarten at the outset of their education will entitle them to collect over \$5,000 a year for the
16 rest of their K-12 education. Under the regulations proposed by the State Treasurer, students
17 already in private school or educated at home can also readily qualify by taking a single public
18 school class for 100 days.

19 3. There are currently just over 20,000 students enrolled in private schools in Nevada.
20 The yearly cost to Nevada's public schools of subsidizing their private school education under the
21 voucher statute would be over \$102 million. This hefty sum does not include payments for
22 students who are educated at home or on-line because the Nevada Department of Education does
23 not track how many children in Nevada are so educated. It also does not include any child
24 attending public school who decides to leave their school and attend a private school with a
25 voucher subsidy. The voucher statute will thus drain Nevada's public schools of the funds
26 provided by the Legislature essential for their operation and divert those funds to private use in
27 violation of the Nevada Constitution.

1 4. The voucher statute will also provide a windfall to those who can already afford to
2 send their children to private school. The ~\$5,000 voucher subsidy is not enough to cover the full
3 tuition at all but a handful of existing private schools in Nevada. Only those families with the
4 means to make up the significant difference will be able to use the voucher subsidy. Diverting
5 precious Nevada taxpayer revenues to subsidize private school education for families that can
6 already afford it is not only inappropriate but is also an unconstitutional use of tax dollars. In
7 addition, very few of Nevada’s private schools are in the urban core of Nevada’s two largest cities,
8 accessible to students in those neighborhoods. The voucher statute will consign Nevada’s most
9 vulnerable and at-risk children to public schools that will have even less funding—isolated by
10 socioeconomic status, disability and academic need.

11 5. The voucher statute further violates the Legislature’s constitutional obligation to
12 establish and maintain a “uniform system” of public schools. Private schools attended by students
13 receiving a voucher subsidy do not have to meet the same requirements as public schools. For
14 example, students do not have to take the same tests or show mastery of the same rigorous
15 standards. Nor do teachers in these schools have to be certified. The voucher statute will also
16 encourage subpar private institutions to spring up to take advantage of the State Treasurer’s yearly
17 deposits of over \$5,000 per child, without any real concern for educating students, to the detriment
18 of the students and families involved.

19 6. Likewise, the voucher statute does not require private schools receiving voucher
20 subsidies to be open to all students as are the public schools. They can refuse admission based on
21 religious beliefs, ability to pay, and academic performance. The drafters of the Nevada
22 Constitution understood the importance of establishing a “uniform system” of “common” or
23 public schools sufficiently funded to prepare all Nevada children to become engaged, productive
24 and contributing citizens; schools that all Nevadan children can attend regardless of beliefs, wealth
25 or ability. SB 302’s diversion of public school funds to private schools and other entities not open
26 to all, with virtually no accountability to the taxpayers, does not maintain—indeed, undermines—
27 the uniform system of public schools mandated by the Nevada Constitution.

28

1 11. Plaintiff Electra Skryzdlewski is a resident of Las Vegas, Nevada, whose daughter,
2 L.M., is a sixth-grader in Clark County School District in the Gifted and Talented Education
3 (GATE) program. Through the hard work of her teachers and parents, L.M. has done quite well in
4 school. However, her schools have struggled to keep class sizes small and to serve all students
5 with limited resources. Electra is a Nevada taxpayer whose tax dollars support the public schools.
6 She has a direct stake in making sure the public schools have the funds to provide an outstanding,
7 high-quality education for every student and that those funds are not used for children enrolled in
8 private schools.

9 12. Plaintiff Jennifer Carr is a resident of Las Vegas, Nevada. Her minor children,
10 W.C., A.C., and E.C., all attend public magnet and charter schools in Clark County. A.C., who is
11 in third grade, has received occupational and speech therapy services in his public school pursuant
12 to his IEP. Although the school does provide occupational and speech therapy, these services
13 have been limited. As a result, A.C. now attends private occupational therapy. Jennifer is also a
14 Nevada taxpayer whose tax dollars support the public schools. She has a direct stake in
15 preventing the transfer of funds from the public schools into private hands.

