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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 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. 25 OC 00109 1B

Dept. No. 1

**PLANTIFFS' REPLY IN SUPPORT OF AMENDED MOTION FOR PRELIMINARY INJUNCTION**

# I. ARGUMENTS

## A. Plaintiffs are likely to succeed on the merits.

### 1. Plaintiffs have standing.[1]

Plaintiffs have standing for three independent reasons: (a) the public-importance exception applies, (b) they satisfy traditional standing, and (c) they have taxpayer standing.

#### a) The public-importance exception applies.

Generally, "to have standing to challenge an unconstitutional act, a plaintiff ... must suffer a personal injury traceable to that act ...." *Nev. Pol'y Rsch. Inst.* v. *Cannizzaro,* 507 P.3 1203, 1207 (Nev. 2022). However, the Nevada Supreme Court "recognize[s] an exception to this injury requirement in certain cases involving issues of significant public importance." *Schwartz* v. *Lopez*, 132 Nev. 732, 743, 382 P.3d 886, 894 (2016). Three criteria must be met: (i) "the case must involve an issue of significant public importance"; (ii) "the case must involve a challenge to a legislative expenditure or appropriation" by claiming "that it violates a specific provision of the Nevada Constitution"; and (iii) "the plaintiff must be an 'appropriate' party." *Id.* Each element is plainly met here.

Defendants make two arguments in opposition. *First*, they summarily deny "that Plaintiffs' claims were insufficient to trigger the public-importance exception." Opp. at 4. That is not correct. As detailed in the Motion, S.B. 420 involves carrier contracts that are worth $20–$25 billion over the next five years; the Public Option will result in $401–$760 million in federal pass-through funding; and the statute will dramatically reshape healthcare in Nevada, a $15 billion industry that employs 160,000 people or more than 10% of the State's workforce. Mot. at 4–5, Ex. D; Ex. E at 24; Ex. M1; Ex. M2. These facts, ***which Defendants do not dispute or rebut***, conclusively demonstrate that S.B. 420 "affect[s] the financial concerns of a significant number of businesses, organizations, and individuals throughout the state, as well as the state's budget." *Morency* v. *State Dep't of Educ.*, 137 Nev. 622,627, 496 P.3d 584, 589 (2021).

[1] While Defendants passingly mention ripeness, they do not make any argument suggesting this case is not ripe. Nor could they. With the Public Option set to go live in just a few months, and open enrollment beginning on October 1, 2025, this dispute is indisputably ripe.

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*Second*, Defendants assert "that Plaintiffs were not 'appropriate' parties to bring a challenge to SB 420" because "[i]f and when the law is fully implemented …, perhaps a more appropriate plaintiff or plaintiffs will bring the claims." Opp. at 5. That argument also misses the mark. To begin with, *Lopez* only requires that the plaintiff be "*an* appropriate" party, not the *most* appropriate party. Nor have Defendants or the Court ever identified who could be "more appropriate." And indeed, Plaintiffs are uniquely positioned: Dr. Titus is a taxpayer, physician, and sitting member of the state legislature; NTU is a public-interest organization that worked to adopt the very constitutional amendment at issue in this case. In the nearly two years since Plaintiffs filed their first complaint, no one else has expressed any interest in filing a lawsuit. NTU and Titus are hardly "sham plaintiffs"; they are more than "capable of competently advocating [their] position." *Cannizzaro*, 507 P.3d at 1208.

**b) Plaintiffs satisfy the test for traditional standing.**

Even if Plaintiffs were required to satisfy the traditional standing inquiry, they can do so. In Nevada, standing doesn't impose a particularly high bar: the Court is "not strictly bound to federal constitutional standing requirements." *NAMIC*, 524 P.3d at 476. The inquiry's purpose is only "to ensure the litigant will vigorously and effectively present his or her case against an adverse party." *Schwartz*, 132 Nev. at 743, 382 P.3d at 894.

