

Joshua M. Halen (NSBN 13885)
HOLLAND & HART LLP
5470 Kietzke Lane, Suite 100
Reno, NV 89511
Tel: (775) 327-3000
Fax: (775) 786-6179
jmhalen@hollandhart.com

Christopher M. Jackson (*pro hac vice* forthcoming)
HOLLAND & HART LLP
555 17th Street, Suite 3200
Denver, CO 80202
Tel: (303) 295-8000
cmjackson@hollandhart.com

Attorneys for Plaintiffs

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 Human Services; STACIE
WEEKS, in her official capacity as Director of
the Nevada Health Authority; NED GAINES,
in his official capacity as the Acting Nevada
Commissioner of Insurance; and JANEL
DAVIS, in her official capacity as Acting
Executive Director of the Silver State Health
Insurance Exchange,

Defendants.

Case No.

Dept. No.

FIRST AMENDED 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

1 Governor of the State of Nevada; Zach Conine, in his official capacity as Nevada State Treasurer;
2 Richard Whitley, in his official capacity as Director of the Nevada Department of Human Services
3 (“DHS”); Stacie Weeks, in her official capacity as Director of the Nevada Health Authority; Ned
4 Gaines, in his official capacity as the Acting Nevada Commissioner of Insurance; and Janel Davis,
5 in her official capacity as Acting Executive Director of the Silver State Health Insurance Exchange
6 (“Exchange” or “SSHIX”). Plaintiffs allege as follows:
7

8 INTRODUCTION

9 1. This lawsuit challenges the constitutionality of S.B. 420 (81st Leg., Nev. 2021),
10 which provides for the establishment of a public health benefit plan in Nevada—the “Public
11 Option.”
12

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

19 3. *Second*, S.B. 420 is in direct conflict with Article IV, Section 19, which states that
20 “[n]o money shall be drawn from the treasury but in consequence of appropriations made by law.”
21 S.B. 420 purports to give the State Treasurer and DHS Director nearly unlimited discretion to use
22 unspecified amounts of funds from the state treasury for purposes that the Legislature did not
23 specify in passing S.B. 420. This violates NRS 353.235, which requires that an appropriation be
24 “embodied in a separate bill” and aimed at a “single work, object or purpose” that is “stated in the
25 bill.” The appropriation S.B. 420 enacts was not made by law, as Article IV, Section 19 requires.
26
27
28

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

PARTIES

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

S.B. 420.

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

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

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

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

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

12. Defendant Stacie Weeks is the Director of the Nevada Health Authority (“Authority”). Under Section 355 of S.B. 494, Weeks has or will have responsibility for designing,

1 establishing, and operating the health benefit plan Nevada adopted via S.B. 420, known as the
2 “Public Option,” the subject of Plaintiffs challenge

3 13. The Authority is a new department within DHS, that now encompasses what was
4 previously the Nevada Division of Health Care Financing and Policy (“DHCFP”). As noted below,
5 one of the Authority’s responsibilities is to implement the Public Option. For clarity, this complaint
6 and the accompanying motion refer to the policy and practice of the former DHCFP, and
7 statements made and actions taken by officials of the former DHCFP, as if they were the policy,
8 practice, statements, and actions of the Authority.
9

10 14. Defendant Ned Gaines is the Acting Commissioner of Insurance, the chief officer
11 of the Nevada Division of Insurance, an agency of the State of Nevada Executive Department
12 housed within the Nevada Department of Business and Industry under NRS Chapter 232.
13

14 15. Janel Davis is the Acting Executive Director of the SSHIX, an agency of the State
15 of Nevada Executive Department established under NRS Chapter 695I.

16 JURISDICTION AND VENUE

17 16. The Court has subject matter jurisdiction pursuant to Article VI, Section 6, clause
18 1 of the Nevada Constitution and NRS 30.030. Furthermore, because Plaintiffs seek injunctive
19 relief, this Court has original jurisdiction over such claims. *Edwards. v. Emperor’s Garden Rest.*,
20 122 Nev. 317, 324, 130 P.3d 1280, 1284 (2006) (“The district court possesses original jurisdiction
21 ... over claims for injunctive relief.”).