16 13. Plaintiff Linda Johnson resides in Las Vegas, Nevada. Her daughter, K.J., attends
17 high school in Clark County. K.J. is an honors student who takes advanced placement courses and
18 participates on the student council. K.J. has had great teachers in her Clark County schools, but
19 her school has struggled to serve its students while receiving limited funding. Her school had to
20 eliminate block scheduling because of the expense, and K.J.'s course offerings are not as broad as
21 they otherwise would be as a result. Linda is also a Nevada taxpayer whose tax dollars support the
22 public schools. She has a direct stake in preventing the use of public school funding for private
23 schools that are not accountable to the public and do not have to serve English language learners,
24 students in need of special education services, or low-income families.

25 14. Plaintiffs Sarah and Brian Solomon are residents of Reno, Nevada, whose children,
26 D.S. and K.S., have attended Washoe County public schools since kindergarten and are now in
27 third grade and second grade, respectively. Sarah and Brian believe that parents should have the
28 choice to send their children to private schools, but object to the use of funds appropriated

1 specifically for public schools to subsidize private education. Sarah and Brian are also taxpayers
2 who have a direct stake in preventing the diversion of taxpayer funds to private schools.

3 15. Defendant Dan Schwartz is named herein in his official capacity as the duly elected
4 Treasurer of Nevada. Dan Schwartz, acting in his official capacity as State Treasurer, is charged
5 under Senate Bill 302 with the enforcement and/or administration of the unconstitutional voucher
6 program. The State Treasurer has offices in Carson City and Las Vegas, Nevada.

7 **III. JURISDICTION AND VENUE**

8 16. This Court has subject matter jurisdiction pursuant to Article VI of the Nevada
9 Constitution, which vests the judicial power of the State herein.

10 17. This Court has personal jurisdiction over Defendant pursuant to Nev. Rev. Stat.
11 (“NRS”) 14.065 because Defendant is a resident of the state of Nevada.

12 18. Venue is proper in this Court, pursuant to NRS 13.020. The present cause of action
13 arises in Carson City, and Defendant is a public officer whose office is required to be kept in
14 Carson City pursuant to NRS 226.030. Plaintiffs are students who attend Nevada public schools
15 and their parents are Nevada residents and taxpayers. Plaintiffs have a direct and immediate
16 interest in the diversion of tax dollars from the operation and support of the public schools under
17 the voucher statute and will suffer harm if the voucher statute is not enjoined from
18 implementation.

19 **IV. FACTS**

20 **A. The Voucher Statute**

21 19. On May 29, 2015, the Legislature enacted Senate Bill 302 (“SB 302”), which
22 authorizes the State Treasurer to transfer funding appropriated by the Legislature for the operation
23 of Nevada public schools from those schools into private “education savings accounts” (“ESAs”)
24 to pay for a wide variety of non-public education services. SB 302 was signed into law by the
25 Governor on June 2, 2015.

26 20. SB 302 imposes only one requirement for eligibility: enrollment in a public school
27 for 100 consecutive school days. Children can satisfy the 100 day public school enrollment
28 requirement once at any point in their academic career in order to obtain the funding every year

1 through the end of their K-12 education. Under the regulations implementing SB 302 proposed by
2 the State Treasurer, the 100 day requirement can be met by full or part time enrollment. These
3 proposed regulations would therefore allow the requirement to be met by enrollment in public
4 school kindergarten at the outset of a child's education; by a single public school class taken by a
5 child enrolled in private school now; or by attendance in 2014-15, the school year prior to
6 enactment of the statute.

7 21. When an ESA is established, SB 302 requires the State Treasurer to deposit into
8 each ESA an amount equal to 90 percent of the statewide average basic support per public school
9 pupil, or \$5,139 per pupil for the 2015-16 school year. For children with disabilities and children
10 in a household with an income of less than 185 percent of the Federal poverty level, the State
11 Treasurer must transfer 100 percent of the statewide average basic support per public school pupil,
12 or \$5,710 per pupil for 2015-16. SB 302 § 8(2).

13 22. The basic support per pupil funding is provided to school districts each year
14 through the Nevada Plan, the Legislature's funding formula. The basic support per pupil funding
15 consists of local revenue and state aid appropriated by the Legislature for the maintenance and
16 support of Nevada's uniform system of public schools. It is guaranteed by the Legislature and is
17 the primary funding appropriated to school districts to fund the operation of the public schools,
18 kindergarten through grade 12, from year-to-year.

