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**FIRST JUDICIAL DISTRICT COURT OF NEVADA**  
**IN AND FOR CARSON CITY**

NATIONAL TAXPAYERS UNION, a non-  
profit organization, and ROBIN L. TITUS,  
MD,

Plaintiffs,

v.

THE STATE OF NEVADA, ex, rel., JOSEPH  
LOMBARDO, in his official capacity as  
Governor of the State of Nevada; ZACH  
CONINE, in his official capacity as Nevada  
State Treasurer; RICHARD WHITLEY, in his  
official capacity as Director of the Nevada  
Department of Health and Human Services;  
SCOTT J. KIPPER, in his official capacity as  
the Nevada Commissioner of Insurance; and  
RUSSELL COOK, in his official capacity as  
Executive Director of the Silver State Health  
Insurance Exchange,

Defendants.

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**  
**[Exemption from Arbitration Based on Equitable and Declaratory Relief Requested**  
**NAR 3(A), 5(a)(1)(G), (I)]**

Plaintiffs National Taxpayers Union ("NTU") and Robin L. Titus, MD, file this Complaint  
against Defendants the State of Nevada, ex rel., Joseph Lombardo, in his official capacity as  
Governor of the State of Nevada; Zach Conine, in his official capacity as Nevada State Treasurer;

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2025 JUL -7 PM 5: 12

WILLIAM SCOTT HOEN  
CLERK

BY  DEPUTY

Case No.

250000109 ID

Dept. No.

4

1 Richard Whitley, in his official capacity as Director of the Nevada Department of Health and  
2 Human Services (“DHHS”); Scott J. Kipper, in his official capacity as the Nevada Commissioner  
3 of Insurance; and Russell Cook, in his official capacity as Executive Director of the Silver State  
4 Health Insurance Exchange (“Exchange” or “SSHIX”). Plaintiffs allege as follows:

## 5 INTRODUCTION

6  
7 1. This lawsuit challenges the constitutionality of S.B. 420 (81st Leg., Nev. 2021),  
8 which provides for the establishment of a public health benefit plan in Nevada—the “Public  
9 Option.”

10 2. S.B. 420 violates three distinct provisions of the Nevada Constitution. *First*, it is at  
11 odds with Article IV, Section 18(2), which provides that a two-thirds majority in each legislative  
12 house is required to pass any bill that “creates, generates, or increases any public revenue in any  
13 form, including but not limited to taxes, fees, assessments and rates, or changes in the computation  
14 bases for taxes, fees, assessments, and rates.” The challenged bill plainly generates public revenue,  
15 but it was not passed by the required two-thirds vote in either the Assembly or the Senate.

16  
17 3. *Second*, S.B. 420 is in direct conflict with Article IV, Section 19, which states that  
18 “[n]o money shall be drawn from the treasury but in consequence of appropriations made by law.”  
19 S.B. 420 purports to give the State Treasurer and DHHS Director nearly unlimited discretion to  
20 use unspecified amounts of funds from the state treasury for purposes that the Legislature did not  
21 specify in passing S.B. 420. This violates NRS 353.235, which requires that an appropriation be  
22 “embodied in a separate bill” and aimed at a “single work, object or purpose” that is “stated in the  
23 bill.” The appropriation S.B. 420 enacts was not made by law, as Article IV, Section 19 requires.

24  
25 4. *Third*, S.B. 420 violates the separation-of-powers principle in Article III, Section  
26 1, which states that “no persons charged with the exercise of powers properly belonging to one of  
27 these departments shall exercise any functions appertaining to either of the others[.]” S.B. 420  
28

1 impermissibly delegates lawmaking authority to executive branch officials without providing any  
2 suitable standard to govern the manner and circumstances under which that authority is exercised.

3 5. The Court should therefore declare that S.B. 420 is unconstitutional and enjoin the  
4 Defendants from implementing, enforcing, or executing the law.  
5

6 **PARTIES**

7 6. Plaintiff NTU is a public interest, nonprofit, nonpartisan corporation organized  
8 under the laws of Delaware and under section 501(c)(4) of the Internal Revenue Code. It is  
9 authorized to do business in Nevada, and its Nevada members and supporters will be harmed by  
10 S.B. 420.

11 7. Plaintiff Robin L. Titus, MD, is a Nevada resident, a licensed physician, and an  
12 elected member of Nevada's citizen legislature.  
13

14 8. Defendant State of Nevada is a State of the United States and is named herein  
15 pursuant to NRS 41.031.

16 9. Defendant Joseph Lombardo currently serves as the Governor of the State of  
17 Nevada, with chief executive authority under Nevada's Constitution and state law.

18 10. Defendant Zach Conine currently serves as Nevada State Treasurer.

19 11. Defendant Richard Whitley is the Director of the DHHS, an agency of the State of  
20 Nevada Executive Department established under NRS Chapter 232. As DHHS Director, Whitley  
21 oversees the Nevada Division of Health Care Financing and Policy ("DHCFP").  
22

23 12. Defendant Scott J. Kipper is the Commissioner of Insurance, the chief officer of  
24 the Nevada Division of Insurance, an agency of the State of Nevada Executive Department housed  
25 within the Nevada Department of Business and Industry under NRS Chapter 232.

26 13. Russell Cook is the Executive Director of the SSHIX, an agency of the State of  
27 Nevada Executive Department established under NRS Chapter 695I.  
28

14. The Court has subject matter jurisdiction pursuant to Article VI, Section 6, clause 1 of the Nevada Constitution and NRS 30.030. Furthermore, because Plaintiffs seek injunctive relief, this Court has original jurisdiction over such claims. *Edwards. v. Emperor's Garden Rest.*, 122 Nev. 317, 324, 130 P.3d 1280, 1284 (2006) (“The district court possesses original jurisdiction ... over claims for injunctive relief.”).

