

In the Supreme Court of the State of Nevada

CARYNE SHEA, individually and as next friend of her minor children A.S. and M.S.; VENECIA SANCHEZ, individually and as next friend of her minor child Y.S.; BETH MARTIN, individually and as next friend of her minor children R.E. and H.E.; CALEN EVANS, individually and as next friend of his minor child C.E.; PAULA ARZOIAN, individually and as next friend of her minor child A.A.; KAREN PULEO, individually and as next friend of her minor children J.D.Jr., Jas.D., and Jac.D.; CHRISTINA BACKUS, individually and as next friend of her minor child D.B.; CAMERON BACKUS, individually and as next friend of his minor child D.B.; ALEXANDRA ELLIS, individually and as next friend of her minor children L.E., M.E., and B.E.,

Appellants,

vs.

THE STATE OF NEVADA; THE NEVADA DEPARTMENT OF EDUCATION; JHONE EBERT, Nevada Superintendent of Public Education, in her official capacity; NEVADA STATE BOARD OF EDUCATION; DOE INDIVIDUALS, I-XXV; ROE ENTITIES, I-XXV,

Respondents.

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Case No.: 82118

District Court Case No.: 20OC 000421B

JOINT APPENDIX VOLUME 1

ALPHABETICAL INDEX TO JOINT APPENDIX

<u>Document Name</u>	<u>Date</u>	<u>Page No.</u>	<u>Vol.</u>
Acceptance of Service of Summons and Complaint for All Defendants	March 16, 2020	JA0038 – JA0039	1

<u>Document Name</u>	<u>Date</u>	<u>Page No.</u>	<u>Vol.</u>
Complaint for Declaratory and Injunctive Relief	March 4, 2020	JA0001 – JA0037	1
Defendants’ Motion to Dismiss	April 23, 2020	JA0040 – JA0062	1
Defendants’ Reply Supporting Motion to Dismiss	August 31, 2020	JA0089 – JA0096	1
Notice of Entry of Order Granting Defendants’ Motion to Dismiss	October 26, 2020	JA0102 – JA0111	1
Order Granting Defendants’ Motion to Dismiss	October 7, 2020	JA0097 – JA0101	1
Plaintiffs’ Notice of Appeal	November 17, 2020	JA0112 – JA0125	1
Plaintiffs Caryne Shea, et al.’s Response to Defendants’ Motion to Dismiss	August 31, 2020	JA0063 – JA0088	1

DATED this 8th day of April, 2021

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CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of April, 2021, a true and correct copy of the **ALPHABETICAL INDEX TO JOINT APPENDIX** was served upon all counsel of record by electronically filing the document using the Nevada Supreme Court's electronic filing system.

By /s/ Danielle Fresquez
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10
11 **FIRST JUDICIAL DISTRICT COURT**
12 **IN AND FOR CARSON CITY, NEVADA**

13 CARYNE SHEA, individually and as
14 next friend of her minor children A.S.
and M.S.; VENECIA SANCHEZ,
15 individually and as next friend of her
minor child Y.S.; BETH MARTIN,
16 individually and as next friend of her
minor children R.M. and H.M.; CALEN
17 EVANS, individually and as next friend
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20 Jac.D.; CHRISTINA BACKUS,
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22 minor child D.B.; ALEXANDRA ELLIS,
individually and as next friend of her
23 minor children L.E., M.E., and B.E.,

24 Plaintiffs,

25 vs.

26 THE STATE OF NEVADA; THE
NEVADA DEPARTMENT OF
27 EDUCATION; JHONE EBERT, Nevada
Superintendent of Public Education, in
28 her official capacity; NEVADA STATE

Case No.: 20 02 00042 1B
Dept. No: II

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

1 BOARD OF EDUCATION; DOE
2 INDIVIDUALS, I-XXV; ROE ENTITIES,
3 I-XXV,

4 Defendants.

5 Plaintiffs, by and through their attorneys of record, allege as follows:

6 **I. INTRODUCTION**

7 1. By this lawsuit, Plaintiffs challenge the adequacy of the Nevada public
8 school system, its funding and resources, and its outcomes which fall egregiously
9 short of the sufficiency required by the Nevada Constitution, the laws of this State,
10 and the pronouncements and benchmarks set by the State itself.

11 2. The Plaintiff Students inhabit one of the lowest-rated and worst-
12 performing state school systems in the United States.

