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* Motion for admission *pro hac vice* forthcoming

Attorneys for Defendants State of Nevada, et al.

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,

-vs-

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 FOR EXPEDITED
ARGUMENT AND DECISION**

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2 **NOTICE OF MOTION**

3 **TO: ALL PARTIES AND THEIR COUNSEL OF RECORD**

4 PLEASE TAKE NOTICE that the foregoing motion will be in chambers on the ____ day
5 of _____, 2015.

6 **MOTION FOR EXPEDITED ARGUMENT AND DECISION**

7 Defendants (also referred to as “Nevada”) hereby move this Court for expedited
8 argument and decision on their Motion to Dismiss this lawsuit. Nevada respectfully requests that
9 this Court schedule a hearing on its Motion to Dismiss for November 25, 2015. Nevada has
10 checked with Master Calendar and been advised that this date is available. The Nevada
11 Government, hundreds of thousands of Nevada parents and schoolchildren, the public and
12 private schools in Nevada—indeed, all Nevadans have a vital interest in a prompt judicial
13 determination of the constitutionality of Nevada’s new education savings account (“ESA”)
14 program. A proposed Order Granting Motion for Expedited Argument and Decision is attached
15 hereto as **Exhibit A.**

16 1. This case involves a challenge to the constitutionality of the ESA program. The
17 ESA program was enacted by the Legislature as Senate Bill 302 and approved by Governor
18 Sandoval on June 2, 2015. On August 27, 2015, Plaintiffs filed their complaint alleging that the
19 ESA program violates Article 11, §§ 2 and 10 of the Nevada Constitution. Plaintiffs seek
20 declaratory and injunctive relief to prevent the State from depositing funds into education
21 savings accounts.

22 2. Nevada filed its Motion to Dismiss on October 16, 2015. By rule, Plaintiffs’
23 opposition is due within 10 days of service of Nevada’s motion. *See* Eighth Jud. Dist. Ct. R.
24 2.20(e). Nevada’s reply brief is due not later than five days before the hearing on its motion.
25 *See id.* 2.20(h). Nevada does not request any truncation of these time periods.

26 3. Nevada Rule of Civil Procedure 16 and other law authorize courts to “[e]xpedit[e]
27 the disposition of [an] action.” N.R.C.P. 16(a)(1); *see also Las Vegas Taxpayer Accountability*
28 *Comm. v. City Council of Las Vegas*, 125 Nev. 165, 171 (2009) (noting that “expedited
29 proceedings are available at the district court level”); Eighth Jud. Dist. Ct. Rule 2.26.

1 4. Expedited argument and decision is warranted in this case. The Legislature
2 enacted the ESA program as part of a sweeping overhaul of education in Nevada. It is in the
3 public interest to have the Nevada courts settle the constitutionality of the ESA program as soon
4 as practical.

5 5. SB 302 took effect on July 1, 2015, for the limited purpose of allowing the State
6 to “adopt[] any regulations and perform[] any other preparatory administrative tasks necessary
7 to carry out” the ESA program. SB 302, § 17. SB 302 takes effect “for all other purposes” on
8 January 1, 2016. *Id.* Thus, the ESA program is scheduled to take full effect in less than three
9 months.

10 6. Full implementation of SB 302 will require the time, effort, and resources of, and
11 coordination between, the Nevada Government and Nevada parents. Under the program, parents
12 must complete ESA applications, the State Treasurer must review and process applications,
13 parents and the State Treasurer must enter into agreements, and the State must fund the education
14 savings accounts. *See* SB 302, §§ 7.1., 7.2., 7.8, 8.1. This process has already started in earnest.

15 7. Nevada parents have a crucial interest in the urgent resolution of this case. This
16 litigation’s outcome will determine the decisions of hundreds of thousands of them obligated to
17 make the best educational choices for their children. Nevada has approximately half a million
18 school-age residents, more than 450,000 of whom are enrolled in public schools.¹ The state
19 Treasurer has already had more than 3,500 students apply for ESAs.² Right now, parents are
20 making educational decisions for their children based on the reasonable expectation that ESAs
21 will be available in early 2016.

