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FIRST JUDICIAL DISTRICT COURT OF NEVADA
CARSON CITY

LANDER COUNTY, a political subdivision of the State of Nevada; PERSHING COUNTY, a political subdivision of the State of Nevada; WHITE PINE COUNTY, a political subdivision of the State of Nevada; and ELKO COUNTY, a political subdivision of the State of Nevada ex rel. BOARD OF ELKO COUNTY COMMISSIONERS,

Plaintiffs/Petitioners,

vs.

STATE OF NEVADA; DOES I through X, inclusive; ROE CORPORATIONS I through X, inclusive; and THE LEGISLATURE OF THE STATE OF NEVADA,

Defendants/Respondents.

Case No. 20 OC 00116 1B
Case No. 20 OC 00147 1B

Dept. No. II

ORDER GRANTING SUMMARY JUDGMENT AND ENTERING FINAL JUDGMENT IN FAVOR OF ALL DEFENDANTS/RESPONDENTS IN THE CONSOLIDATED CASES

NEVADA GOLD MINES, LLC, a Delaware Limited Liability Company,

Plaintiff/Petitioner,

vs.

STATE OF NEVADA ex rel. LEGISLATURE OF THE STATE OF NEVADA; and BARBARA K. CEGAVSKE, in her official capacity as Secretary of State of the State of Nevada,

Defendants/Respondents.

INTRODUCTION

During the 32nd Special Session of the Nevada Legislature ("Legislature") held in 2020, the Legislature passed the following joint resolutions proposing state constitutional amendments under Article 16, Section 1 of the Nevada Constitution: (1) Senate Joint Resolution No. 1 (SJR 1), 2020 Nev. Stat., 32nd Spec. Sess., File No. 8, at 168; (2) Assembly Joint Resolution No. 1 (AJR 1), 2020 Nev. Stat., 32nd Spec. Sess., File No. 9, at 171; and (3) Assembly Joint Resolution No. 2 (AJR 2), 2020 Nev. Stat., 32nd Spec. Sess., File No. 10, at 173 (collectively the "joint resolutions"). The joint resolutions propose state constitutional amendments that would revise provisions of Article 10 of the Nevada Constitution governing the taxation of mines, mining claims, and the proceeds of minerals extracted in this State. These consolidated cases involve claims that the joint resolutions were not constitutionally passed and published under Article 4, Section 18, Article 5, Section 9, and Article 16, Section 1 of the Nevada Constitution.

In *Lander County v. State*, Case No. 20 OC 00116 1B, Plaintiffs/Petitioners are Lander County, Pershing County, White Pine County, and Elko County, which are political subdivisions of the State of Nevada. Defendants/Respondents are the State of Nevada and the Legislature. In *Nevada Gold Mines, LLC v. State*, Case No 20 OC 00147 1B, Plaintiff/Petitioner is Nevada Gold

Mines, which is a mining company with its principal place of business in the State of Nevada. Defendants/Respondents are the State of Nevada ex rel. Legislature and Barbara K. Cegavske, in her official capacity as Secretary of State of the State of Nevada. Except when necessary to make distinctions among the parties, all Plaintiffs/Petitioners in the consolidated cases will be collectively referred to as "Plaintiffs," and all Defendants/Respondents in the consolidated cases will be collectively referred to as "Defendants."

On December 15, 2020, the Court entered an order consolidating the cases and establishing a schedule for briefing the following motions: (1) Motion for Summary Judgment and Writ Relief filed by Lander County, Pershing County, and White Pine County and a Joinder thereto filed by Elko County; (2) Motion for Summary Judgment, Permanent Injunction, and Writ of Prohibition filed by Nevada Gold Mines; and (3) Countermotions for Summary Judgment filed by the State and the Legislature. The Court heard oral arguments on the motions on January 14, 2021.

After a review of the pleadings, motions and exhibits and the oral arguments at the hearing, and for the reasons set forth in this order, the Court determines that it lacks subject-matter jurisdiction over Plaintiffs' claims challenging the 80th Legislature's approval of the joint resolutions for the first time because the Nevada Constitution textually commits to the 81st Legislature the exclusive legislative power and discretion to determine whether to approve the joint resolutions for the second time before they are submitted to the electorate for ratification. If the 81st Legislature rejects the joint resolutions, there would be no need for judicial review, and the courts would avoid the serious separation-of-powers issues that would arise if the courts were to intervene prematurely into the multistep legislative process for proposing state constitutional amendments before all the legislative steps have been exhausted. However, if the 81st Legislature approves the joint resolutions for the second time, then any plaintiffs with the required standing could take actions to seek judicial review after such final legislative approval and before the

proposed amendments are submitted to the electorate for ratification.

Accordingly, the Court concludes that Plaintiffs' claims present nonjusticiable political questions under the separation-of-powers doctrine at this intermediate stage in the legislative process. The Court also concludes that Plaintiffs cannot establish standing and their claims are not ripe for judicial review at this intermediate stage in the legislative process. Therefore, the Court concludes that it lacks subject-matter jurisdiction over Plaintiffs' claims at this intermediate stage in the legislative process.

Furthermore, even if the Court had subject-matter jurisdiction over Plaintiffs' claims at this intermediate stage in the legislative process, the Court would conclude that Defendants are entitled to summary judgment as a matter of law because the 80th Legislature constitutionally approved and published the proposed amendments in the joint resolutions under the Nevada Constitution. First, the 80th Legislature's approval of the joint resolutions did not violate Article 5, Section 9 because at a special session convened by the Governor under Article 5, Section 9, the Legislature has the power to introduce, consider and pass any joint resolutions proposing state constitutional amendments under Article 16, Section 1, regardless of whether such joint resolutions are related to the business for which the Legislature has been specially convened. Second, the 80th Legislature's approval of the joint resolutions did not violate Article 4, Section 18 because joint resolutions proposing state constitutional amendments under Article 16, Section 1 are not subject to the two-thirds majority requirement in Article 4, Section 18, regardless of whether such joint resolutions create, generate or increase any public revenue in any form. Finally, the 80th Legislature's approval and publication of the proposed amendments in the joint resolutions did not violate Article 16, Section 1 because the proposed amendments were referred to the Legislature then next to be chosen and published pursuant to NRS 218D.802 for three months next preceding the time of making such choice.

Therefore, the Court finds that Defendants are entitled to summary judgment as a matter of law under NRCP 56 in these consolidated cases, and the Court: (1) denies the Motion for Summary Judgment and Writ Relief filed by Lander County, Pershing County, and White Pine County and the Joinder thereto filed by Elko County; (2) denies the Motion for Summary Judgment, Permanent Injunction, and Writ of Prohibition filed by Nevada Gold Mines; and (3) grants the Countermotions for Summary Judgment filed by the State and the Legislature. Having considered all claims for relief alleged by Plaintiffs in their Complaints and Petitions, the Court enters a final judgment in these consolidated cases in favor of Defendants adjudicating all the claims of all the parties as a matter of law.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The multistep legislative process for proposing state constitutional amendments.

In order for the Legislature to propose state constitutional amendments under Article 16, Section 1, the Legislature must follow a multistep legislative process that involves the Legislature's approval of the proposed amendments during two legislative sessions separated by an intervening general election. Nev. Const. art. 16, § 1(1). To begin the multistep legislative process, the Legislature must approve the proposed amendments for the first time during a legislative session by "a **[m]ajority** of all the members elected to each of the two [H]ouses." *Id.* (emphasis added). If the proposed amendments are passed for the first time by a majority of all the members elected to each of the two Houses during a legislative session, the proposed amendments "shall be entered on their respective journals, with the Yeas and Nays taken thereon, and referred to **the Legislature then next to be chosen**, and shall be published for three months next preceding the time of making such choice." *Id.* (emphasis added).

Because Article 16, Section 1 directs that the proposed amendments must be referred to "the Legislature then next to be chosen," the 80th Legislature's approval of the proposed amendments

for the first time during the 32nd Special Session is only a preliminary step in the multistep legislative process. The proposed amendments are still subject to further consideration and final approval or rejection by "the Legislature then next to be chosen." That is the 81st Legislature consisting of: (1) the incumbent members of the Senate elected at the general election in 2018; and (2) all members of the Assembly and the remaining members of the Senate elected at the general election in 2020. *See* Nev. Const. art. 4, §§ 3, 4; art. 15, § 5 (providing for the election and terms of office of the members of the Assembly and the Senate who are "chosen" at the biennial general election "on the Tuesday next after the first Monday in November").