13 3. The Nevada system of public education is in crisis, and has been for
14 decades. In fact, the crisis of poor public schools in this state has lasted so long as to
15 have been normalized as an immutable *status quo*. The endemic problems of
16 education in Nevada are longer-lasting than any administration or legislative control
17 by any political party; generations of inaction and shortfalls have left schoolchildren
18 without the tools to succeed in higher education and in eventual careers.

19 4. Solutions to the lack of educational resources, so long leaving students
20 short of announced goals and life opportunities, will require massive, sustained
21 community efforts, and will require the input and energies of legislators, members of
22 the executive branch, school administrators, teachers and staff, citizens far and wide,
23 and jurists. The task is indeed daunting, but the need is too great to continue any
24 longer without forcing the legal issues this lawsuit raises to the fore.

25 5. Plaintiffs ask this Court to determine and find that Nevada public
26 education has fallen short of the requirements of the Nevada Constitution in
27 providing the resources necessary to ensure a basic, uniform, and sufficient education
28 for the schoolchildren of this state.

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II. PARTIES

6. Plaintiffs are parents of students enrolled in Nevada public schools and are residents of and taxpayers in the State of Nevada. Their children receive English Language Learning instruction, free and reduced lunch programs, special needs education, and gifted and talented educational programs. They represent the social class, ethnic, and geographic diversity of Nevada.

7. Plaintiff Caryne Shea is an individual, parent, and guardian of minor children Audrey and Margot Shea, who attend school in the Clark County School District.

8. Plaintiff Venecia Sanchez is an individual, parent, and guardian of minor child Yelena Sanchez, who attends school in the Clark County School District.

9. Plaintiff Beth Martin is an individual, parent, and guardian of minor children Reed and Hollis Martin, who attend school in the Washoe County School District.

10. Plaintiff Calen Evans is an individual, parent, and guardian of minor child Caden Evans, who attends school in the Washoe County School District.

11. Plaintiff Paula Arzoian is an individual, parent, and guardian of minor child Andon Arzoian-Taylor, who attends school in the Washoe County School District.

12. Plaintiff Karen Puleo is an individual, parent, and guardian of minor children Jeloy Jr., Jasmin, and Jacob Decker, who attend school in the Washoe County School District.

13. Plaintiff Christina Backus is an individual, parent, and guardian of minor child Deklan Backus, who attends school in the Clark County School District.

14. Plaintiff Cameron Backus is an individual, parent, and guardian of minor child Deklan Backus, who attends school in the Clark County School District.

15. Plaintiff Alexandra Ellis is an individual, parent, and guardian of minor children Lauralee, Matthew, and Bodie Ellis, who attend school in the White Pine

1 County School District.

2 16. Defendant the State of Nevada is here sued *ex rel* its Department of
3 Education, the Nevada State Board of Education, and the individual defendants
4 named herein.

5 17. Defendant the Nevada Department of Education is the executive agency
6 of the State of Nevada responsible for the administration of public education in
7 Nevada.

8 18. Defendant Jhone Ebert serves as Nevada Superintendent of Public
9 Education, and is the primary executive officer of the Nevada Department of
10 Education responsible for the administration of public education in Nevada

11 19. Defendant the Nevada State Board of Education is the executive agency
12 of the State of Nevada that sets policy ensuring equal access for every Nevada
13 schoolchild to educational services

14 20. Defendants herein are sometimes referred to, collectively, as the "State,"
15 for purposes of brevity.

16 **III. JURISDICTION AND VENUE**

17 21. This Court has subject matter jurisdiction pursuant to Article 6 of the
18 Nevada Constitution, which vests the judicial power of the State herein.

19 22. This Court has jurisdiction over Defendants pursuant to NRS 14.065
20 because Defendants are all public officers or departments of the State of Nevada and
21 have sufficient minimum contacts with the State of Nevada to render the exercise of
22 jurisdiction by Nevada courts permissible under traditional notions of fair play and
23 substantial justice.

24 23. Venue is proper in this Court, pursuant to NRS 13.020, because the
25 causes of action, or some part thereof, arose herein, as Defendants are all public
26 officers or departments whose respective offices are required to be kept in Carson
27 City, Nevada.

28

1 IV. FACTS AND ALLEGATIONS

2 24. In *Guinn v. Legislature*, 119 Nev. 460, 474, 76 P.3d 22, 32 (2003), the
3 Nevada Supreme Court held that Nevada students have a basic right to a public
4 education, pursuant to the Education Article of the Nevada Constitution, Article XI.
5 This right is fundamental.