19 23. SB 302 requires the State Treasurer to transfer funds into ESAs from the basic
20 support per pupil funding appropriated by the Legislature for the operation of the school district in
21 which the eligible child was previously enrolled. Specifically, the statute directs the State
22 Treasurer to deduct "all the funds deposited in education savings accounts established on behalf of
23 children who reside in the county" from the school district's "apportionment" of the legislatively
24 appropriated funding "computed on a yearly basis." SB 302 § 16.1. As the Legislative Counsel's
25 Digest on SB 302 explains, "the amount of the [ESA] must be deducted from the total
26 apportionment to the resident school district of the child on whose behalf the grant is made."

27 24. SB 302 directs the State Treasurer to divert the school district's apportionment of
28 appropriated funding, on a per pupil basis, from the State Distributive School Account ("DSA") to

1 ESAs established by the State Treasurer. SB 302 § 15.9. The DSA is comprised primarily of
2 money derived from interest on the State Permanent School Fund pursuant to Article XI, Section 3
3 of the Nevada Constitution and the appropriations of state and local revenue made by the
4 Legislature for the operation of Nevada’s public schools pursuant to Article XI, Section 6 of the
5 Nevada Constitution. NRS 387.030.

6 25. SB 302 does not impose any cap on the amount of public school funding that can
7 be transferred from the DSA and Nevada public school districts to ESAs in any school year, nor
8 does the statute impose any limit on the number of children who can receive per pupil payments to
9 an ESA. The statute also authorizes the State Treasurer to establish an ESA for all children who
10 satisfy the 100 day public school enrollment requirement without any limit on household income
11 and without regard to financial or academic need.

12 26. SB 302 authorizes the public school funds deposited by the State Treasurer into an
13 ESA to be used to pay for a wide variety of private education expenses. The statute allows
14 payments to any “participating entity”, which is defined as:

- 15 (a) A private school licensed pursuant to chapter 394 of NRS or exempt from such
16 licensing pursuant to NRS 394.211;
- 17 (b) An eligible institution—defined by SB 302§ 3.5 as:
- 18 ■ A university, state college or community college within the Nevada
19 System of Higher Education; or
 - 20 ■ Any other college or university that:
 - 21 • Was originally established in, and is organized under the laws of,
22 this State;
 - 23 • Is exempt from taxation pursuant to 26 U.S.C. § 501(c)(3); and
 - 24 • Is accredited by a regional accrediting agency recognized by the
25 United States Department of Education.
- 26 (c) A program of distance education that is not operated by a public school or the
27 Department;
- 28 (d) A tutor or tutoring facility that is accredited by a state, regional or national
accrediting organization; or
- (e) The parent of a child.

SB 302 § 11.1.

1 27. Further, SB 302 authorizes the public school funding deposited into an ESA to pay
2 for any of the following private education services and expenditures:

- 3 (a) Tuition and fees at a school that is a participating entity in which the child is
4 enrolled;
- 5 (b) Textbooks required for a child who enrolls in a school that is a participating
6 entity;
- 7 (c) Tutoring or other teaching services provided by a tutor or tutoring facility that
8 is a participating entity;
- 9 (d) Tuition and fees for a program of distance education that is a participating
10 entity;
- 11 (e) Fees for any national norm-referenced achievement examination, advanced
12 placement or similar examination or standardized examination required for
13 admission to a college or university;
- 14 (f) If the child is a pupil with a disability, as that term is defined in NRS 388.440,
15 fees for any special instruction or special services provided to the child;
- 16 (g) Tuition and fees at an eligible institution that is a participating entity;
- 17 (h) Textbooks required for the child at an eligible institution that is a participating
18 entity or to receive instruction from any other participating entity;
- 19 (i) Fees for the management of the education savings account, as described in
20 section 10 of this act [which provides that the Treasurer may deduct up to 3
21 percent of the ESA's amount for management];
- 22 (j) Transportation required for the child to travel to and from a participating entity
23 or any combination of participating entities up to but not to exceed \$750 per
24 school year; or
- 25 (k) Purchasing a curriculum or any supplemental materials required to administer
26 the curriculum.

27 SB 302 § 9.1.

28 28. SB 302 thus explicitly permits public school funding deposited into an ESA to pay
for private school tuition, tutoring, online schooling, home-based education curriculum and other
related expenses, and private school and home-based education transportation. SB 302 also allows
payments from ESAs for the SAT, AP and other commercial fee-based tests, as well as private
tutoring services for those tests, services not generally paid for by public dollars for public school
students.