Upon referral of the proposed amendments to the 81st Legislature, it has exclusive legislative power and discretion to determine whether to approve or reject the proposed amendments. In order for the 81st Legislature to approve the proposed amendments, the proposed amendments must be "agreed to by a **majority** of all the members elected to each house." Nev. Const. art. 16, § 1(1) (emphasis added). If such approval occurs, "then it shall be the duty of the Legislature to submit such proposed amendment or amendments to the people, in such manner and at such time as the Legislature shall prescribe." *Id.* Under existing law, the proposed amendments would be "placed upon the ballot at the next general election or at a special election authorized by the Legislature for that purpose." NRS 218D.800(3). The proposed amendments would become part of the Nevada Constitution only if "the people shall approve and ratify such amendment or amendments by a majority of the electors qualified to vote for members of the Legislature voting thereon." Nev. Const. art. 16, § 1(1).

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2. The Court lacks subject-matter jurisdiction over Plaintiffs' claims at this intermediate stage in the legislative process because the joint resolutions are still subject to further consideration and final approval or rejection by the 81st Legislature under the multistep legislative process prescribed by the Nevada Constitution.

As a fundamental rule of separation of powers, courts will not issue an order which would interfere or conflict with the exclusive powers conferred upon a public body or officer by the Nevada Constitution. *See State ex rel. White v. Dickerson*, 33 Nev. 540, 560 (1910). This rule is enforced by the courts under the political question doctrine, which prohibits a court from exercising its jurisdiction over a constitutional issue if the issue has been clearly committed by the text of the Nevada Constitution to the exclusive power of a coordinate branch of government. *See N. Lake Tahoe Fire Prot. Dist. v. Washoe Cnty. Comm'rs*, 129 Nev. 682, 687-88 (2013). The Nevada Supreme Court has adopted "the *Baker* factors to assist in our review of the justiciability of controversies that potentially involve political questions." *Id.* Under those factors, there are certain features that make a case nonjusticiable under the political-question doctrine:

> a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on one question. *United States v. Munoz–Flores*, 495 U.S. 385, 389-90 (1990) (quoting *Baker v. Carr*, 369 U.S. 186, 217 (1962)).

N. Lake Tahoe Fire Prot. Dist., 129 Nev. at 687-88. The presence of any one of the *Baker* factors means that the issue is a nonjusticiable political question which is not subject to judicial review because "[a] determination that any one of these factors has been met necessitates dismissal based on the political question doctrine." *Id.* at 688.

In these cases, at this intermediate stage in the legislative process when the Nevada Constitution textually commits to the 81st Legislature the exclusive legislative power and

discretion to determine whether to approve or reject the joint resolutions, the Court determines that Plaintiffs' claims present nonjusticiable political questions under the separation-of-powers doctrine. Because Article 16, Section 1 directs that the proposed amendments must be referred to "the Legislature then next to be chosen," the 80th Legislature's approval of the joint resolutions for the first time during the 32nd Special Session did not end the multistep legislative process under the Nevada Constitution. Instead, the Nevada Constitution textually commits to the 81st Legislature the exclusive legislative power and discretion to determine whether to approve the joint resolutions for the second time before they are submitted to the electorate for ratification. In other words, even though the 32nd Special Session has ended, the multistep legislative process for proposing amendments to the Nevada Constitution has not ended.

As a result, if the 81st Legislature rejects the joint resolutions, there would be no need for judicial review, and the courts would avoid the serious separation-of-powers issues that would arise if the courts were to intervene prematurely into the multistep legislative process for proposing state constitutional amendments before all the legislative steps have been exhausted. However, if the 81st Legislature approves the joint resolutions for the second time, then any plaintiffs with the required standing could take actions to seek judicial review after such final legislative approval and before the proposed amendments are submitted to the electorate for ratification. *See Caine v. Robbins*, 61 Nev. 416 (1942) (discussing cases where the courts reviewed the validity of proposed constitutional amendments after **final** legislative action but before the proposed amendments were submitted to the electorate). Accordingly, the Court concludes that Plaintiffs' claims present nonjusticiable political questions under the separation-of-powers doctrine at this intermediate stage in the legislative process.

For similar reasons, the Court also concludes that Plaintiffs cannot establish standing and their claims are not ripe for judicial review at this intermediate stage in the legislative process.

When plaintiffs file a complaint for declaratory, injunctive or writ relief, a court may not exercise subject-matter jurisdiction over their claims unless plaintiffs have standing to bring the claims and the claims are ripe for adjudication. *Doe v. Bryan*, 102 Nev. 523, 524-26 (1986); *Heller v. Legislature*, 120 Nev. 456, 460-63 (2004). When plaintiffs lack standing to bring their claims or those claims are not ripe for adjudication, defendants are entitled to dismissal or summary judgment on those claims as a matter of law. *Bryan*, 102 Nev. at 524-26.

The Nevada Supreme Court has held that to establish standing, "a party must show a personal injury and not merely a general interest that is common to all members of the public." *Schwartz v. Lopez*, 132 Nev. 732, 743 (2016). When plaintiffs have not alleged a concrete injury-in-fact that is actual or imminent, they generally lack standing to bring their claims even though it is possible that such an injury may occur in the future. *Bryan*, 102 Nev. at 524-26.

Furthermore, in cases for declaratory relief or where constitutional matters arise, the Nevada Supreme Court "has required plaintiffs to meet increased jurisdictional standing requirements." *Stockmeier v. State, Dep't of Corrections*, 122 Nev. 385, 393 (2006), *overruled in part on other grounds by State ex rel. Bd. of Parole Comm'rs v. Morrow*, 127 Nev. 265 (2011). The reason that the judiciary requires plaintiffs in constitutional challenges to legislative action to meet increased jurisdictional standing requirements is that the doctrine of standing, "which is built on separation-of-powers principles, serves to prevent the judicial process from being used to usurp the powers of the political branches." *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 408 (2013).

Moreover, in cases for declaratory relief or where constitutional matters arise, a claim is ripe for adjudication only if it presents an existing controversy, not merely the prospect of a future problem. *Resnick v. Nev. Gaming Comm'n*, 104 Nev. 60, 65-66 (1988); *Bryan*, 102 Nev. at 524-26. If the claim depends on an outcome that may or may not occur, it is not ripe for adjudication. *Id.* Thus, "[w]hen the rights of the plaintiff are contingent on the happening of some event which

cannot be forecast and which may never take place, a court cannot provide declaratory relief." *Knittle v. Progressive Cas. Ins. Co.*, 112 Nev. 8, 10-11 (1996) (quoting *Farmers Ins. Exch. v. Dist. Court*, 862 P.2d 944, 948 (Colo. 1993)). Simply put, judicial relief is unavailable when "the damage is merely apprehended or feared." *Bryan*, 102 Nev. at 525.

In these cases, the Court determines that Plaintiffs cannot establish standing for declaratory, injunctive and writ relief and their claims are not ripe for judicial review because their claims are contingent on the 81st Legislature's approval of the proposed amendments, which may or may not occur. At this intermediate stage in the legislative process, Plaintiffs cannot prove a concrete injury-in-fact that is actual or imminent because, if the 81st Legislature rejects the proposed amendments, Plaintiffs will not suffer any injury at all.

Nevertheless, Plaintiffs contend that they have already suffered individual harm from the 80th Legislature's first approval of the joint resolutions in violation of the Nevada Constitution and that they will suffer additional harm if they are required to oppose the joint resolutions in the 81st Legislature. The Court finds that Plaintiffs cannot establish standing or ripeness because they have alleged only generalized harms which are shared by all participants in the legislative process who have to spend time, money and resources petitioning and lobbying for and against legislative measures that are still pending in the legislative process. It is well established that while legislative measures are still pending in the legislative process, the judiciary cannot enjoin or prevent the Legislature from taking final action on the legislative measures. *See Goodland v. Zimmerman*, 10 N.W.2d 180, 183 (Wis. 1943) ("Because under our system of constitutional government, no one of the coordinate departments can interfere with the discharge of the constitutional duties of one of the other departments, **no court has jurisdiction to enjoin the legislative process at any point**." (emphasis added)).

In these cases, the joint resolutions are still pending in the multistep legislative process, and

they are still subject to further consideration and final approval or rejection by the 81st Legislature which—at this intermediate stage in the legislative process—has exclusive legislative power and discretion to determine whether to approve or reject the joint resolutions. Thus, at this intermediate stage in the legislative process, the Court finds that Plaintiffs cannot establish standing or ripeness because their claims are contingent on the 81st Legislature's approval of the joint resolutions, which may or may not occur.

Plaintiffs also contend that they are entitled to standing under the "significant public importance" exception to the injury requirement recognized by the Nevada Supreme Court in *Schwartz*, 132 Nev. at 743, and that they are also entitled to general taxpayer standing. *But see Katz v. Incline Vill. Gen. Imp. Dist.*, No. 70440, 2018 WL 1129140 (Nev. Feb. 26, 2018) (unpublished disposition) (stating that "this court recently reaffirmed the general rule that a taxpayer lacks standing when he or she has not 'suffer[ed] a special or peculiar injury different from that sustained by the general public.'" (quoting *Schwartz*, 132 Nev. at 743)). However, the Court finds that the plaintiffs in *Schwartz* were challenging the constitutionality of a legislative bill after the Legislature had already taken final action on the bill and passed it into law. Similarly, the Court finds that plaintiffs claiming general taxpayer standing to challenge the constitutionality of legislative measures do not suffer any potential harm in their capacities as taxpayers unless the Legislature has already taken final action on the legislative measures. Again, it is well established that while legislative measures are still pending in the legislative process, the judiciary cannot enjoin or prevent the Legislature from taking final action on the legislative measures. The decision in *Schwartz* and the doctrine of general taxpayer standing do not create any exceptions to this long-standing rule of law.