22 17. The Court has personal jurisdiction over all of the Defendants, who are residents
23 and officials of the State of Nevada, pursuant to NRS 14.065.
24

25 18. Venue is proper pursuant to NRS 13.010, 13.020(3), 13.040, and 41.031(2) because
26 all of the Defendants either reside or carry out their official duties in Carson City.
27
28

FACTUAL ALLEGATIONS

I. The Plaintiffs.

19. NTU is a nonpartisan, nonprofit, public-interest organization whose primary purpose is to advocate for public policies that promote transparency, accountability, and efficiency in government. NTU's leadership directly and actively advocated for the passage of the Nevada Constitution's two-thirds supermajority provision and the organization has and continues to advocate for related policies that promote fiscally sound constitutional governance. NTU's purpose makes it uniquely qualified to advocate its position in this matter, which involves a significant issue of public importance.

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

21. As part of its mission, NTU encourages and advises citizen activists to enact state and local laws restraining taxes and expenditures. Since 1988, NTU and its research affiliate have provided training, networking, and support for citizens seeking to limit state and local taxes and expenditures through constitutional or statutory means, including inviting activists from Nevada to participate in all these proceedings. NTU has helped to qualify and educate taxpayers on tax restraint ballot measures in numerous states, including in particular, Nevada's Question 11 (1994 & 1996), the supermajority requirement adopted and now codified as Article IV, Section 18(2), as well as Arizona (1992), California (1978 and 1996), Colorado (1992), Florida (1996), Massachusetts (1980), Michigan (1978), Missouri (1980 and 1996), Oklahoma (1992), and South

1 Dakota (1996). NTU and its research affiliate featured Nevada Question 11 eight times in its
2 newsletters (circulation as high as 60,000) between 1993 and 1996, providing contact information
3 for readers who wished to volunteer for the Nevada campaign. NTU and its research affiliate have
4 also reported on ballot initiatives such as the Property Tax Restraint Initiative in Nevada and local
5 taxpayer activity in the Incline Village area.
6

7 22. NTU has provided litigation defense against attempts to weaken or repeal state-
8 level constitutional tax and expenditure limitations, including in Montana (1998) and Colorado
9 (2022–23). NTU’s Nevada-based supporting members will be harmed by the continued
10 implementation of S.B. 420, in light of its unconstitutional increases in revenue and
11 unconstitutional separation-of-powers and appropriations provisions. NTU has both an
12 institutional interest in defending the Nevada Constitution’s supermajority provision and an
13 interest in protecting its members from the harms effectuated under S.B. 420.
14

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

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

18 24. In 2021, Nevada adopted S.B. 420, which requires the Defendants design, establish,
19 and operate the Public Option.
20

21 25. S.B. 420 passed on party lines in both houses during the 81st legislative session
22 (26–15 in the Assembly and 12–9 in the Senate) and was signed into law on June 9, 2021.

23 26. As passed in 2021, § 5 of S.B. 420 (NRS 695K.050) required the Director of then
24 DHHS to implement the Public Option. In 2025, the Nevada Legislature passed S.B. 495, which,
25 among other things, created the Authority and mandated that the Director of the Authority assume
26 the responsibilities of the Director of DHHS to implement and operate the Public Option. Section
27 355 of S.B. 495 (2025) amended NRS 695K.050 to replace Director of DHHS with Director of the
28

1 Authority. Thus, any reference to S.B. 420's requirements of the Director of DHS or DHHS here
2 should be read, consistent with recent amendments, as present or future requirements of the
3 Director of the Authority.

4
5 27. The law requires the DHS Director to make the Public Option available to
6 consumers for purchase as a Qualified Health Plan ("QHP") on the SSHIX, and for "direct
7 purchase" as individual health insurance plans.

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

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

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

20
21 31. S.B. 420 is implementing the Public Option through a waiver application submitted
22 to the US Secretary of Health and Human Services pursuant to 42 U.S.C. § 18052 to obtain "pass-
23 through" federal funding.