1 29. SB 302 provides little check on the expenditure of public school funds deposited
2 into ESAs for private expenditures. SB 302 only requires the State Treasurer to verify
3 expenditures to “participating entities” through random audits of ESAs.

4 30. SB 302 authorizes the payment of public school funds deposited into ESAs to be
5 used for private schools and entities that are not open to all students, as are the Nevada public
6 schools. Private schools that accept payments of public school funds from an ESA can refuse to
7 admit and serve all students and can restrict admission on the basis of religious beliefs, ability to
8 pay, and academic ability.

9 31. SB 302 does not require “participating entities” accepting payment of public school
10 funds from ESAs to meet the same educational standards and performance benchmarks required
11 by the Legislature for public schools. Private schools can operate in Nevada whether they are
12 licensed by the state or not; approximately half of the private schools in the state are not licensed
13 by the state. Public school funding from ESAs can be used at non-licensed schools. SB 302
14 § 11(1)(a). Private schools and other participating entities are also not required to use a
15 curriculum based on state-adopted curriculum content standards. The only requirement for
16 participating entities is that they administer a norm-referenced achievement assessment in
17 mathematics and English/language arts each year. SB 302 § 12(1)(a).

18 32. In addition to diverting public school funding from the operation of the public
19 schools, the voucher statute will increase financial uncertainty and instability for public schools.
20 School funding is based on “average daily enrollment” taken on a quarterly basis. When a student
21 qualifies for an ESA, the district’s quarterly enrollment will be recalculated and its funding from
22 the state will be reduced accordingly on a quarterly basis. As the State Treasurer establishes
23 additional ESAs throughout the year, the districts will experience a reduction in their DSA funding
24 levels from quarter to quarter, necessitating budgetary adjustments, including cuts to teachers,
25 support staff, programs and other expenditures during the school year.

26 33. The State Treasurer has already begun to pre-register children for ESAs. The
27 Treasurer will begin accepting formal applications for the ESAs in January 2016. The State
28

1 Treasurer has also announced that he will begin depositing public school funds into ESAs in April
2 2016.

3 **B. The Voucher Statute Violates the Education Article of the Nevada Constitution**

4 34. The Nevada Constitution places a high priority on the value of public education, as
5 memorialized in the Education Article. Nev. Const. Art. XI. As one of the drafters stated in the
6 1864 Constitutional debate, “[t]ime will not permit, nor is it necessary that I should recapitulate
7 the arguments which have already been urged to show that among the first and the highest duties
8 of the State, is the duty of educating the rising generation.” OFFICIAL REPORT OF THE DEBATES
9 AND PROCEEDINGS IN THE CONSTITUTIONAL CONVENTION OF THE STATE OF NEVADA 587-88, 591-
10 93 (1864) (hereinafter, “DEBATES AND PROCEEDINGS”).

11 35. Consistent with this duty, the Nevada Constitution mandates that the Legislature:
12 (1) make appropriations, as a first priority in the biennium budget, to be used only for the
13 maintenance and support of the public schools; (2) appropriate funds that, when combined with
14 available local revenue, it deems sufficient for the operation of the public schools; and (3) provide
15 for a “uniform system” of public schools throughout the state. The voucher statute violates each
16 of these Constitutional mandates.

17 **1. The Voucher Statute Diverts Funds Appropriated For the Operation of**
18 **the Public Schools to Private Uses**

19 36. Article XI of the Nevada Constitution contains specific directives to the Legislature
20 for funding the operation of Nevada’s uniform system of public schools. First, Article XI directs
21 that all proceeds derived from federal land grants and property bequeathed to the state for
22 educational purposes be deposited into the State Permanent School Fund and that these funds
23 “must not be transferred to other funds for other uses.” NEV. CONST. art. XI, § 3. In addition, the
24 interest earned on the State Permanent School Fund “must be apportioned by the legislature
25 among the several counties for educational purposes.” *Id.*

26 37. Article XI also requires the Legislature to “provide for the[] support and
27 maintenance [of the common schools] by direct legislative appropriation from the general fund.”
28 NEV. CONST. art. XI, § 6.1. Further, the funds appropriated by the Legislature for the support and

1 maintenance of the public schools must be used to “fund the operation of the public schools.”
2 NEV. CONST. art. XI, § 6.2.