Defendants now claim healthcare provider reimbursement rates will not actually be reduced by the Public Option. Opp. at 4. Defendants, however, represented *precisely the opposite*. To secure Nevada's Section 1332 waiver from the federal government, Defendants represented that there will be reductions to provider reimbursements. *E.g.*, Ex. D at 10 (a "share of premium reductions that must be achieved by carriers" will come "through provider reimbursement reductions"); *id.* at 28 ("[T]he PO offerings are expected to provide the opportunity for many Nevadans to obtain a lower-priced product through reduced provider reimbursement"); *id.* at 34 ("[W]e expected the premium reductions to be driven from three sources: provider reimbursement decreases …."); *id.* at 38 (assuming there will be "[r]eductions in provider reimbursement unit costs"). Nevada *secured its waiver based on these representations.* Ex. H at 8 ("[T]he State's analysis of current provider rates suggest that there is room for negotiation with providers.").

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### c) Plaintiffs have taxpayer standing.

Taxpayer standing provides an independent basis to reject Defendants' argument. The Nevada Supreme Court has never definitively adopted the doctrine. *Schwartz*, 132 Nev. at 744 n.5, 382 P.3d at 895 n.5. But many other jurisdictions have, noting that it "flows from an economic interest in having the taxpayer's dollars spent in a constitutional manner." *Hickenlooper v. Freedom from Religion Found., Inc.*, 338 P.3d 1002, 1007 n.10 (Colo. 2014); *Ill. Ass'n of Realtors v. Stermer*, 5 N.E.3d 267, 274 (Ill. App. Ct. 2014); *Reeder v. Wagner*, 974 A.2d 858 (Del. 2009); *Citizens for R. of L. v. Senate Comm. on Rules & Admin*, 770 N.W.2d 169, 175 (Minn. Ct. App. 2009); *Sch. Bd. v. Clayton*, 691 So. 2d 1066, 1067 (Fla. 1997); *Koch v. Canyon Cty.*, 17 P.3d 372, 275 (Idaho 2008); *W. Farms Mall, LLC v. Town of W. Hartford*, 901 A.2d 649, 657 (Conn. 2006); *Ruckle v. Anchorage Sch. Dist.*, 85 P.3d 1030, 1034 (Ak. 2004); *Chambers v. Lautenbaugh*, 644 N.W.2d 540, 548 (Neb. 2002); *Chapman v. Bevilacqua*, 42 S.W.3d 378, 383 (Ark. 2001); *Williams v. Lara*, 52 S.W.3d 171, 179 (Tex. 2001). This "broad" doctrine applies when a plaintiff alleges a constitutional violation. *Barber v. Ritter*, 196 P.3d 238, 246 (Colo. 2008). That is true here: Titus is a Nevada taxpayer, as are many of NTU's Nevada members. They allege that under S.B. 420, the Nevada government will unconstitutionally collect and spend revenue.[2]

### 2. S.B. 420 violates the Constitution's supermajority provision.

Defendants do not dispute that the legislature did not pass S.B. 420 by a supermajority. Thus, the statute is void if it "creates, generates, or increases any public revenue in any form, including but not limited to taxes, fees, assessments and rates, or changes in the computation bases for taxes, fees, assessments, and rates." NEV. CONST., Art. 4, § 18(2). These "words plainly encompass a bill that results in the State *receiving more public revenue than it would have realized without it*…by using the word 'any' the provision has *broad application* . . . ." *State Legislature v. Settelmeyer*, 137 Nev., Adv. Op. 21, 486 P.3d 1276, 1280–81 (2021) (emphases added).

[2] Strictly speaking, NTU has representational standing through the doctrine of taxpayer standing. The elements are satisfied because (i) NTU's members have individual standing to sue via taxpayer standing; (ii) the interests the lawsuit seeks to protect are germane to NTU's purpose—promoting governmental accountability, efficiency, and transparency; and (iii) litigating this case doesn't require the participation of any of NTU's members. *See NAMIC*, 524 P.3d at 478.