Finally, the Court determines that, as political subdivisions of the State of Nevada, Plaintiffs Lander County, Pershing County, White Pine County and Elko County (the "Counties") also

cannot establish standing to bring their claims against the State as a matter of law. In Nevada and other states, the general rule is that political subdivisions lack standing to bring claims against the State alleging violations of state constitutional provisions unless the provisions exist for the protection of the political subdivisions, such as provisions which protect political subdivisions from certain types of special or local laws. *City of Fernley v. State, Dep't of Tax'n*, 132 Nev. 32, 43 n.6 (2016); *City of Reno v. County of Washoe*, 94 Nev. 327, 329-32 (1978); *State ex rel. List v. County of Douglas*, 90 Nev. 272, 280-81 (1974), *overruled on other grounds by Att'y Gen. v. Gypsum Res.*, 129 Nev. 23 (2013). As explained by New York's highest court:

> the traditional principle throughout the United States has been that municipalities . . . lack capacity to mount constitutional challenges to acts of the State and State legislation. . . . Moreover, our Court has extended the doctrine of no capacity to sue by municipal corporate bodies to a wide variety of challenges based as well upon claimed violations of the State Constitution.

City of New York v. State, 655 N.E.2d 649, 651-52 (N.Y. 1995).

The reason that political subdivisions are generally prohibited from bringing claims against the State alleging constitutional violations is that political subdivisions are not independent sovereigns with plenary authority to act contrary to the will of their creator. *List*, 90 Nev. at 279-81. Rather, political subdivisions are created by the State for the convenient administration of government, and they are entitled to challenge the actions of their creator only if a constitutional provision is enacted specifically to protect political subdivisions from the State's actions. *Reno*, 94 Nev. at 329-32.

In these cases, the Counties have not presented any arguments establishing that the provisions of Article 4, Section 18, Article 5, Section 9, and Article 16, Section 1 were enacted specifically for the protection of the political subdivisions of this State, such as the constitutional provisions which protect political subdivisions from certain types of special or local laws. Consequently, the Court concludes that, as political subdivisions of the State of Nevada, the

Counties cannot establish standing to bring their claims against the State as a matter of law.

3. Even if the Court had subject-matter jurisdiction over Plaintiffs' claims at this intermediate stage in the legislative process, the Court would conclude that Defendants are entitled to summary judgment as a matter of law because the 80th Legislature constitutionally approved and published the proposed amendments in the joint resolutions under the Nevada Constitution.

As a general rule, when a court does not have subject-matter jurisdiction, "the court cannot decide the case on the merits." *In re Parental Rights as to S.M.M.D.*, 128 Nev. 14, 20 (2012) (internal quotations omitted); *see also Whitmore v. Arkansas*, 495 U.S. 149, 154 (1990) ("[B]efore a federal court can consider the merits of a legal claim, the person seeking to invoke the jurisdiction of the court must establish the requisite standing to sue."); *Ariz. Christian Sch. Tuition Org. v. Winn*, 563 U.S. 125, 129 (2011). However, even if the Court had subject-matter jurisdiction over Plaintiffs' claims at this intermediate stage in the legislative process, the Court would conclude that Defendants are entitled to summary judgment as a matter of law because the 80th Legislature constitutionally approved and published the proposed amendments in the joint resolutions under the Nevada Constitution.

A. Standards for reviewing the constitutionality of legislative acts.

When reviewing the constitutionality of legislative acts, any "act of the [L]egislature is presumed to be constitutional and should be so declared unless it appears to be clearly in contravention of constitutional principles. In cases of doubt, every possible presumption and intendment will be made in favor of constitutionality. Courts will interfere only in cases of clear and unquestioned violation of fundamental rights." *State ex rel. Tidvall v. Eighth Jud. Dist. Ct.*, 91 Nev. 520, 526-27 (1975) (citations omitted).

Furthermore, it is a cardinal rule of constitutional review that courts may not find legislative acts unconstitutional "simply because [they] might question the wisdom or necessity of the provision under scrutiny." *Techtow v. City Council of N. Las Vegas*, 105 Nev. 330, 333 (1989).

Thus, in reviewing the constitutionality of the joint resolutions in these cases, the Court is not concerned with the wisdom or necessity of the proposed amendments. Rather, the Court's function is to determine whether the 80th Legislature constitutionally approved and published the proposed amendments in compliance with the Nevada Constitution. Having found that the 80th Legislature complied with the Nevada Constitution, the Court's judicial review is at an end, and any questions concerning the wisdom or necessity of the proposed amendments are for the 81st Legislature to decide under the next step in the legislative process for proposing state constitutional amendments.

B. Rules of constitutional construction.

When interpreting constitutional provisions, the rules of statutory construction also govern the interpretation of constitutional provisions, including provisions approved by the voters through a ballot initiative. *See Lorton v. Jones*, 130 Nev. 51, 56-57 (2014); *State ex rel. Wright v. Dovey*, 19 Nev. 396, 399 (1887). When applying the rules of construction, the primary task is to ascertain the intent of the drafters and the voters and to adopt an interpretation that best captures their objective. *Nev. Mining Ass'n v. Erdoes*, 117 Nev. 531, 540 (2001). To ascertain the intent of the drafters and the voters, courts will first examine the language of the constitutional provision to determine whether it has a plain and ordinary meaning. *Miller v. Burk*, 124 Nev. 579, 590 (2008). If the constitutional language is clear on its face and is not susceptible to any ambiguity, uncertainty or doubt, courts will generally give the constitutional language its plain and ordinary meaning, unless doing so would violate the spirit of the provision or would lead to an absurd or unreasonable result. *Miller*, 124 Nev. at 590-91; *Nev. Mining*, 117 Nev. at 542 & n.29.

However, if the constitutional language is capable of "two or more reasonable but inconsistent interpretations," making it susceptible to ambiguity, uncertainty or doubt, courts will interpret the constitutional provision according to what history, reason and public policy would

indicate the drafters and the voters intended. *Miller*, 124 Nev. at 590 (quoting *Gallagher v. City of Las Vegas*, 114 Nev. 595, 599 (1998)). Under such circumstances, courts will look "beyond the language to adopt a construction that best reflects the intent behind the provision." *Sparks Nugget, Inc. v. State, Dep't of Tax'n*, 124 Nev. 159, 163 (2008).

Furthermore, even when there is some ambiguity, uncertainty or doubt as to the meaning of a constitutional provision, that ambiguity, uncertainty or doubt must be resolved in favor of the Legislature and its general power to enact legislation. When the Nevada Constitution imposes limitations upon the Legislature's power, those limitations "are to be strictly construed, and are not to be given effect as against the general power of the [L]egislature, unless such limitations clearly inhibit the act in question." *In re Platz*, 60 Nev. 296, 308 (1940) (quoting *Baldwin v. State*, 3 S.W. 109, 111 (Tex. Ct. App. 1886)). As a result, constitutional language "must be strictly construed in favor of the power of the [L]egislature to enact the legislation under it." *Id.*

Lastly, in matters involving state constitutional law, the judiciary is the final interpreter of the meaning of the Nevada Constitution. *Nevadans for Nev. v. Beers*, 122 Nev. 930, 943 n.20 (2006) ("A well-established tenet of our legal system is that the judiciary is endowed with the duty of constitutional interpretation."). Nevertheless, even though the final power to decide the meaning of the Nevada Constitution ultimately rests with the judiciary, "[i]n the performance of assigned constitutional duties each branch of the Government must initially interpret the Constitution, and the interpretation of its powers by any branch is due great respect from the others." *United States v. Nixon*, 418 U.S. 683, 703 (1974).

Accordingly, the Nevada Supreme Court has recognized that the Legislature's reasonable construction of constitutional provisions should be given great weight. *State ex rel. Coffin v. Howell*, 26 Nev. 93, 104-05 (1901); *State ex rel. Cardwell v. Glenn*, 18 Nev. 34, 43-46 (1883). This is particularly true when the constitutional provisions concern the passage of legislation. *Id.*

Thus, when construing constitutional provisions, "although the action of the [L]egislature is not final, its decision upon this point is to be treated by the courts with the consideration which is due to a co-ordinate department of the state government, and in case of a reasonable doubt as to the meaning of the words, the construction given to them by the [L]egislature ought to prevail." *Dayton Gold & Silver Mining Co. v. Seawell*, 11 Nev. 394, 399-400 (1876).