16. Venue is proper pursuant to NRS 13.010, 13.020(3), 13.040, and 41.031(2) because all of the Defendants either reside or carry out their official duties in Carson City.

## I. The Plaintiffs.

18. NTU's Bylaws, Sec. 3.1, provide, "Any individual or entity that provides support or assistance to [NTU] may be designated as a 'supporting member'...." NTU's Nevada-based supporting members include individuals and other entities who support constitutional tax limitations, individuals and other entities who support restraint in government spending, and

1 individuals and other entities who support private sector-driven, market-based policies concerning  
2 health care and health insurance.

3         19. As part of its mission, NTU encourages and advises citizen activists to enact state  
4 and local laws restraining taxes and expenditures. Since 1988, NTU and its research affiliate have  
5 provided training, networking, and support for citizens seeking to limit state and local taxes and  
6 expenditures through constitutional or statutory means, including inviting activists from Nevada  
7 to participate in all these proceedings. NTU has helped to qualify and educate taxpayers on tax  
8 restraint ballot measures in numerous states, including in particular, Nevada's Question 11 (1994  
9 & 1996), the supermajority requirement adopted and now codified as Article IV, Section 18(2), as  
10 well as Arizona (1992), California (1978 and 1996), Colorado (1992), Florida (1996),  
11 Massachusetts (1980), Michigan (1978), Missouri (1980 and 1996), Oklahoma (1992), and South  
12 Dakota (1996). NTU and its research affiliate featured Nevada Question 11 eight times in its  
13 newsletters (circulation as high as 60,000) between 1993 and 1996, providing contact information  
14 for readers who wished to volunteer for the Nevada campaign. NTU and its research affiliate have  
15 also reported on ballot initiatives such as the Property Tax Restraint Initiative in Nevada and local  
16 taxpayer activity in the Incline Village area.

17  
18  
19         20. NTU has provided litigation defense against attempts to weaken or repeal state-  
20 level constitutional tax and expenditure limitations, including in Montana (1998) and Colorado  
21 (2022–23). NTU's Nevada-based supporting members will be harmed by the continued  
22 implementation of S.B. 420, in light of its unconstitutional increases in revenue and  
23 unconstitutional separation-of-powers and appropriations provisions. NTU has both an  
24 institutional interest in defending the Nevada Constitution's supermajority provision and an  
25 interest in protecting its members from the harms effectuated under S.B. 420.  
26  
27  
28

21. Dr. Titus is a licensed physician in Nevada. She also serves as a Nevada State Senator, representing District 17.

**II. Nevada enacts S.B. 420, the Public Option.**

22. In 2021, Nevada adopted S.B. 420, which requires the Defendants design, establish, and operate a health benefit plan known as the “Public Option.”

23. S.B. 420 passed on party lines in both houses during the 81st legislative session (26–15 in the Assembly and 12–9 in the Senate) and was signed into law on June 9, 2021.

24. The law requires the DHHS Director to make the Public Option available to consumers for purchase as a Qualified Health Plan (“QHP”) on the SSHIX, and for “direct purchase” as individual health insurance plans.

25. S.B. 420 further requires that the Public Option products provide minimum levels of coverage and that they be offered for purchase at a statutorily mandated discount—a “premium reduction” that is aligned with certain “premium reduction targets” established in statute.

26. Specifically, S.B. 420 requires the Public Option product premiums be “at least 5 percent lower than the reference premium for that zip code,” and the premiums “must not increase in any year by a percentage greater than the increase in the Medicare Economic Index for that year.”

27. At the same time, S.B. 420 also purports to authorize the Defendants to “revise” these premium reduction targets to any amount they choose as long as “the average premiums for the Public Option [are] at least 15 percent lower than the average reference premium in this State over the first 4 years in which the Public Option is in operation.”

28. S.B. 420 is implementing the Public Option through a waiver application submitted to the US Secretary of Health and Human Services pursuant to 42 U.S.C. § 18052 to obtain “pass-through” federal funding.

1           29.     42 U.S.C. § 18052, in pertinent part, authorizes the federal government to pay to  
2 the State the “amount of such credits or reductions that would have been paid on behalf of  
3 participants in the [State Health Insurance] Exchanges . . . had the State not received such a  
4 waiver.” In other words, the State may submit a plan to divert money in the form of federal  
5 insurance premium tax credits, cost-sharing reductions, and small business tax credits from  
6 consumers and small businesses to the State.  
7

8           30.     One express criterion that the State must meet as part of its waiver application is  
9 that the State justify its state plan based on “a comprehensive description of the State legislation  
10 and program to implement a plan meeting the requirements for a waiver.” Nevada’s plan to obtain  
11 pass-through federal dollars by implementing the Public Option is outlined in S.B. 420.  
12

13           31.     Nevada’s waiver application sought approval for the State to contract with health  
14 insurers to offer the new state-contracted Public Option insurance products to individuals for  
15 purchase beginning January 1, 2026. The State sought approval for this structure to offer the Public  
16 Option products in part because it will allow the State “to impose additional requirements” on  
17 health carriers “that go beyond those set forth in state law.”  
18

19           32.     Because these new health insurance products must be offered at a discount,  
20 mandated by statute, the State’s waiver application projects that the State will directly receive  
21 hundreds of millions of dollars in pass-through federal funding that the federal government would  
22 otherwise direct to offset consumers’ costs to pay for health insurance.