6 25. The Court, citing *Brown v. Board of Education*, 347 U.S. 483, 493, 74
7 S.Ct. 686, 98 L.Ed. 873 (1954), stated that “[E]ducation is perhaps the most
8 important function of state and local governments.... [Education] is the very
9 foundation of good citizenship. Today it is a principal instrument in awakening the
10 child to cultural values, in preparing him for later professional training, and in
11 helping him to adjust normally to his environment. In these days, it is doubtful that
12 any child may reasonably be expected to succeed in life if he is denied the opportunity
13 of an education.” *Guinn*, 119 Nev. at 31-32, 76 P.3d at 474.

14 26. Furthermore, the Court went on to exhort, “No other governmental
15 service plays such a seminal role in developing and maintaining a citizenry capable
16 of furthering the economic, political, and social viability of the State.” *Id.* at 32, 76
17 P.3d at 474-75 (*quoting Claremont School Dist. v. Governor*, 142 N.H. 462, 703 A.2d
18 1353, 1356 (1997)).

19 27. It is abundantly clear that under the Nevada Constitution and its
20 relevant interpretations by its highest court, the State must assure that the
21 essentials of a sound education are provided by the system of public schools.

22 28. Children are entitled to adequate physical facilities and classrooms.
23 Children must have access to adequate instrumentalities of learning such as desks,
24 chairs, pencils, and reasonably current textbooks. Children are also entitled to
25 adequate teaching, in classes of appropriate size, of reasonably up-to-date basic
26 curricula such as reading, writing, mathematics, science, and social studies, by
27 sufficient personnel adequately trained to teach those subject areas. Teaching
28 personnel must furthermore be provided with the necessary resources to perform the

1 required instruction that will support the child’s educational rights. Children are
2 entitled to basic supports to meet their individual needs. Children are entitled to
3 appropriate levels of staffing to ensure the opportunity to learn and thrive, including
4 but not limited to qualified educators, paraprofessionals, counselors, social workers,
5 administrators, and other essential staff. Children are entitled to up-to-date and safe
6 learning environments

7 29. The State of Nevada has failed to meet the above-referenced standards
8 of a basic, sufficient, uniform, and constitutional public school educational system.

9 **A. Nevada’s Student Population**

10 30. According to the Nevada Department of Education, as of October, 2019,
11 approximately 500,860 students attend Nevada public schools.

12 31. More than 70,000 of those students are classified as English Language
13 Learners (“ELL”).

14 32. More than 327,000, or 65%, of Nevada students qualify for free or
15 reduced-fee lunch programs (“FRL”), indicating disadvantaged or precarious
16 economic circumstances.

17 33. More than 63,000 Nevada students qualify for individual education
18 plans (“IEP”) indicating a need for specialized services in education.

19 34. Approximately 10,000 students are enrolled in gifted and talented
20 education (“GATE”) programs, with many students going unidentified due to
21 insufficient resources.

22 **B. Nevada’s Public Schools Performance**

23 35. Nevada continue to hold places near the top of every “bad” list, and the
24 bottom of every “good” list, in myriad rankings of public schools systems and student
25 performance across the country.

26 36. In *Education Week’s* most recent Quality Counts reports, Nevada
27 ranked 50th out of 50 states and the District of Columbia in the Chance-for-Success
28 Index (measuring educational opportunities and performance). The index tracks the

1 share of students enrolled in preschool, proficiency in K-12 reading and math, high
2 school graduation rates, along with parent education and employment factors.

3 37. Nevada ranked 50th out of 50 states in the Quality Counts School
4 Finance Index, receiving an F in education spending, and a D- overall.

5 38. Nevada ranked at or near the bottom of every metric in the nationally
6 recognized Making the Grade 2019 report, receiving an “F” grade in Funding Level,
7 Funding Distribution, and Funding Effort. The report distinguishes Nevada as the
8 most regressive funding formula in the country, meaning wealthier districts receive
9 proportionally more funds than poorer districts

10 39. Children’s Advocacy Alliance’s Children’s Report Card ranks Nevada
11 48th in preschool enrollment, with only 36.7% of 3 and 4 year olds in preschool. It
12 gives the state an “F” grade in School Readiness.

13 40. Nevada has the third largest class sizes and ranked first in the United
14 States of America in class size growth according to the National Education
15 Association. Class size reduction (CSR) program funding, guided by national
16 research, aims to maintain appropriate pupil-teacher ratios for grades Kindergarten
17 through Third Grade. The State’s state goal for CSR is per-pupil ratios of 16:1 for
18 Kindergarten, 17:1 for grades 1 and 2, and 20:1 for grade 3 (with added flexibility for
19 smaller counties).