The weight given to the Legislature's construction of constitutional provisions involving legislative procedure is of particular force when the meaning of the constitutional provisions is subject to any uncertainty, ambiguity or doubt. *Nev. Mining*, 117 Nev. at 539-40. Under such circumstances, the Legislature may rely on the opinion of its legal counsel interpreting the constitutional provisions, and "the Legislature is entitled to deference in its counseled selection of this interpretation." *Id.* at 540.

C. The 80th Legislature's approval of the joint resolutions did not violate Article 5, Section 9 because at a special session convened by the Governor under Article 5, Section 9, the Legislature has the power to introduce, consider and pass any joint resolutions proposing state constitutional amendments under Article 16, Section 1, regardless of whether such joint resolutions are related to the business for which the Legislature has been specially convened.

Plaintiffs contend that the 80th Legislature's approval of the joint resolutions during the 32nd Special Session violated Article 5, Section 9 because the proposed amendments were not related to the business for which the Legislature was specially convened. The Court disagrees.

It is well established that "the Legislature possesses the whole legislative power of the people, except so far as its power is limited by the [Nevada] Constitution." *State v. Williams*, 46 Nev. 263, 270 (1922). The offshoot of the Legislature's nearly unlimited legislative power is that the Legislature possesses all of its legislative power at every legislative session, unless there are express constitutional limitations on the exercise of that legislative power. Thus, as a general rule, the power of the Legislature at a special session is as broad as its power at a regular session,

unless there are express constitutional limitations to the contrary. *See Richards Furniture Corp. v. Bd. of County Comm'rs*, 196 A.2d 621, 625 (Md. 1964) ("It is generally held that in the absence of constitutional limitation, the legislative power of a Legislature, when convened in extraordinary session, is as broad as its powers in its regular sessions."); *Long v. State*, 127 S.W. 208, 209 (Tex. Crim. App. 1910) ("In the absence of a constitutional provision limiting the same, the jurisdiction of the Legislature when convened in special session is as broad as at a regular session."). Consequently, to determine whether Article 5, Section 9 limits the Legislature's power to pass joint resolutions proposing state constitutional amendments, the Court must examine the plain language of Article 5, Section 9 to determine whether that plain language imposes express constitutional limitations on the exercise of that legislative power at a special session.

Before the 2012 amendment proposed by the Legislature and approved by the voters, the plain language of Article 5, Section 9 provided that, at a special session, "the Legislature shall transact **no legislative business**, except that for which they were specially convened, or such other legislative business as the Governor may call to the attention of the Legislature while in Session." Nev. Const. art. 5, § 9 (1864) (emphasis added). By contrast, after the 2012 amendment, the plain language of Article 5, Section 9 now provides that "[a]t a special session convened pursuant to this section, the Legislature shall not introduce, consider or pass any **bills** except those related to the business for which the Legislature has been specially convened and those necessary to provide for the expenses of the session." Nev. Const. art. 5, § 9 (emphasis added).

Under the rules of construction, the Legislature's substantial amendments in 2012 must be given full meaning and purpose and must not be rendered nugatory, meaningless, superfluous or inconsequential. This is especially important in light of the Legislature's use of the term "bills" and its omission of the term "resolutions," which is notable because other provisions of the Nevada Constitution use both terms, such as "bills or joint resolutions" and "statute or resolution."

Nev. Const. art. 4, § 18; art. 19 § 1. The Legislature "is presumed to have a knowledge of the state of the law upon the subjects upon which it legislates." *Clover Valley Land & Stock Co. v. Lamb*, 43 Nev. 375, 383 (1920). Therefore, when the Legislature made its substantial amendments in 2012, it must be presumed that the Legislature knew the clear legal difference between bills and resolutions when it amended Article 5, Section 9. Indeed, it must be presumed that the Legislature had knowledge of Article 4, Section 23 of the Nevada Constitution, which expressly provides that "no **law** shall be enacted except by **bill**." Nev. Const. art. 4, § 23 (emphasis added). Consequently, when the Legislature made its substantial amendments in 2012, it must be presumed that the Legislature intended to limit its power to enact laws during special sessions because it expressly restricted its power to pass "bills." However, at the same time, it must be presumed that the Legislature knew that it had consistently followed the practice of using resolutions to propose state constitutional amendments since statehood. Therefore, when the Legislature made its substantial amendments in 2012, it must be presumed that the Legislature did not intend to limit its power to propose state constitutional amendments during special sessions because it did not restrict its power to pass resolutions.

Plaintiffs contend that if the Legislature had intended such a result, the Legislature would have clearly explained its intent to the voters in the 2012 ballot materials that were provided to the voters under NRS 218D.810. However, the Court finds that when the 2012 ballot materials are examined in their entirety, the Legislature clearly explained to the voters that the Legislature's intent was to limit its power to enact laws during special sessions because it expressly restricted its power to pass "bills."

First, in the "Condensation" or ballot question that was presented to voters when they cast their ballots, the voters were asked whether the Nevada Constitution should be amended "to limit the subject matter of **bills** passed at a special session." *Nev. Statewide Ballot Question 2012,*

Question No. 1, at 1 (Nev. Sec'y of State 2012). Similarly, in the "Explanation," the voters were informed that the 2012 amendment "provides that the Legislature may not introduce, consider or pass any **bills** at a special session, **whether convened by the Legislature or the Governor,** except for **bills** related to the business specified in the petition or Governor's proclamation and **bills** necessary to pay for the cost of the special session." *Id.* at 1 (emphasis added). The voters were also informed that a "Yes" vote would amend the Nevada Constitution to "limit the subject matter of **bills** passed at a special session." *Id.* at 2 (emphasis added). In the "Arguments for Passage," the voters were told:

> This measure includes strict safeguards to ensure that the Legislature does not abuse the special session power. It is extremely difficult to reach a two-thirds supermajority of the members from both Houses, especially to take extraordinary action to convene a special session. The supermajority would have to specify in the petition the business to be transacted at the special session, and the Legislature could not pass any **bills** except those related to the business specified in the petition and those necessary to fund the session. The Legislature also could not stay in session longer than 20 consecutive calendar days except for proceedings involving impeachment, removal or expulsion from office. These safeguards will make such special sessions rare.

Id. at 2 (emphasis added).

Thus, based on the plain language of the 2012 amendment and its accompanying ballot materials, the Court finds that the voters were told repeatedly that the 2012 amendment would limit the subject matter of "bills" passed at a special session, "whether convened by the Legislature or the Governor." Plaintiffs ask the Court to look beyond the plain language of the 2012 amendment and its accompanying ballot materials and instead interpret the 2012 amendment based on the legislative history of a previous proposed constitutional amendment that was rejected by the voters in 2006. However, the Court finds that the cited legislative history from 2003 and 2005 does not provide the interpretative weight necessary to overcome the plain language of the 2012 amendment and its accompanying ballot materials. Furthermore, the Court finds that Plaintiffs' proposed interpretation would be contrary to several additional rules of construction.

Under the rules of construction, courts "will avoid rendering any part of a statute inconsequential." *Savage v. Pierson*, 123 Nev. 86, 94 (2007). As a result, "no part of a statute should be rendered nugatory, nor any language turned to mere surplusage, if such consequences can properly be avoided." *Metz v. Metz*, 120 Nev. 786, 787 (2004); *Torreyson v. Bd. of Exam'rs*, 7 Nev. 19, 22 (1871). Furthermore, when the Legislature makes substantial amendments to existing provisions, "it is ordinarily presumed that the Legislature intended to change the law." *PEBP v. LVMPD*, 124 Nev. 138, 156-57 (2008); *Metz v. Metz*, 120 Nev. 786, 792 (2004); *Pellegrini v. State*, 117 Nev. 860, 874 (2001); *McKay v. Bd. of Superv'rs*, 102 Nev. 644, 650 (1986). Finally, when the Legislature intends to "overturn long-standing legal precedent and completely change the construction placed on a statute by the courts, it is not too much to require that it be done in unmistakable language." *Strickland v. Waymire*, 126 Nev. 230, 238 (2010) (quoting 3 Norman J. Singer et al., *Sutherland Statutory Construction* § 58:3, at 114-15 (7th ed. 2008), and *State ex rel. Housing Auth. v. Kirk*, 231 So. 2d 522, 524 (Fla. 1970)).