24 32. 42 U.S.C. § 18052, in pertinent part, authorizes the federal government to pay to
25 the State the "amount of such credits or reductions that would have been paid on behalf of
26 participants in the [State Health Insurance] Exchanges . . . had the State not received such a
27 waiver." In other words, the State may submit a plan to divert money in the form of federal
28

1 insurance premium tax credits, cost-sharing reductions, and small business tax credits from
2 consumers and small businesses to the State.

3 33. One express criterion that the State must meet as part of its waiver application is
4 that the State justify its state plan based on “a comprehensive description of the State legislation
5 and program to implement a plan meeting the requirements for a waiver.” Nevada’s plan to obtain
6 pass-through federal dollars by implementing the Public Option is outlined in S.B. 420.
7

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

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

18 36. The legislature in 2019 authorized only the Nevada Insurance Commissioner to
19 submit a waiver application under 42 U.S.C. § 18502, and this authorization is specific and limited.
20 *See* NRS 686B.010(1); NRS 686B.045. The Nevada Insurance Commissioner may only submit a
21 waiver application “to achieve the purposes stated” in NRS 686B.010(2)(a)–(f), and such purposes
22 expressly are “not an independent source of power.” NRS 686B.010(1). The legislature’s 2019
23 authorization did not extend to any agency official other than the Nevada Insurance Commissioner.
24 *See* NRS 686.045(1)–(2).
25

26 37. The legislature in 2019 did not authorize the submission of a waiver application to
27 establish and implement the Public Option health insurance benefit plan, nor did the legislature’s
28

1 2019 authorization contemplate or approve the new and increased revenues to the State that will
2 necessarily result from the sale of Public Option products under S.B. 420.

3 38. S.B. 420 requires that the Public Option product be offered as a QHP and
4 specifies that, as a QHP offered for sale on the SSHIX, the purchase of Public Option products
5 will be subject to QHP carrier fees which are the primary source of operating revenue for the
6 SSHIX.
7

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

17 40. S.B. 420 requires each health carrier that currently has a contract with DHCFP to
18 administer Medicaid managed care or wants to bid on such a contract in the future must submit a
19 good-faith proposal to provide state-contracted Public Option plans.
20

21 41. S.B. 420 empowers the State, if it chooses, to “directly administer” the Public
22 Option “if necessary” because private sector carriers decline to participate.

23 42. S.B. 420 also imposes a mandate on healthcare providers in Nevada to participate
24 in the Public Option program. S.B. 420 requires any healthcare provider who participates in the
25 Public Employees Benefit Program, the Medicaid program, or Nevada’s workers’ compensation
26 program to enroll as a participating provider in at least one carrier’s Public Option network and to
27 accept new patients enrolled in Public Option health benefit plans.
28

1 43. Finally, S.B. 420 requires “any money” received from the State’s implementation
2 of the Public Option program to be deposited to the State Public Option Trust Fund. The sources
3 of revenue S.B. 420 allocated to the Public Option Trust Fund include “any money” generated
4 pursuant to the State’s waiver application, and “any money” generated by the administration of
5 Public Option insurance products, including “any money” generated by the State “directly
6 administer[ing]” the Public Option if it chooses to do so.
7

8 44. S.B. 420 mandates that “the [DHS] Director shall deposit into the Trust Fund any
9 money received from (a) a Health Carrier or other person or entity with which the Director
10 contracts to administer the Public Option, or (b) If the Director directly administers the Public
11 Option...any money received from any person or entity in the course of administering the Public
12 Option.” S.B. 420 allows the DHS Director “to use a portion determined by the State Treasurer of
13 any additional money in the Trust Fund to increase the affordability of the Public Option.”
14

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

16 45. As noted above, the Defendants are implementing S.B. 420 through a waiver
17 application submitted to the US Secretary of Health and Human Services pursuant to 42 U.S.C. §
18 18052.
19

20 46. On January 1, 2024, Nevada submitted its waiver application (“Application”).
21

22 47. The federal government announced a 30-day public comment period regarding the
23 Application and began an extensive and detailed review.
24

25 48. On February 12, 2024, the US Department of Health and Human Services informed
26 the Defendants that it made a preliminary determination that the Application was complete.
27

28 49. On August 23, 2024, Nevada filed an addendum to its Application.

