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IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE CARSON CITY

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

Plaintiffs,

vs.

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

DEFENDANTS' REPLY IN SUPPORT OF MOTION TO DISMISS

Defendants Joseph Lombardo, in his official capacity as Governor of the State of Nevada; Zach Conine, in his official capacity as Treasurer of the State of Nevada; Richard Whitley, in his official capacity as 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 Acting Commissioner of the Division of Insurance; and Janel Davis, in her official capacity as Acting Executive Director of Silver State Health Insurance Exchange ("Exchange"), by and through counsel, submit this reply in support of the motion to dismiss.

* * *

MEMORANDUM OF POINTS AND AUTHORITIES

I. Introduction

Plaintiffs' second challenge to SB 420 fares no better than the first. They lack standing. They fail to state viable claims. And they incorrectly named Director Whitley.

II. Argument

A. Plaintiff's lack standing.

1. Taxpayer status does not establish standing in Nevada.

Taxpayer standing may be "well-accepted" elsewhere. Opp. at 4. But not in Nevada. *Blanding v. City of Las Vegas*, 52 Nev. 52, 74, 280 P. 644, 650 (1929). And Plaintiffs' position is illogical. The public-importance exception exists because taxpayer standing doesn't.

2. Dr. Titus has not established an injury-in-fact.

Plaintiffs' argument that Dr. Titus has standing is that she is a healthcare provider, and healthcare providers will be harmed by SB 420 through reductions in reimbursement rates. Opp. at 4. But Plaintiffs do not dispute the point that the contracts were finalized for 2026 without a reduction to her reimbursement rates, so she has no "injury-in-fact" that gives her standing to challenge SB 420. *High Noon at Arlington Ranch Homeowners Assoc. v. Eighth Jud. Dist. Ct.*, 133 Nev. 500, 507, 402 P.3d 639, 646 (2017); *see also* NRCP 17(a).

Plaintiffs' "more work for less" argument also falls short. Opp. at 4 n.2. Plaintiffs do not deny that even with potential rate cuts, broader insurance coverage under the Public Option could result in a net benefit—receiving more for doing the same work—by providing better coverage for currently uninsured or underinsured patients. Dr. Titus's claim of harm is too speculative. *Doe v. Bryan*, 102 Nev. 523, 525–36, 728 P.2d 443, 444–45 (1986).

3. NTU fails to establish individual or representational standing.

Plaintiffs' reliance on *Elley v. Stephens*, 104 Nev. 413, 760 P.2d 768 (1988), also fails to establish standing. Opp. at 4. NTU asserts no constitutional harm to itself; only its "members." Opp at 4. But NTU fails to give the Court the means to identify its members, which is required for representational standing. *Nat'l Ass'n of Mut. Ins. Companies v. Dep't of Bus. & Indus., Div. of Ins.*, 139 Nev. 18, 27, 524 P.3d 470, 480 (2023) ("*NAMIC*").

4. Plaintiffs do not satisfy the public-importance exception.

The public-importance exception has three elements. *Nev. Pol'y Rsch. Inst., Inc. v. Cannizzaro*, 138 Nev. 259, 262, 507 P.3d 1203, 1207 (2022). This Court previously determined that Plaintiffs failed to satisfy the first and third elements. Exhibit 1 at 9–10. Plaintiffs correctly note that there is no binding effect for the prior dismissal without prejudice. Opp. at 2 n.1. Even so, they identify nothing that should change the outcome—they don't dispute that they are the same parties bringing the same claims. Opp. at 2–4.