22 8. The ESA program is open to all school-age children in Nevada. The only
23 requirement for participation in the program is that a student must have been enrolled in a
24 Nevada public school during the period immediately preceding the opening of an ESA for at
25 least 100 consecutive school days. *See* SB 302, § 7.1. Families withdrawing children from
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28 ¹ *See* U.S. Census Bureau, State & County QuickFacts: Nevada,
29 <http://quickfacts.census.gov/qfd/states/32000.html>; Nevada Legislative Counsel Bureau, *Nevada
Education Data Book* 16 (2015).

² <https://twitter.com/NVTreasury/status/654425704684085248> (*last accessed* Oct. 18, 2015).

1 public school—or planning to withdraw them—in reliance on SB 302 could be irreparably
2 injured, financially and educationally, by prolonged litigation over SB 302.

3 9. The need for a quick resolution of this case is broadly acknowledged, including
4 by Governor Brian Sandoval. “It is clear that parents want the freedom to choose the best school
5 to meet the needs of their students,” he said. “The uncertainty and legal gridlock created by this
6 lawsuit will significantly impact student success.” He added that an “expedited hearing on this
7 matter ... will allow students, parents, educators, and the state to move forward and properly
8 direct our focus toward collectively creating a system that provides children with the resources
9 and learning environment they need to thrive and succeed.”³

10 Accordingly, Nevada respectfully requests that this Court expedite the argument and
11 decision on Nevada’s Motion to Dismiss and schedule a hearing for November 25, 2015 and
12 render a decision as soon thereafter as is practicable consistent with the Court’s workload and
13 availability.

14 Respectfully submitted,

15 Adam Paul Laxalt
16 *Attorney General*

17 By: /s/ Lawrence VanDyke

18 Lawrence VanDyke
19 *Solicitor General*

20 Joseph Tartakovsky
21 *Deputy Solicitor General*

22 Ketan Bhirud
23 *Senior Deputy Attorney General*

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30 ³ See Press Release, Office of the Governor, Governor Brian Sandoval Requests Nevada
31 Attorney General to Seek Expedited Hearing in Education Savings Accounts Case (Sept. 4,
32 2015), [http://gov.nv.gov/News-and-Media/Press/2015/Sandoval-Requests-Nevada-Attorney-
33 General-to-Seek-Expedited-Hearing-in-Education-Savings-Accounts-Case/](http://gov.nv.gov/News-and-Media/Press/2015/Sandoval-Requests-Nevada-Attorney-General-to-Seek-Expedited-Hearing-in-Education-Savings-Accounts-Case/) (*last accessed* Oct.
34 18, 2015).

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8 *Motion for admission *pro hac vice*
9 forthcoming

10 *Attorneys for Defendants*

11 **CERTIFICATE OF SERVICE**

12 Pursuant to Nevada Rule of Civil Procedure 5(b) and L.R. 8.05, I certify that on October
13 19, 2015, a true and correct copy of the forgoing document was electronically served via the
14 court's electronic filing system to the following attorneys associated with this case:

15 **ACLU of Nevada**

16 Amy Rose rose@aclunv.org
17 Shawn Meerkamper meerkamper@aclunv.org

18 **Hutchison & Steffen**

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23 **Institute for Justice**

24 Keith Diggs kdiggs@ij.org
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27 /s/ Lawrence VanDyke

28 Lawrence VanDyke
29 *Solicitor General*
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EXHIBIT A

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STEVE CANAVERO, Interim Superintendent
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Defendants.

CASE NO. A-15-723703-C

DEPT. NO. XX

**[PROPOSED] ORDER GRANTING
MOTION FOR EXPEDITED
ARGUMENT AND DECISION**

The Court has reviewed the points and authorities on file regarding Defendants' Motion
for Expedited Argument and Decision.

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1 GOOD CAUSE APPEARING, the Court ORDERS that Defendant's Motion to Dismiss
2 for Lack of Jurisdiction and Failure to State a Claim shall be heard on November 25, 2015, and
3 the Court will render a decision as soon thereafter as is practicable consistent with the Court's
4 workload and availability.

5 DATED this ____ day of _____ 2015.

6
7 _____
8 JUDGE ERIC JOHNSON

9 Respectfully submitted,

10 Adam Paul Laxalt
Attorney General

11 By: /s/ Lawrence VanDyke
12 Lawrence VanDyke
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Deputy Solicitor General
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