3 38. The framers of the Nevada Constitution repeatedly expressed their intent that funds
4 appropriated by the Legislature pursuant to Article XI, §§6.1 and 6.2 be used only for the support
5 and maintenance of public, not private, education institutions. Delegates to the 1864
6 Constitutional Convention explained that Article XI makes reference “only to public schools, and
7 to the appropriation of the public funds. . . so that it has a direct reference to the public schools,
8 and clearly cannot refer to anything else.” DEBATES AND PROCEEDINGS at 568. Further, the
9 delegates stated clearly that funds appropriated pursuant to Article XI were for “the support of
10 good common schools . . . the support and encouragement of public instruction.” *Id.* at 594.

11 39. The Legislature has also codified its obligation under Article XI, §§ 6.1 and 6.2 to
12 appropriate funding to be used only for the operation of the public schools. NRS 387.045. This
13 statute explicitly provides that “[n]o portion of the public school funds or of the money specially
14 appropriated for the purpose of public schools shall be devoted to any other object or purpose.”

15 40. The voucher statute purports to exempt ESAs from the requirement, as codified in
16 NRS 387.045, that funds appropriated by the Legislature for the operation of the public schools
17 cannot be used for any other purpose. SB 302 § 15.9. However, NRS 387.045 is a statutory
18 codification of the mandate in Article XI, §§ 6.1 and 6.2 restricting the use of Legislative
19 appropriations for the maintenance and support of the public schools to fund the operation of those
20 schools. The Legislature cannot exempt itself from this constitutional mandate by statute and,
21 therefore, SB 302’s exemption from that mandate is null and void.

22 41. The express language of Article XI, §§ 6.1 and 6.2, and the implementing statute,
23 make plain that the Legislature’s appropriations for the maintenance and support of Nevada’s
24 uniform system of public schools must be used to fund the operation of the public schools, and the
25 public schools alone.

26 42. SB 302, by transferring public school funding to ESAs, diverts appropriations made
27 by the Legislature for the maintenance and support of public schools to pay for private schools and
28

1 a wide variety of other private education expenses, in contravention of the express language,
2 meaning and intent of Article XI, §§ 6.1 and 6.2 of the Nevada Constitution.

3 **2. The Voucher Statute Reduces the Appropriations Deemed Sufficient by**
4 **the Legislature for the Operation of the Public Schools**

5 43. The Education Article of the Nevada Constitution requires the Legislature to enact
6 “one or more appropriations” for the next biennium that the Legislature “deems to be sufficient,
7 when combined with the local money reasonably available for this purpose, to fund the operation
8 of the public schools in the State for kindergarten through grade 12.” NEV. CONST. art. XI, § 6.2.
9 Because the provision for public education has the highest priority in the Nevada Constitution, the
10 Education Article mandates that the Legislature appropriate the funds it deems sufficient to
11 operate the public schools first “before any other appropriation.” *Id.*

12 44. Studies commissioned by the Legislature in 2006 and 2012 recommended that
13 funding for Nevada’s public schools be substantially increased above current levels, especially for
14 the state’s growing population of low income students, English language learners, and students
15 with special needs. The level of public school funding currently provided by the Legislature
16 through the Nevada plan formula is far below most other states and among the lowest in the
17 nation.

18 45. SB 302, by transferring the basic support per pupil guaranteed for the operation of
19 the public schools to ESAs, and by directing the State Treasurer to deduct those transfers from the
20 DSA and school district budgets, reduces the Legislature’s appropriations for the maintenance and
21 support of Nevada’s uniform system of public schools below the level deemed sufficient by the
22 Legislature for the operation of those public schools, in contravention of the express language,
23 plain meaning and intent of Article XI, § 6.2 of the Nevada Constitution.

24 **3. The Voucher Statute Diverts Funding Appropriated to Maintain the**
25 **Uniform System of Public Schools to Fund Private, Non-Uniform**
26 **Schools and Education Services**

27 46. Article XI of the Nevada Constitution mandates that the Legislature “provide for a
28 uniform system of common schools” across the state. NEV. CONST. art. XI, § 2. To ensure the
public schools operate uniformly, Article XI further authorizes the Legislature to “pass such laws

1 as will tend to secure a general attendance of the children in each school district upon said public
2 schools”; to establish and maintain a public school “in each school district” open to all, NEV.
3 CONST. art. XI, § 2; and to “provide for a superintendent of public instruction” to supervise the
4 uniform public school system. NEV. CONST. art. XI, § 1.