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S.B. 420 creates, generates, and increases public revenue in three ways: (i) imposing Carrier Premium Fees ("CPFs"), (ii) imposing a tax on insurance premiums, and (iii) securing hundreds of millions of dollars in new federal funds. Mot. at 6. In response, Defendants contend that the CPF and tax were adopted before S.B. 420. Opp. at 5–6. That is a *non sequitur*. Whether CPFs or a premium tax existed prior to S.B. 420, it is undisputed that the Exchange is empowered to, and in fact does, set the rate for CFPs each year in order to secure the funds needed to operate the Exchange. NRS 695I.210; Ex. R (meeting minutes to "adopt the 2024 fees to be charged to insurers" to "3.05% of pre-subsidized premium fee"); *see also* https://www.nevadahealthlink.com/wp-content/uploads/2025/03/PY2026_Regulation_and_Adoption_02.18.25.pdf ("The Exchange is required to develop an annual fee which, in the opinion of the Board, allows the agency to perform all duties imposed by state or federal statute without unnecessarily increasing the premiums paid by Nevadans for health plans.").

Federal funding is also new revenue for the State. Defendants do not dispute that the State will receive hundreds of millions of dollars by implementing the Public Option. Instead, they claim that "the dollars in question would have been tax credits" issued to Nevada citizens. Opp. at 8. This just proves Plaintiffs' point: these federal dollars will go not to individuals, but to *the State Treasury*, which will receive money it would not have otherwise had. And under state law, these new federal dollars will be treated the same as any other revenue the State receives. NRS 227.295(1) (Controller to provide a table displaying "all revenues" from fees, fines, interest, licensing revenue, taxes, and "Transfers from the Federal Government"). Moreover, *all* of this money—the CPFs, tax revenue, and federal dollars—must be placed in the newly established Public Option Trust Fund. S.B. 420 § 15.2(a)–(c) (Trust Fund consists of "any money deposited in the Trust Fund pursuant to sections 11 and 12 of [S.B. 420]" and "all income and interest earned on the money in the Trust Fund."). As the above confirms, it is undisputed—and indisputable—that S.B. 420 creates, generates, and increases public revenue because the State will "receive more public revenue than it would have realized without it." *Settelmeyer*, 486 P.3d at 1280–81.

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### 3. S.B. 420 violates the Appropriations Clause.

Defendants concede that S.B. 420 falls under the ambit of the Appropriations Clause. They argue, though, that S.B. 420 complies with this constitutional provision. Opp. at 8–9. Defendants are wrong. An appropriation must contain certain details to prevent "the expenditure of the people's treasure without their consent." *Davis v. Eggers*, 29 Nev. 469, 474, 91 P. 819, 820 (1907).[3] These details include (i) an identifiable fund to draw from, (ii) the object of the services for which it is drawn, and (iii) a maximum amount that can be withdrawn. *Id.* at 469, 91 P. at 824. They collectively ensure that *Lopez*'s promise—that an appropriation set aside a "certain sum of money for a specified object, in such a manner that … the government [can] use that money, and no more, for that object, and no other"—is satisfied. 132 Nev. 732, 753, 382 P.3d 886, 900 (2016).

S.B. 420 falls short. To begin with, it plainly fails element (iii). The Constitution requires the bill to state "a *maximum amount set aside* for the payment of claims *or at least a formula* by which the amount can be determined." *Id.* (emphasis added). S.B. 420 contains none. The withdrawal may instead be in any amount "determined by the State Treasurer." Without a more detailed expression of "the legislative will," this delegation leaves "to the recipient to command from the state treasury sums to any unlimited amount …." *Davis*, 29 Nev. at 469, 91 P. at 824.

That isn't all. All funds appropriated by a single bill must go toward "integral parts of a single purpose" sharing a "necessary relation" to each other. *Lund v. Horner*, 31 N.E.2d 611, 613 (Ill. 1940). *Cf. Proll v. Dunn*, 22 P. 143, 143 (Cal. 1889) (favorably cited by *Davis*). S.B. 420 identifies an object, but that object is too nebulous for a citizen to consent to unlimited withdrawals in service of it. What does it mean for the Public Option to be "afforab[le]," and to whom? Without additional information as to when and how this object is measured and can be met, the Treasurer could withdraw funds to, for example, promote program participation. That could ostensibly reduce the individual cost of the Public Option (enhancing affordability), but

[3] Defendants may have misunderstood *Davis*, though they do not cite it. *Davis* recognizes that, on its face, the Appropriations Clause does not demand specificity. But the Court adopted judicial gloss on the "federal constitution and . . . [those of] many of the states" that do require specific information in every appropriation" because the clause was intended to serve the same purposes as those analyzed elsewhere. *Davis,* 29 at 481, 91 P. at 823.