With regard to the 2012 amendment, the Court finds that the Legislature used unmistakable language to overturn long-standing legal precedent and completely change the construction placed on Article 5, Section 9 by the courts. Before the 2012 amendment, there were two reported cases from the Nevada Supreme Court which discussed the scope of the Governor's power under Article 5, Section 9. *Jones v. Theall*, 3 Nev. 233, 234-35 (1867); *In re Platz*, 60 Nev. 296, 306-07 (1940). In those cases, the Nevada Supreme Court concluded that the Governor had the exclusive power to determine the type of legislative business to be considered at a special session and that "it is the purpose of the Constitution to forbid consideration of any but such business as the Governor may deem necessary to be transacted at such sessions." *Jones*, 3 Nev. at 236; *Platz*, 60 Nev. at 307-09. When the Legislature proposed the 2012 amendment, it must be presumed from its unmistakable revision of the previous language that it had knowledge of the existing state of

the law, including case law, and that it intended to overturn the long-standing case law and completely change the construction placed on Article 5, Section 9 by the courts. If the Legislature had intended to preserve the long-standing case law, it would have left the previous language undisturbed and intact. *See LVCVA v. Miller*, 124 Nev. 669, 679 (2008) ("[W]hen the Legislature amends a statute without disturbing language previously interpreted by this court, it is presumed that the Legislature approved the interpretation."); *Silvera v. EICON*, 118 Nev. 105, 109 (2002) ("It is presumed that the legislature approves the supreme court's interpretation of a statutory provision when the legislature has amended the statute but did not change the provision's language subsequent to the court's interpretation.").

Finally, even assuming that there is some ambiguity, uncertainty or doubt as to the meaning of Article 5, Section 9, the Legislature acted on the opinion of its legal counsel that, at a special session convened by the Governor under Article 5, Section 9, the Legislature has the power to pass joint resolutions proposing state constitutional amendments under Article 16, Section 1, regardless of whether such joint resolutions are related to the business for which the Legislature has been specially convened. *Hearing before Assembly Comm. of the Whole*, 32nd Spec. Sess. (Nev. Aug. 1, 2020) (Exhibits); *Hearing before Senate Comm. of the Whole*, 32nd Spec. Sess. (Nev. Aug. 2, 2020) (Exhibits). Under such circumstances, the Legislature was entitled to rely on the opinion of its legal counsel interpreting Article 5, Section 9, and "the Legislature is entitled to deference in its counseled selection of this interpretation." *Nev. Mining*, 117 Nev. at 540.

Thus, based on the plain language of the 2012 amendment and its accompanying ballot materials and the application of the rules of construction, the Court finds that Article 5, Section 9 expressly places limitations on the Legislature's power at a special session only with regard to "bills," and it does not place any limitations on the Legislature's power at a special session with regard to resolutions. Accordingly, the Court concludes that the 80th Legislature's approval of the

joint resolutions did not violate Article 5, Section 9 because at a special session convened by the Governor under Article 5, Section 9, the Legislature has the power to introduce, consider and pass any joint resolutions proposing state constitutional amendments under Article 16, Section 1, regardless of whether such joint resolutions are related to the business for which the Legislature has been specially convened.

D. The 80th Legislature's approval of the joint resolutions did not violate Article 4, Section 18 because such joint resolutions proposing state constitutional amendments under Article 16, Section 1 are not subject to the two-thirds majority requirement in Article 4, Section 18, regardless of whether such joint resolutions create, generate or increase any public revenue in any form.

Plaintiffs contend that the 80th Legislature's approval of the joint resolutions during the 32nd Special Session violated the two-thirds majority vote requirement in Article 4, Section 18, which provides in relevant part:

> 1. * * * **Except as otherwise provided in subsection 2, a majority of all the members elected to each House is necessary to pass every bill or joint resolution**, and all bills or joint resolutions so passed, shall be signed by the presiding officers of the respective Houses and by the Secretary of the Senate and Clerk of the Assembly.
> 2. **Except as otherwise provided in subsection 3, an affirmative vote of not fewer than two-thirds of the members elected to each House is necessary to pass a bill or joint resolution which 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.
> 3. **A majority of all of the members elected to each House may refer any measure which creates, generates, or increases any revenue in any form to the people of the State at the next general election**, and shall become effective and enforced only if it has been approved by a majority of the votes cast on the measure at such election.

Nev. Const. art. 4, § 18 (emphasis added). Plaintiffs contend that, based on its plain language, the two-thirds requirement in Article 4, Section 18 applies to joint resolutions proposing state constitutional amendments under Article 16, Section 1 if the proposed amendments would create, generate or increase any public revenue in any form. The Court disagrees.

Under the rules of construction, "[t]he Nevada Constitution should be read as a whole, so as

to give effect to and harmonize each provision." *Nevadans for Nev. v. Beers*, 122 Nev. 930, 944 (2006). In their arguments, Plaintiffs rely solely on the language of Article 4, Section 18 to the exclusion of the language of Article 16, Section 1, which governs approval of proposed state constitutional amendments and which has stated—since statehood—that such proposed amendments must be "agreed to by a **majority** of all the members elected to each house." Nev. Const. art. 16, § 1(1) (emphasis added). Plaintiffs essentially ask the Court to read the two-thirds requirement in Article 4, Section 18 as an exception to the majority requirement in Article 16, Section 1 for proposed state constitutional amendments that would create, generate or increase any public revenue in any form.

However, when the initiative proponents drafted the two-thirds requirement, they placed an explicit exception for the two-thirds requirement in the existing constitutional provision governing passage of bills and joint resolutions, expressly stating that: "**Except as otherwise provided in subsection 2 [the two-thirds requirement]**, a majority of all the members elected to each House is necessary to pass every bill or joint resolution." Nev. Const. art. 4, § 18(1) (emphasis added). In stark contrast, the initiative proponents failed to place such an explicit exception in Article 16, Section 1 governing the approval of proposed state constitutional amendments. If the initiative proponents had intended for the two-thirds requirement to create an exception to the majority requirement in Article 16, Section 1, they could have easily placed such an explicit exception in Article 16, Section 1. In the absence of such an explicit exception, the Court concludes—based on the plain language of both constitutional provisions—that joint resolutions proposing state constitutional amendments are subject only to the majority requirement in Article 16, Section 1, and they are not subject to the two-thirds requirement in Article 4, Section 18, regardless of whether they create, generate or increase any public revenue in any form. In reaching this conclusion, the Court finds that its interpretation is supported by historical evidence and case law

from other jurisdictions.

In 1798, the U.S. Supreme Court addressed a similar legal issue in a case where the plaintiffs argued that Congress did not validly propose the Eleventh Amendment to the Federal Constitution. *Hollingsworth v. Virginia*, 3 U.S. 378 (1798). The plaintiffs argued that when Congress exercised its power to propose the Eleventh Amendment under the Amendments Article, Congress failed to submit the proposed amendment to the President for approval or disapproval under the Legislative Article. The Supreme Court rejected the argument and held that the Eleventh Amendment was constitutionally adopted. 3 U.S. at 382. Although the Supreme Court did not provide any explanation in its opinion for rejecting the argument, Justice Chase stated that "[t]here can, surely, be no necessity to answer that argument. The negative of the President applies only to the ordinary cases of legislation: He has nothing to do with the proposition, or adoption, of amendments to the Constitution." *Id.* at 381 n.

Following the *Hollingsworth* decision, many state courts have held that legislative proposals to amend the state constitution "are not the exercise of an ordinary legislative function nor are they subject to the constitutional provisions regulating the introduction and passage of ordinary legislative enactments, although they may be proposed in the form of an ordinary legislative bill or in the form of a Joint Resolution." *Collier v. Gray*, 157 So. 40, 44 (Fla. 1934).[1] As a general rule, these courts have found that the process of proposing constitutional amendments is a separate and independent function that is unconnected with the process of passing ordinary bills and

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[1] *Jones v. McDade*, 75 So. 988, 991 (Ala. 1917); *Mitchell v. Hopper*, 241 S.W. 10, 11 (Ark. 1922); *Nesbit v. People*, 36 P. 221, 223-24 (Colo. 1894); *People v. Ramer*, 160 P. 1032, 1032-33 (Colo. 1916); *Cooney v. Foote*, 83 S.E. 537, 539 (Ga. 1914); *Hays v. Hays*, 47 P. 732, 732-33 (Idaho 1897); *State ex rel. Morris v. Mason*, 9 So. 776, 795-96 (La. 1891); *Opinion of Justices*, 261 A.2d 53, 57-58 (Me. 1970); *Warfield v. Vandiver*, 60 A. 538, 538-43 (Md. 1905); *Julius v. Callahan*, 65 N.W. 267, 267 (Minn. 1895); *Edwards v. Lesueur*, 33 S.W. 1130, 1135 (Mo. 1896); *In re Senate File 31*, 41 N.W. 981, 983-88 (Neb. 1889); *State ex rel. Wineman v. Dahl*, 68 N.W. 418, 418-20 (N.D. 1896); *Commonwealth v. Griest*, 46 A. 505, 505-10 (Pa. 1900); *Kalber v. Redfearn*, 54 S.E.2d 791, 793-98 (S.C. 1949); *Moffett v. Traxler*, 147 S.E.2d 255, 258-60 (S.C. 1966).

resolutions. *See, e.g., Edwards v. Lesueur*, 33 S.W. 1130, 1135 (Mo. 1896) ("The provision for adopting resolutions proposing amendments is distinct from, and independent of, all provisions which are provided for the government of legislative proceedings."); *Commonwealth v. Griest*, 46 A. 505, 508 (Pa. 1900) ("the separate and distinctive character of this particular exercise of the power of the two houses is preserved, and is excluded from association with the orders, resolutions and votes, which constitute the ordinary legislation of the legislative body."). As further explained by the Colorado Supreme Court:

> The power of the general assembly to propose amendments to the constitution is not subject to the provisions of article 5 regulating the introduction and passage of ordinary legislative enactments. . . . Section 2 of article 19 prescribes the method of proposing amendments to the constitution, and no other rule is prescribed. It is not, therefore, by the "legislative" article, but by the article entitled "amendments," that the legality of the action of the general assembly in proposing amendments to the constitution is to be tested. Article 19 is *sui generis*; it provides for revising, altering and amending the fundamental law of the state, and is not *in pari materia* with those provisions of article 5 prescribing the method of enacting ordinary statutory laws.