Even so, Plaintiffs defeat their own argument. On element one, they argue that this "bill plainly affects 'the financial concerns of a significant number of businesses, organizations, and individuals throughout the state.'" Opp. at 2. The public-importance exception only applies to two discrete forms of constitutional claims that make it hard for anyone to prove standing and are therefore likely to "evade review if strict standing requirements are imposed." *NAMIC*, 139 Nev. at 22, 524 P.3d at 476. *Id.*[1] The "appropriate party" requirement is about considering whether the plaintiff has a sufficiently strong interest in the legal dispute when the nature of the claim means *no one* will be able to prove standing. *Cannizaro*, 138 Nev. 265–66, 507 P.3d at 1210. This is not such a case. Also, there is no way for this Court to know if NTU is a "sham" plaintiff without knowing who its members are. *Id.* at 265–66, 507 P.3d 1210. And allowing Dr. Titus to proceed would defy nearly 50 years of authority on the lack of third-party standing in Nevada. *Deal v. 999*

[1] Additionally, Plaintiffs must prove standing for each of their claims. *NAMIC*, 139 Nev. at 27, 524 P.3d at 480. But they only assert that their separation-of-powers claim meets the second element under *Cannizaro*. Opp. at 3. And their second cause of action also undisputedly meets the second element under *Schwartz v. Lopez*, 132 Nev. 732, 882 P.3d 886 (2016), because it is a challenge under the Appropriations Clause. Their first cause of action (a two-thirds challenge under Article IV, Section 18(2)) and fourth causes of action (an alleged violation of the APA), however, do not meet the second element under *Schwartz* or *Cannizzaro*. Defendants' acknowledge that they did not raise this point in the motion to dismiss. But standing issues can be raised at any time, even by the Court *sua sponte*, because standing is a jurisdictional question. *Cotter on behalf of Reading Int'l, Inc. v. Kane*, 136 Nev. 559, 564, 473 P.3d 451, 456 (2020). So if this Court is convinced that Plaintiffs establish standing through the public importance exception, and not by establishing traditional standing, the Court should issue an order to show cause why it shouldn't dismiss the first and fourth causes of action for lack of standing.

Lakeshore Ass'n, 94 Nev. 301, 304, 579 P.2d 775, 777 (1978).

B. Plaintiffs' first-amended complaint fails to state a claim for relief.

None of Plaintiffs' claims survive NRCP 12(b)(5); they are all legally flawed. *See Buzz Stew, LLC v. City of North Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008).

1. Plaintiffs' theory under Article IV, Section 18(2) is legally flawed.

Plaintiffs are wrong that Article IV, Section 18(2) applies to SB 420. Plaintiffs incorrectly state that the bill "increases existing taxes and fees." Opp. at 6. Plaintiffs' substantive arguments prove Defendants right.

Plaintiffs do not dispute three important points from Defendants' motion to dismiss: (1) the tax and the fee will remain in place if this Court were to strike SB 420; (2) increases in revenue will come from an increase in transactions that means more people will have health insurance, and (3) reductions in premium rates *reduce* the burden of the tax and fee at an individual level. And Plaintiffs Defendants are "not correct" that their interpretation of Article IV, Section 18(2) will improperly hand control of the Legislature to a minority of legislators. But their arguments prove Defendants' right.

First, they say this Court must apply the Constitution's text. Opp. at 6. Correct. And that means this Court can't ignore the text of Article IV, Section 18(1) that sets the default standard for majority rule in this State. Second, they propose a limiting principle: whether a bill collects funds to further a policy aim. Opp. at 6. Again, correct. That limiting principle *is* Defendants' argument. SB 420 does not "collect" funds like bills that establish a new fee or repeal a tax reduction. Opp. at 6 (citing *Legislature v. Settelmeyer*, 137 Nev. 231, 486 P.3d 1276 (2021)). The relevant tax and fee already exist and will remain if SB 420 were struck down. So, SB 420 establishes a change in policy on how the State appropriates funds collected through the existing fee and tax. Plaintiffs' proposed "limiting principle" proves Defendants right. Without that limiting principle, every bill that incidentally increases revenue—including a bill that is projected to increase revenue by using a tax *cut* to incentivize economic development—would require a two-thirds vote. But that's not what

Article IV, Section 18(2) means. And Plaintiffs seem to agree.

Finally, Plaintiffs' have no response to Defendants' point that U.S. Constitution's Supremacy Clause defeats their reliance on the Nevada Constitution to limit the federal government's decisions on federal fiscal policy. Their only response about federal passthrough dollars is to have this Court ignore the Nevada Supreme Court's holding that a reduction of tax credits is a reallocation of resources that only requires a simple-majority vote. *Morency v. Dep't of Ed.*, 137 Nev. 622, 630, 496 P.3d 584, 591 (2021). Opp. at 5.