1 50. On January 10, 2025, the US Department of Health and Human Services informed
2 the Defendants in writing that the Application was approved (“Approval Letter”). That letter
3 required Nevada to agree to certain terms and conditions.

4 51. The Approval Letter notes “that Nevada’s waiver plan meets the statutory guardrail
5 requirements” in federal law and, moreover, “is projected to provide coverage that is at least as
6 comprehensive as coverage provided without the waiver.”

7 52. The Approval Letter goes on to confirm that under Nevada State law “and under
8 the approved waiver,” participating carriers “are required to reduce premiums by certain targets
9 including by at least 3% in the first year of the waiver (2026) and 15% by the fourth year of the
10 waiver (2029).” Under the Public Option, “net premiums will decrease in each year of the waiver.”

11 53. The Approval Letter also confirms that to effectuate the Public Option, healthcare
12 provider rates must be reduced. The Approval Letter states, for example, that “the provider
13 reimbursement rate floor included in the BBSP statute and the State’s analysis of current provider
14 rates suggest that there is room for negotiation with providers.” Later, the Approval Letter notes
15 that in Nevada, “provider rates are well above 100% of Medicare rates, suggesting that negotiating
16 lower rates without violating this floor is feasible.”

17 54. Indeed, the Public Option affirmatively requires that providers accept lower
18 reimbursement rates. As a result, provider reimbursement rates will in fact be reduced.

19 55. On or around January 13, 2025, Nevada accepted all of the terms and conditions.

20 **IV. The procurement process begins.**

21 56. Both during the application process and after the federal government issued the
22 Approval Letter, the Defendants began the procurement process under S.B. 420.

23 57. On October 2, 2024, Nevada issued an updated request for proposal from private
24 carriers to offer a Public Option product.

1 58. On or around October 31, 2024, interested carriers—which includes any carrier that
2 provides any healthcare services through managed care—were required to submit technical
3 proposals.

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

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

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

9 62. On July 1, 2025, Nevada announced the launch of the Nevada Health Authority,
10 which will be led by Stacie Weeks. The Authority will manage and administer several key
11 healthcare programs, including the Exchange.

12 63. Consistent with S.B. 420’s requirements, the Public Option program will go live
13 and the Public Option health benefit plans will be offered for purchase on the Nevada Health Link
14 on January 1, 2026. Nevadans may begin looking for health benefit plans, including Public Option
15 plans, on the Nevada Health Link for calendar year 2026 starting October 1, 2025, and start
16 enrolling in such plans in November 2025 on Nevada Health Link.

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

18
19
20
21 **V. S.B. 420 violates Nevada state law.**

22 65. S.B. 420 violates the Nevada Constitution and the Nevada Administrative
23 Procedure Act (“NAPA”).

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

25 66. The Nevada Constitution requires that any legislation that creates, generates, or
26 increases any public revenue in any form is subject to a two-thirds legislative supermajority
27 threshold for passage:
28

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

7 NEV. CONST., Art. IV, § 18, ¶ 2.

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

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

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

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

23 71. The SSHIX also assesses Revenue/Carrier Premium Fees (“CPFs” or “QHP fees”)
24 at a rate of 2.95% of total premiums collected on the sale of health insurance plans sold through
25 the Exchange. Premiums for Public Option products offered for purchase through the Exchange
26 will be subject to these 2.95% QHP fees.
27
28

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

5
6 73. In a fiscal note submitted for S.B. 420, the SSHIX stated that the CPFs “the SSHIX
7 collects are charged to carriers operating on the Exchange and grounded in the requirements of the
8 Affordable Care Act (ACA). The transfer of the SSHIX’s fee revenue to other uses is inconsistent
9 with the ACA and NRS [Chapter] 695I, and if an attempt were made to transfer such funds to other
10 uses, it may be subject to a legal challenge by carriers who paid the fee.”

11
12 74. As a result, the State will receive revenue in the form of CPFs or QHP fees assessed
13 on new Public Option products, which the State would not otherwise receive but for S.B. 420.

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

17 76. An interim study on the Public Option model, commissioned pursuant to Senate
18 Concurrent Resolution 10 prior to the 2021 legislative session, relied on a “key assumption” that
19 “Public Option taxes” and “Nevada state fees” would be applicable to Public Option products sold
20 on the individual health insurance market.