23           33.     The legislature in 2019 authorized only the Nevada Insurance Commissioner to  
24 submit a waiver application under 42 U.S.C. § 18502, and this authorization is specific and limited.  
25 *See* NRS 686B.010(1); NRS 686B.045. The Nevada Insurance Commissioner may only submit a  
26 waiver application “to achieve the purposes stated” in NRS 686B.010(2)(a)–(f), and such purposes  
27 expressly are “not an independent source of power.” NRS 686B.010(1). The legislature’s 2019  
28

1 authorization did not extend to any agency official other than the Nevada Insurance Commissioner.  
2 *See* NRS 686.045(1)–(2).

3         34.       The legislature in 2019 did not authorize the submission of a waiver application to  
4 establish and implement the Public Option health insurance benefit plan, nor did the legislature’s  
5 2019 authorization contemplate or approve the new and increased revenues to the State that will  
6 necessarily result from the sale of Public Option products under S.B. 420.  
7

8         35.       S.B. 420 requires that the Public Option product be offered as a QHP and  
9 specifies that, as a QHP offered for sale on the SSHIX, the purchase of Public Option products  
10 will be subject to QHP carrier fees which are the primary source of operating revenue for the  
11 SSHIX.  
12

13         36.       S.B. 420 also mandates that the Public Option products must be offered “for direct  
14 purchase” subject to “other applicable provisions of this title”, *i.e.*, Title 57 of the Nevada Revised  
15 Statutes, when offered for sale as a QHP or “as a policy of individual health insurance.” Title 57,  
16 Nevada’s Insurance Code, establishes among other things the insurance premium tax which is  
17 imposed on the sale of individual health insurance plans, and other “fees and taxes” imposed on  
18 participants in the insurance market. *See* NRS 680B.010–680B.120. S.B. 420, § 12(6)(a) requires  
19 that any health carrier or other person or entity contracted to offer Public Option products for sale  
20 must comply with NRS 686B.010 to NRS 686B.1799.  
21

22         37.       S.B. 420 requires each health carrier that currently has a contract with DHCFP to  
23 administer Medicaid managed care or wants to bid on such a contract in the future must submit a  
24 good-faith proposal to provide state-contracted Public Option plans.

25         38.       S.B. 420 empowers the State, if it chooses, to “directly administer” the Public  
26 Option “if necessary” because private sector carriers decline to participate.  
27  
28



39. S.B. 420 also imposes a mandate on healthcare providers in Nevada to participate in the Public Option program. S.B. 420 requires any healthcare provider who participates in the Public Employees Benefit Program, the Medicaid program, or Nevada’s workers’ compensation program to enroll as a participating provider in at least one carrier’s Public Option network and to accept new patients enrolled in Public Option health benefit plans.

40. Finally, S.B. 420 requires “any money” received from the State’s implementation of the Public Option program to be deposited to the State Public Option Trust Fund. The sources of revenue S.B. 420 allocated to the Public Option Trust Fund include “any money” generated pursuant to the State’s waiver application, and “any money” generated by the administration of Public Option insurance products, including “any money” generated by the State “directly administer[ing]” the Public Option if it chooses to do so.

41. S.B. 420 mandates that “the [DHHS] Director shall deposit into the Trust Fund any money received from (a) a Health Carrier or other person or entity with which the Director contracts to administer the Public Option, or (b) If the Director directly administers the Public Option...any money received from any person or entity in the course of administering the Public Option.” S.B. 420 allows the DHHS Director “to use a portion determined by the State Treasurer of any additional money in the Trust Fund to increase the affordability of the Public Option.”

### **III. Nevada secures a waiver from the federal government.**

42. As noted above, the Defendants are implementing S.B. 420 through a waiver application submitted to the US Secretary of Health and Human Services pursuant to 42 U.S.C. § 18052.

43. On January 1, 2024, Nevada submitted its waiver application (“Application”).

44. The federal government announced a 30-day public comment period regarding the Application and began an extensive and detailed review.

1           45.     On February 12, 2024, the US Department of Health and Human Services informed  
2 the Defendants that it made a preliminary determination that the Application was complete.

3           46.     On August 23, 2024, Nevada filed an addendum to its Application.

4           47.     On January 10, 2025, the US Department of Health and Human Services informed  
5 the Defendants in writing that the Application was approved ("Approval Letter"). That letter  
6 required Nevada to agree to certain terms and conditions.  
7

8           48.     The Approval Letter notes "that Nevada's waiver plan meets the statutory guardrail  
9 requirements" in federal law and, moreover, "is projected to provide coverage that is at least as  
10 comprehensive as coverage provided without the waiver."

11           49.     The Approval Letter goes on to confirm that under Nevada State law "and under  
12 the approved waiver," participating carriers "are required to reduce premiums by certain targets  
13 including by at least 3% in the first year of the waiver (2026) and 15% by the fourth year of the  
14 waiver (2029)." Under the Public Option, "net premiums will decrease in each year of the waiver."

15           50.     The Approval Letter also confirms that to effectuate the Public Option, healthcare  
16 provider rates must be reduced. The Approval Letter states, for example, that "the provider  
17 reimbursement rate floor included in the BBSP statute and the State's analysis of current provider  
18 rates suggest that there is room for negotiation with providers." Later, the Approval Letter notes  
19 that in Nevada, "provider rates are well above 100% of Medicare rates, suggesting that negotiating  
20 lower rates without violating this floor is feasible."  
21

22           51.     Indeed, the Public Option affirmatively requires that providers accept lower  
23 reimbursement rates. As a result, provider reimbursement rates will in fact be reduced.  
24

25           52.     On or around January 13, 2025, Nevada accepted all of the terms and conditions.  
26  
27  
28

1 **IV. The procurement process begins.**

2 53. Both during the application process and after the federal government issued the  
3 Approval Letter, the Defendants began the procurement process under S.B. 420.