2. Plaintiffs' theory under Article IV, Section 19 is legally flawed.

Plaintiffs' claim under the Appropriations Clause falls short too. They complain that SB 420 is insufficient because it provides no express limit on spending. Opp. at 7. That level of specificity is not required. *Schwartz*, 132 Nev. at 753, 882 P.3d at 900. But Plaintiffs admit that SB 420 identifies the funding streams for the Public Option Trust Fund and instructs that the money spent must only come from the Trust Fund. FAC at ¶¶ 89, 91. In other words, the Treasurer cannot authorize spending exceeding the balance of the Trust Fund. So, Plaintiffs are wrong. SB 420 does not allow limitless spending; it imposes an identifiable limit on spending that satisfies the Appropriations Clause. *Id.*

Plaintiffs' Appropriations-Clause claim also fails given their concession that the Nevada Supreme Court has never required technical language to constitute an appropriation. Opp at 6–7 (quoting *Id.*, 132 Nev. at 753, 382 P.3d at 900). A clear intent to appropriate is all the law requires. *Id.* at 753, 882 P.2d at 900–01. Plaintiffs do not dispute that such an intent exists. Opp. at 7. And Plaintiffs' reliance on out-of-state authority to establish a specificity requirement fails. Opp. at 7. *Schwartz* states the controlling law. *Id.*

3. Plaintiffs' theory under Article III, Section 1 is legally flawed.

Plaintiffs' fail to state a claim for a violation of Article III, Section 1. Plaintiffs admit that SB 420 constrains how Defendants can revise the premium reduction targets. Opp. at 8. But they fail to explain why those constraints are insufficient to guide the exercise of discretion left to the Defendants on revising the targets. The discretion granted to Defendants here is no different than the discretion to select appropriate drugs for an

execution protocol addressed in *Floyd v. Dep't of Corr.*, 139 Nev. 335, 536 P.3d 445 (2023), or the discretion to set time-limits on checking hunting traps addressed in *Smith v. Bd. of Wildlife Commissioners,* 136 Nev. 878, 461 P.3d 164 (2020) (unpublished table decision). SB 420's terms provide the necessary guardrails to avoid a non-delegation problem under Article III, Section 1. And in any event, Plaintiffs have no response to Defendants' argument that, as the Eight Amendment did in *Floyd*, the Special Terms and Conditions the federal government imposed through the Section 1332 Waiver also limit the exercise of discretion under SB 420. Opp. at 8–9.

4. Plaintiff's theory under the APA is legally flawed.

Plaintiffs' attempts to save the APA claim fail too. Opp at 9–10. The guidance letters are administrative tasks, which are exempt from the APA under SB 420. If not, they aren't subject to the APA at all. *See* NRS 233B.020. And in any event, Plaintiffs lack standing. Plaintiffs' claim that the letters "relate to providers accepting lower reimbursement rates." Opp. at 10. But there is no allegation that Dr. Titus has experienced a rate reduction. *See supra* Part II(A)(2). So, Plaintiffs fail to establish the injury-in-fact and causation required to prove standing. *NAMIC*, 139 Nev. at 22, 524 P.3d at 476.

C. This Court should dismiss any claims against Director Whitley.

Under Section 32 of SB 494, Director Whitley is now the Director of the Department of Human Services. He and his department have no control over the Public Option. Section 18 of SB 494 gives the new Nevada Health Authority and its Director, Stacie Weeks, control of the Public Option. Any claims against Director Whitley should be dismissed.

III. Conclusion

For the foregoing reasons, this Court should grant the motion to dismiss.

RESPECTFULLY SUBMITTED this 29th day of September, 2025.

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Attorney General

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CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General and that on this 29th day of September, 2025, I served an electronic copy via email of, **DEFENDANTS' REPLY IN SUPPORT OF MOTION TO DISMISS,** to the following:

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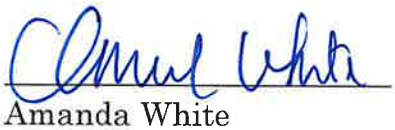

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