21
22 77. In a Fiscal Note submitted for S.B. 420, NHA stated that “insurance premiums and
23 Medicaid managed care capitation payments are subject to the State’s 3.5% insurance premium
24 tax.”

25 78. Nevada will receive insurance premium tax revenue which it otherwise would not
26 receive but for S.B. 420’s Public Option product provisions mandating that the new Public Option
27 products be offered for sale to individual consumers.
28

1 79. In addition, the State will receive federal pass-through funding revenue which the
2 State would not otherwise receive but for S.B. 420's premium reduction mandates, which require
3 the sale of a health insurance product (a QHP) at a statutorily mandated reduced price (the premium
4 reduction target), which will purportedly allow the State to divert federal premium tax credit
5 dollars that would otherwise offset consumer health insurance purchases. Instead, as a direct result
6 of S.B. 420's premium reduction mandates, these federal pass-through dollars will be redirected
7 to the State Public Option Trust Fund.
8

9 80. On December 29, 2023, Whitley submitted Nevada's Application to the federal
10 government.
11

12 81. The Application confirms the revenue-generating effects of S.B. 420's Public
13 Option provisions. To begin with, it states that Public Option products "shall operate as individual
14 health insurance products that comply with State and federal requirements for QHPs and all State
15 health insurance laws and regulations." State law imposes taxes on premiums for health insurance
16 products, and the Application states that new Public Option products will be among the "private
17 health insurance plans in the individual market."
18

19 82. In addition, the Application notes that as QHP products sold on the SSHIX, the new
20 Public Option products will generate SSHIX operating revenue: "The SSHIX will determine
21 whether these [Public Option] plans meet the certification requirements and whether they are
22 eligible for premium tax credits like other plans being offered as QHPs in the SSHIX. This includes
23 applying the premium assessment fee, which is used as revenue to fund the operations of the
24 SSHIX."
25

26 83. The Application further confirms that S.B. 420's premium reduction mandates are
27 meant to divert federal premium tax credit dollars that would otherwise be allocated to offset
28 consumers' health insurance costs and redirect those funds as revenue to the State to finance

1 reinsurance and other initiatives. The Application states that “implementing a new premium
2 reduction target and a State-based reinsurance program would meet the federal requirements for a
3 Section 1332 waiver” and result in \$279 to \$310 million in federal pass-through revenue in the
4 first five years and \$760 to \$844 million in federal pass-through revenue at the end of the first ten
5 year of the Public Option’s implementation. The Defendants intend to use this new revenue for
6 reinsurance, student loan repayments, and other programs.

8 84. These and other revenue-generating provisions subjected S.B. 420 to the Nevada
9 Constitution’s two-thirds supermajority requirement because they will create, generate, or increase
10 public revenue.

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

14 **B. *The Appropriations Clause.***

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

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

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

1 89. S.B. 420, § 15 establishes a Public Option Trust Fund consisting of Public Option
2 revenues, appropriated funds, and interest and income earned on money in the Public Option Trust
3 Fund.

4 90. The Public Option Trust fund is part of the State Treasury.

5 91. S.B. 420 does not clearly identify a single purpose for the appropriation it enacts.
6
7 S.B. 420, § 15(5) provides that “[i]f the State Treasurer determines that there is sufficient money
8 in the Trust Fund to carry out the provisions of [S.B. 420] sections 2 to 15, inclusive . . . for the
9 current fiscal year, the [DHS] Director may use a portion determined by the State Treasurer of any
10 additional money in the Trust Fund to increase the affordability of the Public Option.”

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

14 93. S.B. 420 wholly lacks the certainty and specificity that is required of a legislative
15 appropriation. It provides unbridled discretion to executive branch officials to use unspecified
16 amounts of funds for the nebulous and vague purposes of “increasing the affordability of the Public
17 Option.”