4 54. On October 2, 2024, Nevada issued an updated request for proposal from private  
5 carriers to offer a Public Option product.

6 55. On or around October 31, 2024, interested carriers—which includes any carrier that  
7 provides any healthcare services through managed care—were required to submit technical  
8 proposals.

9 56. By November 4, 2024, the Defendants sent notification of good faith bid  
10 determinations to the carriers who submitted a proposal.

11 57. On or around February 1, 2025, the Defendants issued a notice of intent to carriers.

12 58. The Defendants finalized contracts with the carriers and the Nevada Board of  
13 Examiners approved such contracts on or around April 8, 2025, the contract effective date.

14 59. On July 1, 2025, Nevada announced the launch of the Nevada Health Authority,  
15 which will be led by Stacie Weeks and Richard Whitley. The new authority will manage and  
16 administer several key healthcare programs, including the Exchange.

17 60. Consistent with S.B. 420's requirements, the Public Option program will go live  
18 and the Public Option health benefit plans will be offered for purchase on the Nevada Health Link  
19 on January 1, 2026. Nevadans may begin looking for health benefit plans, including Public Option  
20 plans, on the Nevada Health Link for calendar year 2026 starting October 1, 2025, and start  
21 enrolling in such plans in November 2025 on Nevada Health Link.

22 61. No material changes were made to S.B. 420 in the 2021–2025 legislative sessions.

1     **V.    S.B. 420 violates Nevada state law.**

2           62.    S.B. 420 violates the Nevada Constitution and the Nevada Administrative  
3    Procedure Act (“NAPA”).

4                   **A.   *Two-thirds supermajority requirement***

5           63.    The Nevada Constitution requires that any legislation that creates, generates, or  
6    increases any public revenue in any form is subject to a two-thirds legislative supermajority  
7    threshold for passage:  
8

9                   [A]n affirmative vote of not fewer than two-thirds of the members  
10                  elected to each House is necessary to pass a bill or joint resolution  
11                  which creates, generates, or increases any public revenue in any  
12                  form, including but not limited to, taxes, fees, assessments and rates,  
13                  or changes in the computation bases for taxes, fees, assessments and  
14                  rates.

15           NEV. CONST., Art. IV, § 18, ¶ 2.

16           64.    Nevada’s two-thirds supermajority provisions “plainly encompass a bill that results  
17    in the State receiving more public revenue than it would have realized without it . . . [and] has  
18    broad application . . . to all bills that create, generate, or increase public revenue.” *State Legislature*  
19    *v. Settelmeyer*, 137 Nev. 231, 235–36, 486 P.3d 1276, 1280–81 (2021).

20           65.    The meaning, intent, and purpose of the two-thirds requirement is to subject any  
21    revenue-creating legislation to a heightened standard of legislative approval and to protect  
22    taxpayers from new and increased taxes, fees, and other assessments.

23           66.    S.B. 420 provides that the DHHS Director “shall make the Public Option available:  
24    (1) As a qualified health plan through the [Silver State Health] Exchange to natural persons who  
25    reside in this State and are eligible to enroll in such a plan through the Exchange under the  
26    provisions of 45 C.F.R. § 155.305; and (2) For direct purchase as a policy of individual health  
27    insurance by any natural person who resides in this State.”  
28

1           67.     In establishing a new health insurance benefit product, requiring that such product  
2 be offered to consumers for purchase as a QHP through the SSHIX, and for individual purchase  
3 as a health insurance policy, S.B. 420 creates, generates, and increases public revenue.

4           68.     The SSHIX also assesses Revenue/Carrier Premium Fees (“CPFs” or “QHP fees”)  
5 at a rate of 2.95% of total premiums collected on the sale of health insurance plans sold through  
6 the Exchange. Premiums for Public Option products offered for purchase through the Exchange  
7 will be subject to these 2.95% QHP fees.

8           69.     An interim study on the Public Option model, which the legislature commissioned  
9 pursuant to Senate Concurrent Resolution 10 prior to the 2021 legislative session, relied on a “key  
10 assumption” that Exchange-assessed CPFs would also be assessed on new Public Option products  
11 sold on the SSHIX.  
12

13           70.     In a fiscal note submitted for S.B. 420, the SSHIX stated that the CPFs “the SSHIX  
14 collects are charged to carriers operating on the Exchange and grounded in the requirements of the  
15 Affordable Care Act (ACA). The transfer of the SSHIX’s fee revenue to other uses is inconsistent  
16 with the ACA and NRS [Chapter] 695I, and if an attempt were made to transfer such funds to other  
17 uses, it may be subject to a legal challenge by carriers who paid the fee.”  
18

19           71.     As a result, the State will receive revenue in the form of CPFs or QHP fees assessed  
20 on new Public Option products, which the State would not otherwise receive but for S.B. 420.  
21

22           72.     Nevada also assesses an insurance premium tax of 3.5% on net premiums, which is  
23 assessed on the sale of individual health benefit policies. The insurance premium tax will apply to  
24 sales of Public Option insurance products that are sold as individual health benefit plans.