5 47. The Legislature is obligated under Article XI to establish and maintain a system of
6 public schools that provides uniform, high quality education to children across the state and that
7 benefits all Nevadans by preparing those children for citizenship and to be productive participants
8 in Nevada’s economy.

9 48. In recent years, the Legislature has exercised its constitutional obligation to
10 maintain Nevada’s system of public education by establishing uniform, rigorous education and
11 accountability standards that all public schools must meet to give every child the opportunity to
12 achieve and graduate from high school prepared for college and career and ready for active
13 citizenship. These uniform education and accountability standards include, but are not limited to:
14 curriculum content standards, assessments, teacher qualifications, and class size limits. All public
15 schools must adhere to these uniform standards.

16 49. SB 302 diverts legislative appropriations for the maintenance and support of
17 Nevada’s uniform system of public schools to pay for private schools and a wide variety of other
18 private education services. SB 302 does not require the private schools, online schools and other
19 entities that receive payment from public school funds deposited to an ESA to adhere to any of the
20 education and accountability standards established by the Legislature and applicable to public
21 schools.

22 50. In addition to uniform education standards, the Legislature has also mandated non-
23 discrimination in the public schools. Nevada public schools must serve all children regardless of
24 need and be open to all without regard to characteristics such as race, disability, income level, or
25 academic ability.

26 51. SB 302 does not require the private schools, online schools and other entities
27 receiving public school funds through an ESA to be free and open to all children; to admit and
28 serve all children without regard to race, religion, sex, disability, sexual orientation and gender

1 identity or expression; or to admit children with special educational needs, including English
2 language learners, at-risk children, homeless children and children with disabilities requiring
3 special education services.

4 52. Thus, SB 302 transfers public school funding to private schools that are not free
5 and open to all students. These schools can refuse to serve students who do not meet selective
6 admission requirements; who have disabilities, are academically at-risk, or need to learn English;
7 or who are low income and cannot afford to pay the full cost of private school tuition, books, fees,
8 transportation and other expenses. Conversely, SB 302 will increase the concentration in the
9 public schools of students who are low income, English language learners, immigrants, homeless,
10 transient, and otherwise at-risk and in need of additional educational programs, services and
11 interventions. SB 302 will also increase the concentration in the public schools of students with
12 disabilities in need of special education services. At the same time, SB 302 reduces the funding
13 available to provide the teachers, staff and programs needed to give those students the opportunity
14 to meet Nevada's uniform, rigorous standards.

15 53. Because SB 302 allows for the funding of private schools, online schools and other
16 participating entities not required to meet any of the uniform education and accountability
17 standards or the non-discrimination and open access requirements established by the Legislature
18 for Nevada's public schools, it results in the use of public school funding to support private
19 schools separate from the uniform system of public schools, in contravention to Article XI, § 2 of
20 the Constitution.

21 **FIRST CAUSE OF ACTION**

22 (Violation of Article XI, Sections 3 and 6 of the Nevada
23 Constitution – Prohibiting Diversion of Public School Funds)

24 54. The allegations in the preceding paragraphs are realleged and incorporated herein
25 by reference.

26 55. Article XI, Section 3 of the Nevada Constitution provides that proceeds derived
27 from federal land grants, which were given to Nevada "for the support of common schools,"
28 Nevada Enabling Act, ch. 36 § 7, 13 Stat. 30, 32 (1864), and property bequeathed to the state for
educational purposes, must be deposited into the State Permanent School Fund for the operation of

1 the public schools, and “must not be transferred to other funds for other uses.” NEV. CONST. art.
2 XI, § 3.

3 56. Likewise, the Nevada Constitution requires the Legislature to “provide for the[]
4 support and maintenance [of the common schools] by direct legislative appropriation from the
5 general fund.” NEV. CONST. art. XI, § 6.1.

6 57. The Nevada Constitution mandates that the “direct legislative appropriation from
7 the general fund” be used only to “fund the operation of the public schools.” NEV. CONST. art. XI,
8 §§ 6.1 and 6.2.