18 94. A December 14, 2022 “Briefing on Nevada Public Option” presentation illustrates
19 the unconstitutional lack of specificity. In a slide entitled “New Funds for Affordability Policies”
20 addressing “New State Revenue (Federal Pass-Through Funds),” the presentation states that
21 “[l]eftover PTF [pass-through funding] can be used by [the] Director of DHS to establish new
22 affordability policies,” and lists as examples “new state premium wraps” and “new funds for
23 supporting enrollment (*e.g.*, navigators).”
24
25
26
27
28

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

2 95. The Nevada Constitution requires the separation of powers among three distinct
3 branches of state government:

4 The powers of the Government of the State of Nevada shall be
5 divided into three separate departments—the Legislative, the
6 Executive, and the Judicial; and no persons charged with the
7 exercise of powers properly belonging to one of these Departments
8 shall exercise any functions, appertaining to either of the others,
9 except in the cases expressly directed or permitted in this
10 constitution.

11 NEV. CONST., Art. III, § 1, cl. 1.

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

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

19 98. S.B. 420, § 10(4)(a)–(b) establishes premium level reduction targets for Public
20 Option Health Benefit insurance products and provides that such premiums “(a) [m]ust be at least
21 5 percent lower than the reference premium for that zip code; and (b) [m]ust not increase in any
22 year by a percentage greater than the increase in the Medicare Economic Index for that year.”

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

1 100. Specifically, § 10(5) states that “[t]he [DHS] Director, in consultation with the
2 Commissioner [of Insurance] and the Executive Director of the [Silver State Health] Exchange,
3 *may revise the requirements* of [S.B. 420, § 10(4)], provided that the average premiums for the
4 Public Option must be at least 15 percent lower than the average reference premium in this State
5 over the first 4 years in which the Public Option is in operation.” (Emphasis added.)
6

7 101. The Defendants have exercised that lawmaking authority to “revise” S.B. 420’s
8 premium reduction targets by issuing two “Guidance Letters.” The first, General Guidance Letter
9 22-001, was issued on October 4, 2022 by Defendant Whitley and then-NHA Administrator
10 Bierman. The second, General Guidance Letter 22-003, was issued on November 20, 2023 by
11 Whitley and Weeks.
12

13 102. The Defendants did not engage in administrative rulemaking under the Nevada
14 Administrative Procedure Act, NRS 233B.010–233B.120 in issuing the two Guidance Letters.
15

16 103. On January 2, 2024, Plaintiffs requested in writing that Whitley and Weeks “pass
17 upon the validity of the regulation[s] in question” under NRS 233B.110(1). To date, Defendants
18 have not responded to Plaintiffs’ request.
19

20 104. The Guidance Letters expressly invoke the DHS Director’s authority under S.B.
21 420 to “revise” the statutory requirements noted above.
22

23 105. By issuing the Guidance Letters, the Defendants have in substance and effect struck
24 out existing statutory language and amended it with the executive branch’s preferred language.
25

26 106. In addition, as described above, S.B. 420 § 15(5) purports to give the State
27 Treasurer and the DHS Director the unilateral power to decide whether and how much public funds
28 should be spent “to increase the affordability of the Public Option” products. A “regulation” is an
agency rule, standard, directive or statement of general applicability which effectuates or interprets

1 law or policy, or describes the organization, procedure or practice requirements of any agency.
2 NRS § 233B.038(1)(a).

3 107. The Guidance Letters are statements of the policy and practice of the the current
4 Authority, that are generally applicable.
5

6 108. The Defendants did not engage in administrative rulemaking under the NAPA,
7 NRS 233B.010–233B.120 in issuing the two Guidance Letters.

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

9 109. The question of whether S.B. 420 violates the Nevada Constitution is an issue of
10 exceptional public importance.

11 110. The Public Option will dramatically reshape the healthcare industry in Nevada, a
12 \$15 billion industry that employs over 160,000 Nevadans or more than 10% of the State's
13 workforce.
14

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

19 112. Unless this Court hears Plaintiffs' legal challenge to the Public Option, these claims
20 are likely to evade review. No other individual or organization has publicly or privately indicated
21 any interest in filing a lawsuit to challenge the Public Option, even after Plaintiffs filed an earlier
22 lawsuit raising similar issues. Moreover, if Plaintiffs here—a physician and a nonprofit
23 organization that was integral to the adoption of the constitutional amendments at issue—cannot
24 bring this challenge, then no other litigant would be able to do so.
25

26 113. No one other than the Plaintiffs is in a better position to bring an action. Plaintiffs
27 have secured competent counsel to bring this lawsuit, and they are committed to seeing it through
28

1 to the end. Indeed, Plaintiff filed an earlier lawsuit to challenge S.B. 420 several months ago, which
2 the Court dismissed without prejudice. Since then, no one else has, publicly or privately, so much
3 as suggested an interest in bringing their own lawsuit.