25           73.     An interim study on the Public Option model, commissioned pursuant to Senate  
26 Concurrent Resolution 10 prior to the 2021 legislative session, relied on a “key assumption” that  
27  
28

1 “Public Option taxes” and “Nevada state fees” would be applicable to Public Option products sold  
2 on the individual health insurance market.

3 74. In a Fiscal Note submitted for S.B. 420, DHCFP stated that “insurance premiums  
4 and Medicaid managed care capitation payments are subject to the State’s 3.5% insurance  
5 premium tax.”  
6

7 75. Nevada will receive insurance premium tax revenue which it otherwise would not  
8 receive but for S.B. 420’s Public Option product provisions mandating that the new Public Option  
9 products be offered for sale to individual consumers.

10 76. In addition, the State will receive federal pass-through funding revenue which the  
11 State would not otherwise receive but for S.B. 420’s premium reduction mandates, which require  
12 the sale of a health insurance product (a QHP) at a statutorily mandated reduced price (the premium  
13 reduction target), which will purportedly allow the State to divert federal premium tax credit  
14 dollars that would otherwise offset consumer health insurance purchases. Instead, as a direct result  
15 of S.B. 420’s premium reduction mandates, these federal pass-through dollars will be redirected  
16 to the State Public Option Trust Fund.  
17

18 77. On December 29, 2023, Director Whitley submitted Nevada’s Application to the  
19 federal government.  
20

21 78. The Application confirms the revenue-generating effects of S.B. 420’s Public  
22 Option provisions. To begin with, it states that Public Option products “shall operate as individual  
23 health insurance products that comply with State and federal requirements for QHPs and all State  
24 health insurance laws and regulations.” State law imposes taxes on premiums for health insurance  
25 products, and the Application states that new Public Option products will be among the “private  
26 health insurance plans in the individual market.”  
27  
28

1           79.     In addition, the Application notes that as QHP products sold on the SSHIX, the new  
2 Public Option products will generate SSHIX operating revenue: “The SSHIX will determine  
3 whether these [Public Option] plans meet the certification requirements and whether they are  
4 eligible for premium tax credits like other plans being offered as QHPs in the SSHIX. This includes  
5 applying the premium assessment fee, which is used as revenue to fund the operations of the  
6 SSHIX.”

7  
8           80.     The Application further confirms that S.B. 420’s premium reduction mandates are  
9 meant to divert federal premium tax credit dollars that would otherwise be allocated to offset  
10 consumers’ health insurance costs and redirect those funds as revenue to the State to finance  
11 reinsurance and other initiatives. The Application states that “implementing a new premium  
12 reduction target and a State-based reinsurance program would meet the federal requirements for a  
13 Section 1332 waiver” and result in \$279 to \$310 million in federal pass-through revenue in the  
14 first five years and \$760 to \$844 million in federal pass-through revenue at the end of the first ten  
15 year of the Public Option’s implementation. The Defendants intend to use this new revenue for  
16 reinsurance, student loan repayments, and other programs.

17  
18           81.     These and other revenue-generating provisions subjected S.B. 420 to the Nevada  
19 Constitution’s two-thirds supermajority requirement because they will create, generate, or increase  
20 public revenue.

21  
22           82.     S.B. 420 failed to garner the support of two-thirds of the Nevada legislature when  
23 it was adopted by a vote of 26–15 in the Assembly and 12–9 in the Senate.

24                   ***B. The Appropriations Clause.***

25           83.     The Nevada Constitution provides that “[n]o money shall be drawn from the  
26 treasury but in consequence of appropriations made by law.” NEV. CONST., Art. IV, § 19.  
27  
28

1           84.     An “appropriation” is “the setting aside from the public revenue of a certain sum of  
2 money for a specified object, in such manner that the executive officers of the government are  
3 authorized to use that money, and no more, for that object, and no other.” *Schwartz v. Lopez*, 132  
4 Nev. 732, 753, 382 P.3d 886, 900 (2016) (citations omitted); *see also* NRS 353.235.

5           85.     The Appropriations Clause is intended to promote transparency and accountability  
6 and to ensure that the people are informed about how their government intends to expend public  
7 funds. If an appropriation does not meet this mark, it is void. *See In re Two Minor Children*, 95  
8 Nev. 225, 232, 592 P.2d 166, 171 (1979).

9           86.     S.B. 420, § 15 establishes a Public Option Trust Fund consisting of Public Option  
10 revenues, appropriated funds, and interest and income earned on money in the Public Option Trust  
11 Fund.  
12

13           87.     The Public Option Trust fund is part of the State Treasury.

14           88.     S.B. 420 does not clearly identify a single purpose for the appropriation it enacts.  
15 S.B. 420, § 15(5) provides that “[i]f the State Treasurer determines that there is sufficient money  
16 in the Trust Fund to carry out the provisions of [S.B. 420] sections 2 to 15, inclusive . . . for the  
17 current fiscal year, the [DHHS] Director may use a portion determined by the State Treasurer of  
18 any additional money in the Trust Fund to increase the affordability of the Public Option.”  
19

20           89.     Additionally, the Approval Letter includes a term and condition under which the  
21 State is required to “ensure sufficient funds are available on an annual basis for the waiver to  
22 operate as described in the State’s waiver plan.”  
23

24           90.     S.B. 420 wholly lacks the certainty and specificity that is required of a legislative  
25 appropriation. It provides unbridled discretion to executive branch officials to use unspecified  
26 amounts of funds for the nebulous and vague purposes of “increasing the affordability of the Public  
27 Option.”  
28