Nesbit v. People, 36 P. 221, 223 (Colo. 1894).

Under the interpretative rule favored by a majority of state courts that have addressed the issue, "[a] proposal by the legislature of amendments to the constitution is not the exercise of ordinary legislative functions, and is not subject to constitutional provisions regulating the introduction and passage of ordinary legislative enactments." *Cooney v. Foote*, 83 S.E. 537, 539 (Ga. 1914). Under this interpretative rule, a state legislature is required to comply only with the specific provisions in the Amendments Article that govern the proposal of constitutional amendments, and it is not required to comply with the general provisions in the Legislative Article that govern the passage of legislation.

However, a small minority of state courts have rejected this interpretative rule. These courts have held that specific constitutional provisions governing the proposal of constitutional amendments must be interpreted and harmonized with general constitutional provisions governing

ordinary legislative action. *Geringer v. Bebout*, 10 P.3d 514, 515-24 (Wyo. 2000); *State ex rel. Livingstone v. Murray*, 354 P.2d 552, 556-58 (Mont. 1960); *Smith v. Lucero*, 168 P. 709, 709-13 (N.M. 1917).

Given the plain language of Nevada's constitutional provisions, the Court agrees with the interpretative rule favored by the majority view, and it rejects the interpretative rule favored by the minority view. Therefore, the Court concludes that joint resolutions proposing state constitutional amendments are subject only to the majority requirement in Article 16, Section 1, and they are not subject to the two-thirds requirement in Article 4, Section 18, regardless of whether they create, generate or increase any public revenue in any form.

Furthermore, even assuming that there is some ambiguity, uncertainty or doubt regarding the interpretation of Nevada's constitutional provisions, the Court concludes that when Nevada's constitutional provisions are interpreted and harmonized together in accordance with the rules of construction, any joint resolution proposing state constitutional amendments qualifies for the exception from the two-thirds requirement, which provides that "**[a] majority of all of the members elected to each House** may refer any measure which creates, generates, or increases any revenue in any form to the people of the State at the next general election." Nev. Const. art. 4, § 18(3) (emphasis added).

When two or more constitutional provisions relate to the same subject matter, courts strive to "give effect to all controlling legal provisions *in pari materia*." *State of Nev. Employees Ass'n v. Lau*, 110 Nev. 715, 718 (1994). In other words, whenever possible, constitutional provisions relating to the same subject matter must be read together and harmonized so that each of the provisions is able to achieve its basic purpose without creating conflicts or producing unintended consequences or unreasonable or absurd results. *We the People Nev. v. Miller*, 124 Nev. 874, 880-81 (2008) ("[W]hen possible, the interpretation of a statute or constitutional provision will be

harmonized with other statutes or provisions to avoid unreasonable or absurd results."). To this end, when two or more constitutional provisions apply to a given situation and create an ambiguity, courts will endeavor to reconcile the provisions consistently with what reason and public policy would indicate the framers intended. *See Halverson v. Miller*, 124 Nev. 484, 489-91 (2008); *We the People Nev.*, 124 Nev. at 883-89. As stated by the court, "[i]f a constitutional provision's language is ambiguous, meaning that it is susceptible to 'two or more reasonable but inconsistent interpretations,' we may look to the provision's history, public policy, and reason to determine what the voters intended." *Miller v. Burk*, 124 Nev. 579, 590 (2008) (quoting *Gallagher v. City of Las Vegas*, 114 Nev. 595, 599 (1998)).

Based on its review of the history of the two-thirds requirement, the Nevada Supreme Court has explained the purpose of the requirement as follows:

> The supermajority requirement was intended to make it more difficult for the **Legislature** to pass new taxes, hopefully encouraging efficiency and effectiveness in government. Its proponents argued that the tax restriction might also encourage state government to prioritize its spending and economize rather than explore new sources of revenue.

Guinn v. Legislature (Guinn II), 119 Nev. 460, 471 (2003) (emphasis added). Additionally, the court has noted that the two-thirds requirement contains an exception which "permits a majority of the Legislature to refer any proposed new or increased taxes for a vote at the next general election." *Guinn II*, 119 Nev. at 472 n.27. By requiring the Legislature to act by a two-thirds vote to pass revenue-generating measures, the framers of the constitutional provision clearly wanted to restrict the power of the Legislature to enact such measures into law through the ordinary legislative process. However, by also providing that the Legislature could act by a traditional majority vote to refer such measures to the people at the next general election, the framers clearly did not want to restrict the power of the Legislature to refer such measures to the voters.

Because the Legislature's power to refer revenue-generating measures to the voters under

Article 4, Section 18 is substantially the same as its power to refer constitutional amendments to the voters under Article 16, Section 1, the two provisions must be interpreted and harmonized together as substantially equivalent provisions. In describing the state legislature's power to propose constitutional amendments to the voters, the Colorado Supreme Court has stated:

> [I]n proposing an amendment to the constitution, the action of the general assembly is initiatory, not final; a change in the fundamental law cannot be fully and finally consummated by legislative power. Before a proposed amendment can become a part of the constitution, it must receive the approval of a majority of the qualified electors of the state voting thereon at the proper general election. When thus approved it becomes valid as part of the constitution by virtue of the sovereign power of the people constitutionally expressed.

Nesbit v. People, 36 P. 221, 224 (Colo. 1894). The Court finds that this description applies equally to the Legislature's power to propose revenue-generating measures to the voters under Article 4, Section 18. When the Legislature proposes such measures, its action is initiatory, not final, and its proposal cannot be fully and finally consummated by legislative power. Instead, the proposal must receive the approval of the voters, and only then does it become law by virtue of the sovereign power of the people constitutionally expressed.

Thus, the spirit and purpose of the referral provisions in Article 4, Section 18 can be construed consistently and harmoniously with the spirit and purpose of the referral provisions in Article 16, Section 1. Under these equivalent referral provisions, the Legislature is authorized to refer measures to the voters by a traditional majority vote, but the measures do not become effective unless approved by the voters. Consequently, when these equivalent referral provisions are interpreted and harmonized together, the Court concludes that any joint resolution proposing state constitutional amendments under Article 16, Section 1 would qualify for the exception from the two-thirds requirement under Article 4, Section 18 because the proposed state constitutional amendments become effective only if approved by voters.

The Court finds that its conclusion is supported by the reasoning in *Lockman v. Secretary of*

State, 684 A.2d 415, 419 (Me. 1996). In *Lockman*, the Maine Legislature, by a majority vote, passed a joint resolution which proposed a competing measure to be placed on the general election ballot with an initiative petition pursuant to Article IV, Section 18 of the Maine Constitution. The plaintiffs argued that the joint resolution was invalidly enacted without a two-thirds vote under Article IV, Section 16 of the Maine Constitution. Section 16 provided that no act or joint resolution could take effect until 90 days after the adjournment of the session in which it was passed, unless the Maine Legislature, by a two-thirds vote, directed otherwise. Even though the joint resolution did not comply with the 90-day provision in section 16 because it was passed with only a majority vote, the Maine Supreme Court rejected the plaintiffs' argument and held that "section 16 applies to acts and resolves that have the force of law and **does not apply to the approval of competing measures that will become law only if approved by the voters**." *Id.* at 419 (emphasis added).

Finally, even assuming that there is some ambiguity, uncertainty or doubt regarding the interpretation of Nevada's constitutional provisions, the Legislature acted on the opinion of its legal counsel that it would be required to comply only with the specific majority voting requirement in Article 16, Section 1 when it adopted any joint resolution proposing state constitutional amendments, and it would not be required to comply with the two-thirds majority requirement in Article 4, Section 18, regardless of whether the joint resolution creates, generates, or increases any public revenue in any form. *Hearing before Assembly Comm. of the Whole*, 32nd Spec. Sess. (Nev. Aug. 1, 2020) (Exhibits); *Hearing before Senate Comm. of the Whole*, 32nd Spec. Sess. (Nev. Aug. 2, 2020) (Exhibits). Under such circumstances, the Legislature was entitled to rely on the opinion of its legal counsel interpreting Article 4, Section 18 and Article 16, Section 1, and "the Legislature is entitled to deference in its counseled selection of this interpretation." *Nev. Mining*, 117 Nev. at 540.