4 114. Plaintiffs are not aware of any other individual or organization that has the plans,
5 resources, or interest to mount a similar challenge.

6 115. This case involves a challenge to a legislative expenditure or appropriation on the
7 basis that it violates specific provisions of the Nevada Constitution.

8 116. This case also involves a challenge based on the separation-of-powers principle in
9 the Nevada Constitution.

10 117. The Plaintiffs are appropriate parties to bring this lawsuit. They are also interested
11 parties within the meaning of NRS 30.040.

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

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

20 120. Plaintiffs' other lawsuit mentioned herein was dismissed without prejudice.

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

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

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

123. 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.

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

125. 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.

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

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

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

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

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

130. 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.

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

132. 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.

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

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

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

2
3 **THIRD CAUSE OF ACTION**
4 **(Declaratory Relief - Violation of Separation of Powers (NEV. CONST., Art. III, § 1))**

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

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

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

139. 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.

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

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

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

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

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

144. 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).

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

146. The Guidance Letters are regulations under NAPA.

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

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

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

11 150. On January 2, 2024, Plaintiffs requested in writing that Whitley and
12 Weeks "pass upon the validity of the regulations in question," under NRS 233B.110(1). To date,
13 Defendants have not responded to Plaintiffs' request.

14
15 151. The Defendants violated NAPA by adopting and promulgating the Guidance
16 Letters.

17 152. The Guidance Letters constitute invalid and unenforceable agency regulations.

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

20
21 154. The Court has the power to grant this relief under NRS 233B.110.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiffs pray for the following relief:

24 A. A judgment in the Plaintiffs' favor and against the Defendants;

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

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

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

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

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


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

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

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

14 DATE: August 25, 2025

15 HOLLAND & HART LLP

16 
17 Joshua M. Halen (NSBN 13885)
18 5470 Kietzke Lane, Suite 100
19 Reno, NV 89511
20 Tel: (775) 327-3000

21 Christopher M. Jackson (*pro hac vice* forthcoming)
22 555 17th Street, Suite 3200
23 Denver, CO 80202
24 Tel: (303) 295-8000

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: August 25, 2025

/s/Pete Sepp
Pete Sepp
President, National Taxpayers Union

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

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: August 25, 2025

/s/Robin L. Titus

Robin L. Titus

35629392_v2

1 **CERTIFICATE OF SERVICE**

2 I, Cathy Ryle, certify:

3 I am employed in the City of Reno, County of Washoe, State of Nevada by the law offices of
4 Holland & Hart LLP. My business address is 5470 Kietzke Lane, Suite 100, Reno, Nevada
89511. I am over the age of 18 years and not a party to this action.

5 On August 25, 2025, I caused the foregoing FIRST AMENDED COMPLAINT FOR
6 DECLARATORY AND INJUNCTIVE RELIEF, to be served by the following methods(s):

7 ☐ U.S. Mail: a true and correct copy was placed in Holland & Hart LLP's outgoing mail in
a sealed envelope addressed as follows:

8 Jeffery M. Conner (NSBN 11543)

9 Chief Deputy Solicitor General

State of Nevada

10 Office of the Attorney General

100 North Carson Street

11 Carson City, Nevada 89701-4717

Tel: (775) 684-1136

12 jconner@ag.nv.gov

13 ☒ E-Mail: By e-mailing a true copy thereof to the following person(s) at the following e-
mail addresses, pursuant to NRCP 5(b)(F):

14 Jeffery M. Conner (NSBN 11543)

15 Chief Deputy Solicitor General

16 jconner@ag.nv.gov

17 
Cathy Ryle
An Employee of Holland & Hart LLP

18 35629392_v2

HOLLAND & HART LLP
5470 KIETZKE LANE, SUITE 100
RENO, NV 89511