1           91.     A December 14, 2022 “Briefing on Nevada Public Option” presentation illustrates  
2 the unconstitutional lack of specificity. In a slide entitled “New Funds for Affordability Policies”  
3 addressing “New State Revenue (Federal Pass-Through Funds),” the presentation states that  
4 “[l]eftover PTF [pass-through funding] can be used by [the] Director of DHHS to establish new  
5 affordability policies,” and lists as examples “new state premium wraps” and “new funds for  
6 supporting enrollment (*e.g.*, navigators).”  
7

8                   ***C. The separation of powers and NAPA.***

9           92.     The Nevada Constitution requires the separation of powers among three distinct  
10 branches of state government:

11                   The powers of the Government of the State of Nevada shall be  
12 divided into three separate departments—the Legislative, the  
13 Executive, and the Judicial; and no persons charged with the  
14 exercise of powers properly belonging to one of these Departments  
15 shall exercise any functions, appertaining to either of the others,  
16 except in the cases expressly directed or permitted in this  
17 constitution.

18                   NEV. CONST., Art. III, § 1, cl. 1.

19           93.     “The separation of powers doctrine is the most important foundation for preserving  
20 and protecting liberty by preventing the accumulation of power in any one branch of government.”  
21 *Shea v. State*, 138 Nev. Adv. Op. 36, 510 P.3d 148, 152 (2022) (quoting *Berkson v. LePome*, 126  
22 Nev. 492, 498, 245 P.3d 560, 564 (2010)).

23           94.     One of the principles underlying separation of powers as established in Nevada’s  
24 Constitution is the notion that only elected legislators should enact and amend the law—not  
25 unelected agency officials who are insulated from the democratic process.

26           95.     S.B. 420, § 10(4)(a)–(b) establishes premium level reduction targets for Public  
27 Option Health Benefit insurance products and provides that such premiums “(a) [m]ust be at least  
28 5 percent lower than the reference premium for that zip code; and (b) [m]ust not increase in any  
year by a percentage greater than the increase in the Medicare Economic Index for that year.”

1           96.     S.B. 420 also purports to enable the Defendants—all executive branch officials—  
2 to enact and outright “revise” statutory language, a lawmaking function that is exclusively assigned  
3 to the legislative branch. It gives those executive branch officials unconstrained discretion in  
4 governing the manner and circumstances under which the Defendants can exercise this delegated  
5 authority. *Cf. Floyd v. State Dep’t of Corr.*, 536 P.3d 445, 446 (Nev. 2023).  
6

7           97.     Specifically, § 10(5) states that “[t]he [DHHS] Director, in consultation with the  
8 Commissioner [of Insurance] and the Executive Director of the [Silver State Health] Exchange,  
9 *may revise the requirements* of [S.B. 420, § 10(4)], provided that the average premiums for the  
10 Public Option must be at least 15 percent lower than the average reference premium in this State  
11 over the first 4 years in which the Public Option is in operation.” (Emphasis added.)  
12

13           98.     The Defendants have exercised that lawmaking authority to “revise” S.B. 420’s  
14 premium reduction targets by issuing two “Guidance Letters.” The first, General Guidance Letter  
15 22-001, was issued on October 4, 2022 by Defendant Whitley and then-DHCFP Administrator  
16 Bierman. The second, General Guidance Letter 22-003, was issued on November 20, 2023 by  
17 Defendant Whitely and DHCFP Administrator Stacie Weeks.  
18

19           99.     The Defendants did not engage in administrative rulemaking under the Nevada  
20 Administrative Procedure Act, NRS 233B.010–233B.120 in issuing the two Guidance Letters.  
21

22           100.    On January 2, 2024, Plaintiffs requested in writing that Director Whitley and  
23 Administrator Weeks “pass upon the validity of the regulation[s] in question” under NRS  
24 233B.110(1). To date, Defendants have not responded to Plaintiffs’ request.  
25

26           101.    The Guidance Letters expressly invoke the DHHS Director’s authority under S.B.  
27 420 to “revise” the statutory requirements noted above.  
28

          102.    By issuing the Guidance Letters, the Defendants have in substance and effect struck  
out existing statutory language and amended it with the executive branch’s preferred language.

1           103. In addition, as described above, S.B. 420 § 15(5) purports to give the State  
2 Treasurer and the DHHS Director the unilateral power to decide whether and how much public  
3 funds should be spent “to increase the affordability of the Public Option” products. A “regulation”  
4 is an agency rule, standard, directive or statement of general applicability which effectuates or  
5 interprets law or policy, or describes the organization, procedure or practice requirements of any  
6 agency. NRS § 233B.038(1)(a).  
7

8           104. The Guidance Letters are statements of the policy and practice of the DHCFP, that  
9 are generally applicable.

10           105. The Defendants did not engage in administrative rulemaking under the NAPA,  
11 NRS 233B.010–233B.120 in issuing the two Guidance Letters.  
12

13 **VI. This case involves a matter of exceptional public importance.**

14           106. The question of whether S.B. 420 violates the Nevada Constitution is an issue of  
15 exceptional public importance.

16           107. The Public Option will dramatically reshape the healthcare industry in Nevada, a  
17 \$15 billion industry that employs over 160,000 Nevadans or more than 10% of the State’s  
18 workforce.  
19

20           108. The Defendants’ own public statements confirm that the Public Option has  
21 exceptional public importance. For example, Nevada’s Application states that federal pass-through  
22 funding *alone* will total \$760 million through 2035. The Application also notes that contracts with  
23 carriers are estimated to be worth \$20–\$25 billion over the next five-year period.