Accordingly, based on the plain language of Nevada's constitutional provisions and the rules of construction, the Court concludes that the 80th Legislature's approval of the joint resolutions did not violate Article 4, Section 18 because such joint resolutions proposing state constitutional amendments under Article 16, Section 1 are not subject to the two-thirds majority requirement in Article 4, Section 18, regardless of whether such joint resolutions create, generate or increase any public revenue in any form.

E. The 80th Legislature's approval and publication of the proposed amendments in the joint resolutions did not violate Article 16, Section 1 because the proposed amendments were referred to the Legislature then next to be chosen and published pursuant to NRS 218D.802 for three months next preceding the time of making such choice.

After the 80th Legislature approved the proposed amendments in the joint resolutions for the first time, Article 16, Section 1 provided that the proposed amendments "shall be . . . referred to the Legislature then next to be chosen, and shall be published for **three months next preceding the time of making such choice**." Nev. Const. art. 16, § 1(1) (emphasis added). The parties disagree on the date that is "three months next preceding the time of making such choice."

First, Plaintiffs contend that the proposed amendments were required to be published three months preceding the first day of early voting by personal appearance under NRS Chapter 293, instead of three months preceding the general election under the Nevada Constitution. The Court disagrees.

Under the rules of construction, "[t]he Nevada Constitution should be read as a whole, so as to give effect to and harmonize each provision." *Nevadans for Nev. v. Beers*, 122 Nev. 930, 944 (2006). The plain language of Article 16, Section 1 states that the proposed amendments shall be "referred to the Legislature then next to be **chosen**, and shall be published for three months next preceding the time of making such **choice**." Nev. Const. art. 16, § 1(1) (emphasis added). The plain language of Article 4, Section 3 states that "[t]he members of the Assembly shall be **chosen**

biennially by the qualified electors of their respective districts, on the **Tuesday next after the first Monday in November** and their term of Office shall be two years from the day next after their election." Nev. Const. art. 4, § 3 (emphasis added). The plain language of Article 4, Section 4 states that "Senators shall be **chosen** at the same time and places as members of the Assembly by the qualified electors of their respective districts, and their term of Office shall be four years from the day next after their election." Nev. Const. art. 4, § 4 (emphasis added). Finally, Article 15, Section 5 states that "[t]he general election shall be held on the **Tuesday next after the first Monday of November**." Nev. Const. art. 15, § 5 (emphasis added).

Reading the Nevada Constitution as a whole and giving effect to and harmonizing each of these provisions, the Court finds that "the Legislature then next to be chosen" consists of the members of the Legislature who are "chosen biennially . . . on the Tuesday next after the first Monday in November," which is the date of the general election prescribed by the Nevada Constitution. Therefore, the Court concludes that the proposed amendments were not required to be published three months preceding the first day of early voting by personal appearance under NRS Chapter 293, because such an interpretation would conflict with the plain language of the Nevada Constitution.

Plaintiffs next contend that the proposed amendments were required to be published three "calendar" months preceding the general election on November 3, 2020, which required publication on or before August 2, 2020. *See State ex rel. Thompson v. Winnett*, 110 N.W. 1113, 1115 (Neb. 1907) ("The election was held on the 6th day of November. The three months named in the Constitution are three calendar months, and would include the period of time commencing with the beginning of the 6th day of August, and to comply literally with this provision the first publication must be before that day." (citation omitted)).

However, the Legislature contends that, based on the plain language of Article 16, Section

1, the proposed amendments needed to be published for "three months" next preceding the general election, not three "calendar" months as argued by Plaintiffs. The Legislature argues that the term "three months" in Article 16, Section 1 is ambiguous because it can reasonably be interpreted to mean 90 days or three "calendar" months. For support, the Legislature points to the Nevada Supreme Court's statement that "[t]he constitution does require that an amendment proposed and agreed to at a session of the legislature shall be published for **ninety days** next preceding the succeeding election of members of the legislature, so that the people may, if they desire, elect members specially to consider it." *State ex rel. Galusha v. Davis*, 20 Nev. 220, 223 (1888) (emphasis added). Thus, the Legislature argues that the Court can reasonably conclude that the proposed amendments needed to be published for 90 days preceding the general election on November 3, 2020, which required publication on or before August 5, 2020. Alternatively, the Legislature argues that even assuming the proposed amendments needed to be published for three "calendar" months preceding the general election on November 3, 2020, that interpretation required publication on or before August 3, 2020, not August 2, 2020, as argued by Plaintiffs. *See Kremer v. Grant*, 606 A.2d 433, 437 (Pa. 1992) ("It is also undisputed that the next general election after June 29, 1990, was to be on Tuesday, November 6, 1990, and that 'the date three months before the next general election' was Monday, August 6, 1990.").

For the purposes of deciding these cases, the Court does not need to resolve the parties' remaining disagreement regarding the date that is "three months next preceding the time of making such choice," because the Court concludes that the LCB Director published the proposed amendments on August 2, 2020, in accordance with NRS 218D.802, and that such publication on August 2, 2020, was at least three months preceding the general election on November 3, 2020, and therefore complied with the publication requirement in in Article 16, Section 1.

When interpreting the publication requirement in Article 16, Section 1, the Nevada Supreme

Court has held that "the framers of the constitution intended that the legislature should be the sole judges as to the manner in which such publication is to be made, there being no restraint on them whatever, except requiring the publication to commence at least three months before the holding of the election." *State ex rel. Torreyson v. Grey*, 21 Nev. 378, 381-82 (1893). During the 32nd Special Session, the Legislature passed Assembly Bill No. 2 (AB 2), which provided for the publication of proposed amendments under Article 16, Section 1 after approval by the Legislature for the first time at a special session held in an even-numbered year. AB 2, 2020 Nev. Stat., 32nd Spec. Sess., ch. 2, § 17, at 13. Specifically, section 17 of AB 2, which has been codified as NRS 218D.802, provides:

> Notwithstanding any other provisions of law, for the purposes of carrying out the publication of any proposed amendment or amendments to the Constitution of the State of Nevada pursuant to Section 1 of Article 16 of the Nevada Constitution:
> 1. If the Legislature first approves a joint resolution proposing any such amendment or amendments during a special session held in an even-numbered year, the Director [of the LCB] shall immediately publish a separate printed volume of advance sheets of statutes which includes the full text of the proposed amendment or amendments as approved by the Legislature.
> 2. Upon publication of the proposed amendment or amendments pursuant to this section, such publication shall be deemed to be the publication of the proposed amendment or amendments for the purposes of Section 1 of Article 16 of the Nevada Constitution without any additional publication being necessary for those purposes.

In these cases, the proposed amendments were approved by "a [m]ajority of all the members elected to each of the two houses" on August 1 and 2, 2020. Nev. Const. art. 16, § 1(1); *Assembly Daily Journal*, 32nd Spec. Sess., at 18 (Nev. Aug. 1, 2020); *Senate Daily Journal*, 32nd Spec. Sess., at 8 (Nev. Aug. 1, 2020); *Senate Daily Journal*, 32nd Spec. Sess., at 17 (Nev. Aug. 2, 2020). On August 2, 2020, as required by NRS 218D.802(1), the LCB Director immediately published a separate printed volume of advance sheets of statutes which included the full text of the proposed amendments as approved by the Legislature. The advance sheets are entitled: "Nevada Legislature Advance Sheets of Proposed Amendments to the Nevada Constitution

Agreed to and Passed at the Thirty-Second Special Session."

Despite the publication of the advance sheets on August 2, 2020, Plaintiffs contend that it is a legal impossibility that AB 2 and the joint resolutions could have been signed before August 3, 2020, by the Assembly Speaker and Chief Clerk based on procedural rules and statutes relating to the enrollment and signing of bills and joint resolutions. The Court disagrees. *See Mason's Manual of Legislative Procedure* §§ 15, 73, 284 (NCSL 2010) ("*Mason's Manual*").[2]

Under the rules of parliamentary law governing state legislatures, in order to pass legislative measures, a state legislature must comply with the procedural requirements expressly set forth in the state constitution, and if a state legislature violates any constitutional procedural requirements in passing legislative measures, the courts are empowered to invalidate the legislative measures. *Mason's Manual* §§ 7, 12. However, because a state legislature possesses plenary and exclusive constitutional power to control its own legislative procedure and because a state legislature cannot be bound by any procedural rules and statutes adopted by it or a prior legislature, a state legislature is not required to comply with nonconstitutional procedural rules and statutes. *Mason's Manual* §§ 15, 73, 284. Under such circumstances, the courts will not "declare an act of a legislature void on account of noncompliance with rules of procedure made by itself to govern its own deliberations and not involving any constitutional provision." *Mason's Manual* § 73(3).