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could also be used to reduce the cost to an unnecessary degree (below what most citizens would deem "affordab[le]"). Thus, the Treasurer could use S.B. 420's broadly stated purpose to mask an alternative intent (perhaps, to go beyond merely protecting "affordability" and ensure the Public Option is so cheap that unravelling the program becomes politically untenable). There is no "necessary relation" between these two purposes—affordability does not demand universal accessibility and widespread adoption of the cheapest alternative does not promote the object of an affordable alternative to private insurance. And without further details, there is no way to measure whether withdrawn funds serve one and not the other. *Cf. Lund*, 31 N.E.2d 611, 613 (finding no "necessary relation" between "traffic surveys, signs, and the investigation and reporting of traffic accidents" to satisfy a single purpose).

It is true that "the use of technical words in a statute is not necessary to create an appropriation." Opp. at 8. But, "while no set form of language" is required, some provisions are plainly insufficient to be an appropriation:

> A promise by the government to pay money is not an appropriation. A duty on the part of the legislature to make an appropriation is not such. A promise to make an appropriation is not an appropriation.

39 P. at 438. S.B. 420 is nothing more than these: the Legislature's promise to appropriate from the Public Trust Fund to promote the Public Option's affordability. That is not enough.

**4. S.B. 420 violates the Constitution's separation-of-powers provision.**

S.B. 420 § 10(5) gives Defendants Whitley, Weeks, Gaines, and Davis the ability to unilaterally revise premium level reduction targets set by the Legislature with no general or specific guidelines as to what conditions might warrant such a revision. S.B. 420 sets a floor on how much premium level reduction targets may be lowered; but the *when*, *why*, and *by how much* is undefined. The statute therefore violates separation of powers under the Nevada Constitution.

Defendants argue that S.B. 420's delegation is similar to other instances of permissible delegation, including "discretion to select the drugs for an execution, as examined *Floyd v. Dep't of Corr.*, 536 P.3d 445 (Nev. 2023), or the Board of Wildlife Commissioners deciding how often

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animal traps need to be checked in *Smith v. State*, 2020 Nev. Unpub. LEXIS 434, at *4 (Nev. Apr. 23, 2020). Opp. at 9. However, S.B. 420 is vastly different from these cases.

In *Floyd*, the Supreme Court held that a statute that provided the Director of the Department of Corrections authority to select drugs to be used for executions did not violate the separation-of-powers provision because "the Director's discretion in choosing the drug or combination of drugs is not unguided; rather, the Director must make those decisions 'after consulting with the Chief Medical Officer.'" 536 P.3d at 448 (quoting NRS 176.355(2)(b)). Because the Chief Medical Officer must be a licensed physician who is tasked with enforcing laws pertaining to public health, "the Legislature has ensured the Director will ascertain facts and conditions relevant to making operation of the death penalty statute complete." *Id.* at 449. In *Smith*, the court found the relevant statutes permissible because the Legislature "provided sufficient standards to the Commission," and "the Legislature required predicate factual findings," before adopting regulations. 2020 Nev. Unpub. LEXIS 434, at *4.

Here, S.B. 420 § 10(5) provides no guidance and requires no fact finding before Defendants may unilaterally revise premium level reduction targets. Defendants may, entirely on their own and without any limitation, decide to change premium rates for any reason, even if arbitrary or capricious. This ability violates the separation of powers.

**B. The remaining factors support a preliminary injunction.**

Defendants do not dispute that if the Court finds that Plaintiffs are likely to succeed on the merits, they will have established irreparable harm and demonstrated that the public interest and the balance of the equities favor an injunction.

Plaintiffs again emphasize that time is of the essence. Nevada Health Link will go live with Public Option plans on October 1, 2025, and enrollment will begin in November 2025—just a few weeks away.

## II. CONCLUSION

The Court should grant the motion and issue the preliminary injunction.

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DATE: September 9, 2025

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## CERTIFICATE OF SERVICE

I, Cathy Ryle, certify:

I am employed in the City of Reno, County of Washoe, State of Nevada by the law offices of 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.

On September 9, 2025, I caused the foregoing **REPLY BRIEF**, to be served by the following methods(s):

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

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