24           109. Unless this Court hears Plaintiffs’ legal challenge to the Public Option, these claims  
25 are likely to evade review. No other individual or organization has publicly or privately indicated  
26 any interest in filing a lawsuit to challenge the Public Option, even after Plaintiffs filed an earlier  
27 lawsuit raising similar issues. Moreover, if Plaintiffs here—a physician and a nonprofit  
28

1 organization that was integral to the adoption of the constitutional amendments at issue—cannot  
2 bring this challenge, then no other litigant would be able to do so.

3 110. No one other than the Plaintiffs is in a better position to bring an action. Plaintiffs  
4 have secured competent counsel to bring this lawsuit, and they are committed to seeing it through  
5 to the end. Indeed, Plaintiff filed an earlier lawsuit to challenge S.B. 420 several months ago, which  
6 the Court dismissed without prejudice. Since then, no one else has, publicly or privately, so much  
7 as suggested an interest in bringing their own lawsuit.

8  
9 111. Plaintiffs are not aware of any other individual or organization that has the plans,  
10 resources, or interest to mount a similar challenge.

11 112. This case involves a challenge to a legislative expenditure or appropriation on the  
12 basis that it violates specific provisions of the Nevada Constitution.

13 113. This case also involves a challenge based on the separation-of-powers principle in  
14 the Nevada Constitution.

15 114. The Plaintiffs are appropriate parties to bring this lawsuit. They are also interested  
16 parties within the meaning of NRS 30.040.

17 115. State law affirmatively requires the Defendants to launch the Public Option on  
18 January 1, 2026, just months away. Just as importantly, Nevadans will be able to look for health  
19 benefit plans, including Public Option plans, on the Nevada Health Link starting October 1, 2025,  
20 and start enrolling in such plans in November 2025 on Nevada Health Link.

21 116. If the Court does not hear this challenge on the merits now, then the judiciary will  
22 not have the opportunity to adjudicate these claims before the Public Option goes live, risking the  
23 uncertainty and potential harm that would result from the launch and then immediate, court-  
24 ordered rollback of a governmental program.

25 117. Plaintiffs' other lawsuit mentioned herein was dismissed without prejudice.  
26  
27  
28

**FIRST CAUSE OF ACTION**  
**(Declaratory Relief - Violation of Two-Thirds Majority Requirement (NEV. CONST., Art. IV, § 18))**

118. Plaintiffs re-allege and incorporate all of the foregoing paragraphs.

119. S.B. 420 creates, generates, or increases public revenue and was therefore subject to the Nevada Constitution's two-thirds supermajority requirement.

120. S.B. 420 did not garner a two-thirds supermajority in either the Assembly or the Senate, passing with a simple majority in each chamber.

121. S.B. 420 therefore violates Article IV, Section 18 of the Nevada Constitution.

122. Without this Court's intervention, Defendants will continue to implement S.B. 420, resulting in irrevocable and irreparable harm to the rights of Nevada citizens protected under Nevada's Constitution.

123. There exists no adequate remedy at law to prevent these constitutional violations.

124. Plaintiffs, acting in the public interest, are entitled to injunctive relief to prevent the constitutional violations alleged in this Complaint.

125. This Court has the power to grant such relief.

**SECOND CAUSE OF ACTION**  
**(Declaratory Relief - Violation of Appropriations Clause ((NEV. CONST., Art. IV, § 19))**

126. Plaintiffs re-allege and incorporate all of the foregoing paragraphs.

127. S.B. 420 § 15 permits executive branch officials to draw money from the State Treasury even though the law does not contain any appropriation that would permit the drawing of that money.

128. S.B. 420 therefore violates Article IV, Section 19 of the Nevada Constitution.

129. Without this Court's intervention, Defendants will continue to implement S.B. 420, resulting in irrevocable and irreparable harm to the rights of Nevada citizens protected under Nevada's Constitution.

130. There exists no adequate remedy at law to prevent these constitutional violations.

131. Plaintiffs, acting in the public interest, are entitled to injunctive relief to prevent the constitutional violations alleged in this Complaint.

132. This Court has the power to grant such relief.

**THIRD CAUSE OF ACTION  
(Declaratory Relief - Violation of Separation of Powers (NEV. CONST., Art. III, § 1))**

133. Plaintiffs re-allege and incorporate all of the foregoing paragraphs.

134. S.B. 420 purports to delegate legislative authority to the DHHS Director, Insurance Commissioner, SSHIX Director, and the State Treasurer without establishing suitable standards to govern the manner and circumstances under which the Defendants can exercise this delegated authority.

135. S.B. 420 therefore violates Article III, Section 1 of the Nevada Constitution.

136. Without this Court's intervention, Defendants will continue to implement S.B. 420, resulting in irrevocable and irreparable harm to the rights of Nevada citizens protected under Nevada's Constitution.

137. There exists no adequate remedy at law to prevent these constitutional violations.

138. Plaintiffs, acting in the public interest, are entitled to injunctive relief to prevent the constitutional violations alleged in this Complaint.

139. This Court has the power to grant such relief.

**FOURTH CAUSE OF ACTION  
(Declaratory Relief - Violation of NAPA  
(NRS Chapter 233B))**

140. Plaintiffs re-allege and incorporate all of the foregoing paragraphs.

141. NAPA defines a "regulation" as "an agency rule, standard, directive or statement of general applicability which effectuates or interprets law or policy, or describes the organization, procedure or practice requirements of any agency." NRS 233B.038(1)(a)–(d).