These well-established rules of parliamentary law governing state legislatures have been

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[2] In determining the rules of parliamentary law governing its legislative proceedings under Article 4, Section 6 of the Nevada Constitution, each House has adopted *Mason's Manual* as parliamentary authority. *See* Assembly Standing Rule No. 100; Senate Standing Rule No. 90. Courts have found that "*Mason's Manual* is a widely recognized authority on state legislative and parliamentary procedures." *Gray v. Gienapp*, 727 N.W.2d 808, 811 (S.D. 2007). All citations to *Mason's Manual* are to the 2010 edition, which was the most recent edition published by the National Conference of State Legislatures (NCSL) at the time of the 32nd Special Session. In late 2020, NCSL published an updated 2020 edition of *Mason's Manual*.

followed by the courts for centuries. *Mason's Manual* § 73(3) (collecting cases). As explained by the Wisconsin Supreme Court:

> Although since *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803), courts have had the authority to review acts of the legislature for any conflict with the constitution, courts generally consider that the legislature's adherence to the rules or statutes prescribing procedure is a matter entirely within legislative control and discretion, not subject to judicial review unless the legislative procedure is mandated by the constitution. 73 Am. Jur. 2d *Statutes* § 49, p. 296. If the legislature fails to follow self-adopted procedural rules in enacting legislation, and such rules are not mandated by the constitution, courts will not intervene to declare the legislation invalid. The rationale is that the failure to follow such procedural rules amounts to an implied *ad hoc* repeal of such rules. This principle has been expressed in 1 Sutherland, *Statutory Construction* (4th Ed.) § 7.04, p. 264, as follows:
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> > "The decisions are nearly unanimous in holding that an act cannot be declared invalid for failure of the house to observe its own rules. Courts will not inquire whether such rules have been observed in the passage of the act. Likewise, the legislature by statute or joint resolution cannot bind or restrict itself or its successors as to the procedure to be followed in the passage of legislation."

State ex rel. La Follette v. Stitt, 338 N.W.2d 684, 687 (Wis. 1983); *Des Moines Register & Tribune Co. v. Dwyer*, 542 N.W.2d 491, 496 (Iowa 1996) ("[T]he legislature has complete control and discretion whether it shall observe, enforce, waive, suspend, or disregard its own rules of procedure, and violations of such rules are not grounds for the voiding of legislation."); *Baines v. N.H. Senate President*, 876 A.2d 768, 776 (N.H. 2005) ("[B]ecause these statutes concern nonconstitutionally mandated legislative procedures and because the State Constitution grants the legislature the authority to establish such procedures, the question of whether the legislature violated these statutes is nonjusticiable."); *Westerfield v. Ward*, 599 S.W.3d 738, 746 (Ky. 2019) ("[W]e have serious questions about our ability to invalidate a legislative act—in this case a constitutional amendment—based on a failure of the legislature to follow its own procedure, a procedure that it has full authority to change."); *St. Louis & S.F. Ry. Co. v. Gill*, 15 S.W. 18, 19 (Ark. 1891) ("The joint rules of the general assembly were creatures of its own, to be maintained and enforced, rescinded, suspended, or amended, as it might deem proper. Their observance was

a matter entirely subject to legislative control and discretion, not subject to be reviewed by the courts.").

In these cases, Plaintiffs contend that the Assembly Speaker and Chief Clerk could not have signed AB 2 and the joint resolutions on August 2, 2020, because the Assembly had not complied yet with the procedural rules and statutes in Joint Standing Rule No. 5 and NRS 218D.640 relating to the enrollment and signing of bills and joint resolutions. However, because those are nonconstitutional procedural rules and statutes, any noncompliance by the Assembly and its officers must be deemed—as a matter of law—to be an implied suspension of those procedural rules and statutes under well-established rules of parliamentary law governing state legislatures. *State ex rel. La Follette v. Stitt*, 338 N.W.2d 684, 687 (Wis. 1983); *Mason's Manual* § 284. Therefore, the Court finds that the Assembly Speaker and Chief Clerk properly signed AB 2 and the joint resolutions on August 2, 2020, because on that date both Houses had complied with all constitutionally mandated procedural requirements in order to pass AB 2 and the joint resolutions.

Furthermore, under Article 4, Section 18(1), the constitutional power of the Assembly Speaker, the Chief Clerk and the other legislative officers to sign all bills and joint resolutions passed by the Legislature is a constitutional power entrusted to each legislative officer who may "rely on personal observations or consult the records" to determine whether all constitutionally mandated procedural requirements were met in passing the bills and joint resolutions. *Mason's Manual* § 575(3). After all the legislative officers have signed the bill or joint resolution, their signatures provide conclusive evidence as to the passage of the bill or joint resolution, and such conclusive evidence cannot be impeached by extrinsic or outside evidence under the enrolled bill doctrine. *Mason's Manual* § 702(2).

In Nevada, the enrolled bill doctrine has been adopted by the Nevada Supreme Court. *State ex rel. Osburn v. Beck*, 25 Nev. 68, 80-81 (1899); *State ex rel. Sutherland v. Nye*, 23 Nev. 89, 101

(1895); *State ex rel. Cardwell v. Glenn*, 18 Nev. 34 (1883); *State ex rel. George v. Swift*, 10 Nev. 176 (1875). As stated by the Nevada Supreme Court:

> The constitution makes the signing of an enrolled bill "by the presiding officers of the two houses and by the secretary of the senate and clerk of the assembly" conclusive evidence of its passage by the legislature, and, when passed and approved by the governor, and filed in the office of the secretary of state, it constitutes a record which is conclusive evidence of the passage of the act as enrolled, and in accordance with the rules prescribed by the constitution relating to legislative procedure. The rule, "that in testing the validity of a statute the courts will not look beyond the statute roll, solemnly attested in accordance with the provisions of the constitution," is well settled in this State by the following cases: *State ex rel. George v. Swift*, 10 Nev. 176; *State ex rel. Cardwell*, 18 Nev. 34.

State ex rel. Sutherland v. Nye, 23 Nev. 89, 101 (1895).

In these cases, the Court finds that on August 2, 2020, AB 2 and the joint resolutions were enrolled, signed by the presiding officers of the two Houses and by the Secretary of the Senate and Chief Clerk of the Assembly, presented to and signed by the Governor, and filed in the office of the Secretary of State. Under the enrolled bill doctrine, the signed AB 2 and the signed joint resolutions provide conclusive evidence as to the passage and approval of the bill and joint resolutions on August 2, 2020, and such conclusive evidence cannot be impeached by extrinsic or outside evidence from any other source.

Therefore, the Court concludes that the LCB Director published the proposed amendments on August 2, 2020, in accordance with NRS 218D.802, and that such publication on August 2, 2020, was at least three months preceding the general election on November 3, 2020. Accordingly, the Court concludes that the 80th Legislature's approval and publication of the proposed amendments did not violate Article 16, Section 1 because the proposed amendments were referred to the Legislature then next to be chosen and published pursuant to NRS 218D.802 for three months next preceding the time of making such choice.

ORDER AND FINAL JUDGMENT

IT IS HEREBY ORDERED THAT the Court **DENIES** the Motion for Summary Judgment and Writ Relief filed by Plaintiffs/Petitioners Lander County, Pershing County and White Pine County and the Joinder thereto filed by Plaintiffs/Petitioners Elko County ex rel. Board of Elko County Commissioners.

IT IS HEREBY FURTHER ORDERED THAT the Court **DENIES** the Motion for Summary Judgment, Permanent Injunction, and Writ of Prohibition filed by Plaintiff/Petitioner Nevada Gold Mines.

IT IS HEREBY FURTHER ORDERED THAT the Court **GRANTS** the Countermotions for Summary Judgment filed by Defendants/Respondents State and Legislature.

IT IS HEREBY FURTHER ORDERED THAT, having considered all claims for relief alleged in the Plaintiffs/Petitioners' Complaints and Petitions, the Court **ENTERS A FINAL JUDGMENT** in these consolidated cases in favor of Defendants/Respondents adjudicating all the claims of all the parties as a matter of law.

IT IS HEREBY FURTHER ORDERED THAT the Legislature's counsel, LCB Legal, shall serve written notice of entry of this Order and Final Judgment on all other parties and file proof of such service within 7 days after the Court sends this Order and Final Judgment to said counsel, by electronic mail, pursuant to FJDCR 3.10(b) and the parties' stipulation and consent in writing to service by electronic mail.

DATED: January 27, 2021

James Ellsworth
DISTRICT COURT JUDGE

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Submitted on the **12th** day of January, 2021, by:

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