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LV4242-002

December 5, 2016

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

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

Dear Attorney General Laxalt:

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

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely yours,

**WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP**

BRADLEY S. SCHRAGER
Counsel for Plaintiffs

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