142. A “regulation” subject to NAPA must be “adopted and filed in accordance with the provisions of [NRS Chapter 233B].”

143. The Guidance Letters are regulations under NAPA.

144. S.B. 420 recognizes that the adoption, amendment, or repeal of any rule or policy governing the Public Option established pursuant to chapter 695K of NRS would constitute a regulation subject to NAPA. S.B. 420 only *prospectively* exempted such adoption from NRS Chapter 233B, effective January 1, 2026.

145. Defendants adopted the Guidance Letters without satisfying NAPA’s rulemaking procedures, including but not limited to NRS 233B.067(5)’s requirement that the Nevada Legislative Commission review and approve an agency regulation before it takes effect.

146. Regardless of when they were adopted, the regulations are otherwise invalid because they effectuate an unconstitutional bill.

147. On January 2, 2024, Plaintiffs requested in writing that Director Whitley and DHCP Administrator Stacie Weeks “pass upon the validity of the regulations in question,” under NRS 233B.110(1). To date, Defendants have not responded to Plaintiffs’ request.

148. The Defendants violated NAPA by adopting and promulgating the Guidance Letters.

149. The Guidance Letters constitute invalid and unenforceable agency regulations.

150. Plaintiffs request that this Court declare that the Guidance Letters are invalid and have no force or effect.

151. The Court has the power to grant this relief under NRS 233B.110.

#### PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for the following relief:

A. A judgment in the Plaintiffs’ favor and against the Defendants;

1 B. A declaration that S.B. 420 violates Article IV, Section 18 of the Nevada  
2 Constitution;

3 C. A declaration that S.B. 420 violates Article IV, Section 19 of the Nevada  
4 Constitution;

5 D. A declaration that S.B. 420 violates Article III, Section 1 of the Nevada  
6 Constitution;

7 E. An injunction prohibiting the Defendants from implementing, enforcing, or  
8 executing any and all provisions of S.B. 420;

9 F. A declaration that Defendants violated NAPA by adopting and promulgating the  
10 Guidance Letters, and that the Guidance Letters are invalid agency regulations;

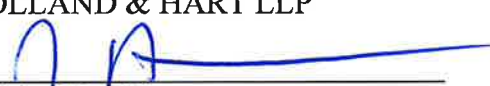
11 G. For reasonable attorneys' fees and costs; and

12 H. For such other and further relief as the Court may deem just and proper.

13 The undersigned affirms that this document does not contain the social security number  
14 of any person and acknowledge that when any additional documents are filed, an affirmation will  
15 be provided only if the document does contain personal information.

16 DATE: July 7, 2025

HOLLAND & HART LLP

20   
21 Joshua M. Halen (NSBN 13885)  
22 5470 Kietzke Lane, Suite 100  
23 Reno, NV 89511  
24 Tel: (775) 327-3000

25 Christopher M. Jackson (*pro hac vice* forthcoming)  
26 555 17th Street, Suite 3200  
27 Denver, CO 80202  
28 Tel: (303) 295-8000



VERIFICATION

I, Robin L. Titus, declare the following under penalty of perjury:

1. I am over eighteen years of age and am competent to testify in this matter.
2. I have personal knowledge of the facts alleged in the complaint related to me.
3. I have reviewed the Complaint, and the allegations contained therein are true and correct to the best of my knowledge.

DATE: June 17, 2025

  
Robin L. Titus


35135302\_v2

**VERIFICATION**

On behalf of Plaintiff National Taxpayers Union ("NTU"), I, Pete Sepp, declare the following under penalty of perjury:

1. I am over eighteen years of age and am competent to testify in this matter.
2. I currently serve as the president of NTU.
3. I have personal knowledge of the facts alleged in the complaint relating to NTU.
4. I have reviewed the Complaint, and the allegations contained therein are true and correct to the best of my knowledge.

DATE: June 24, 2025

  
\_\_\_\_\_  
Pete Sepp  
President, National Taxpayers Union

No.	Filed	Action	Operator	Fine/Cost	Due
22	08/18/25	DEFENDANTS' UNOPPOSED MOTION FOR ENLARGMENT OF TIME (SECOND REQUEST)	1bdortiz	0.00	0.00
23	07/31/25	ORDER (EXTENSION OF TIME TO RESPOND)	1BJULIEH	0.00	0.00
24	07/29/25	DEFENDANTS' UNOPPOSED MOTION FOR ENLARGEMENT OF TIME (FIRST REQUEST)	1BETORRES	0.00	0.00
25	07/29/25	DEFENDANT'S NOTICE OF APPEARANCE	1BETORRES	0.00	0.00
26	07/08/25	ISSUING SUMMONS (5)	1BDORTIZ	0.00	0.00
✓ 27	07/08/25	PLAINTIFFS MOTION FOR PRELIMINARY INJUNCTION	1BCCOOPER	0.00	0.00
28	07/07/25	PLAINTIFFS APPENDIX TO MOTION FOR PRELIMINARY INJUNCTION VOLUMES 1 THROUGH 18	1BCCOOPER	0.00	0.00
29	07/07/25	CREDIT CARD PROCESSING FEE Receipt: 90462 Date: 07/08/2025	1BCCOOPER	2.50	0.00
30	07/07/25	ADDITIONAL PLAINTIFF Receipt: 90462 Date: 07/08/2025	1BCCOOPER	30.00	0.00
✓ 31	07/07/25	COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF	1BCCOOPER	265.00	0.00
Total:				297.50	0.00
Totals By: COST				297.50	0.00
INFORMATION				0.00	0.00
*** End of Report ***					