9 58. SB 302 violates Article XI, Sections 3 and 6 of the Nevada Constitution because it
10 diverts legislative appropriations for the support and maintenance of Nevada public schools to pay
11 for private schools and a wide variety of other private educational services.

12 **SECOND CAUSE OF ACTION**

13 (Violation of Article XI, Section 6 of the Nevada Constitution –
14 Reducing the Funds Deemed Sufficient to Operate the Public Schools)

15 59. The allegations in the preceding paragraphs are realleged and incorporated herein
16 by reference.

17 60. The Nevada Constitution provides that “[d]uring a regular session of the
18 Legislature, before any other appropriation is enacted to fund a portion of the state budget for the
19 next ensuing biennium, the Legislature shall enact one or more appropriations to provide the
20 money the Legislature deems to be sufficient, when combined with the local money reasonably
21 available for this purpose, to fund the operation of the public schools in the State for kindergarten
22 through grade 12 for the next ensuing biennium for the population reasonably estimated for that
23 biennium.” NEV. CONST. art. XI, § 6.2.

24 61. SB 302 violates Article XI, Section 6 of the Nevada Constitution because it
25 reduces, without limitation, the appropriations for the maintenance and support of the public
26 schools below the level deemed sufficient by the Legislature to fund the operation of those
27 schools.
28

THIRD CAUSE OF ACTION

(Violation of Article XI, Section 2 of the Nevada Constitution –
Mandating a Uniform System of Common Schools)

62. The allegations in the preceding paragraphs are realleged and incorporated herein
by reference.

63. Article XI, § 2 of the Nevada Constitution provides that the “legislature shall
provide for a uniform system of common schools.” NEV. CONST. art. XI, § 2.

64. Pursuant to this constitutional obligation, the Legislature has established uniform
education and accountability standards that govern all public schools across the state, and has
established uniform standards requiring all public schools to be open, free, and serve all children,
without regard to race, gender, disability or sexual orientation, and to provide education services
to all students, including ELLs, at-risk and homeless children, and children with disabilities in
need of special education.

65. SB 302 violates Article XI, § 2 of the Nevada Constitution because it authorizes the
State Treasurer to divert legislative appropriations for the maintenance and support of Nevada
public schools to pay for private schools and other private entities that are not governed by the
legislatively established, uniform education and accountability standards applicable to Nevada
public schools, and that are not free, or open or required to serve all Nevada children, thereby
funding non-uniform private schools and other private education services.

///

///

///

///

///

///

///

///

///

///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for the following relief:


1. For a declaratory judgment, declaring that SB 302 violates Article XI to the Nevada Constitution and is thereby null and void;
2. For preliminary and permanent injunctive relief enjoining Defendant from implementing SB 302;
3. For court costs and reasonable attorney's fees;

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

4. For such other and further relief as this Court deems just and proper.

DATED: September 9, 2015

WOLF, RIFKIN, SHAPIRO, SCHULMAN &
RABKIN, LLP

By: 
Don Springmeyer

DON SPRINGMEYER (Nevada Bar No. 1021)
JUSTIN C. JONES (Nevada Bar No. 8519)
BRADLEY S. SCHRAGER (Nevada Bar No. 10217)
WOLF, RIFKIN, SHAPIRO, SCHULMAN &
RABKIN, LLP
3556 E. Russell Road, Second Floor
Las Vegas, Nevada 89120
Telephone: (702) 341-5200
Facsimile: (702) 341-5300
dspringmeyer@wrslawyers.com
bschrager@wrslawyers.com
jjones@wrslawyers.com

TAMERLIN J. GODLEY (pro hac vice to be submitted)
THOMAS PAUL CLANCY (pro hac vice to be submitted)
LAURA E. MATHE (pro hac vice to be submitted)
SAMUEL T. BOYD (pro hac vice to be submitted)
MUNGER, TOLLES & OLSON LLP
355 South Grand Avenue, Thirty-Fifth Floor
Los Angeles, California 90071-1560
Telephone: (213) 683-9100
Facsimile: (213) 687-3702

DAVID G. SCIARRA (pro hac vice to be submitted)
AMANDA MORGAN (Nevada Bar No. 13200)
EDUCATION LAW CENTER
60 Park Place, Suite 300
Newark, NJ 07102
Telephone: (973) 624-4618
Facsimile: (973) 624-7339

Attorneys for Plaintiffs