20 41. In reality, Kindergarten classes average 5 additional students per class,
21 at 21:1, Grades 1 and 2 average more than 19:1, and Grade 3 averages nearly 22:1,
22 according to the State’s most recent NRS 388.700(5) report (“CSR Report”). In total,
23 districts requested 1,024 CSR requirement variances in the most recent quarter. The
24 CSR Report claims CSR allocations “provide sufficient funds for school districts to
25 meet required ratios at the district level.” However, the CSR Report also
26 acknowledges that districts report facilities limitations, lack of funding, and difficulty
27 attracting and retaining high quality teachers as reasons for requesting variances for
28 class size limitations.

1 42. In Grades 4 through 12, class sizes continue to grow, and CSR funding
2 has not been offered for most students beyond 3rd Grade. This leads to severe
3 overcrowding, lack of supplies, and even insufficient chairs and desks in many high
4 school classrooms.

5 43. In addition, the Nevada Report Card reports that in the 2018-19 school
6 year, 3,308 long term substitutes, rather than permanent, qualified teachers, taught
7 elementary students across the state. This is up from 1,623 from the previous year.

8 44. Title 1 and low-rated schools, typically with higher concentration of
9 students with unique educational needs, are especially affected by the use of long
10 term substitutes, inexperienced teachers, high teacher vacancy rates, and large class
11 sizes. These students often need more individualized supports and experienced
12 educators to be successful.

13 45. Nevada students chronically underperform on national and state
14 assessments.

15 46. The 2019 National Assessment of Educational Assessments (NAEP)
16 scores revealed that only 34% of students are proficient in fourth grade math, with
17 ELL at 11%, low income (FRL) at 25%, and special education students at 11%. Math
18 scores further deteriorate in eighth grade, with 26% proficient overall, and ELL at
19 24%, FRL at 16%, and special education students at 5%.

20 47. Reading scores for NAEP paint a similar picture of chronic
21 underperformance. Only 31% of fourth grade students are proficient in reading, with
22 ELL at 9%, FRL at 24%, and special education students at 10%. Only 29% of eighth
23 grade students are proficient in reading, ELL at 3%, FRL at 20%, and special
24 education student at 6%.

25 48. The Smarter Balanced Assessment Consortium (SBAC) testing, which
26 measures proficiency in state academic content standards, exposes the disconnect
27 between what is expected of Nevada students and their ability to meet state
28 standards.

1 49. In every grade level that takes the SBAC assessment in Math, the
2 majority of students are not proficient. In third grade, 48% of students are proficient,
3 with ELL at 29% and FRL at 40%, and special education at 20%. By fourth grade,
4 proficiency drops to 44% overall, with ELL at 23%, FRL at 35%, and special
5 education at 16%. The downward trend continues in fifth grade, with an overall
6 proficiency rate of 37%, with ELL at a staggering 9%, FRL at 28%, and special
7 education at 10%. And in middle school, seventh grade scores deteriorate to 32%
8 proficient overall, with ELL at 5%, FRL at 21%, and special education scores
9 plummeting to 5%. Unsurprisingly, by eighth grade, a majority of students fail the
10 SBAC Math assessment, with only 30% overall proficient, ELL at 5%, FRL at 20%,
11 and special education at 6%.

12 50. SBAC scores in Reading tell a similar story of gross underperformance,
13 especially for Nevada's most vulnerable students. Only 46% of third graders are
14 proficient, with ELL at 25%, FRL at 38%, and special education at 18%. By fourth
15 grade, 49% students overall meet proficiency, with ELL at 23%, FRL at 41%, and
16 special education at 18%. In fifth grade, overall proficiency is 52%, with ELL sinking
17 to 14%, FRL at 44%, and special education at 14%. By seventh grade, overall
18 students are 50% proficient, with ELL at 8%, FRL at 39%, and special education at
19 11%. By eighth grade, students are 48% proficient, with ELL at 8%, FRL falling to
20 37%, and special education at 9%.

21 51. Insufficient professional development, lack of curricula aligned content
22 standards and higher education requirements, and other resource deficits have
23 impacted students achievement in SBAC assessments and overall achievement.

24 52. Abysmal college readiness scores and high remediation rates reveal that
25 despite recent increases in state graduation rates, students continue to graduate
26 unprepared for college. In the 2016-17 school year the graduation rate improved
27 when the State removed the high school proficiency exam requirement, instead using
28 End of Course examinations to determine proficiency. In the 2017-18 school year,

1 students need not pass the exam, only participate. Currently, the End of Course
2 exam still only accounts for a portion of the final grade for the class, and thus a
3 students can fail the exam while still passing the course and graduating.

4 53. Nevada students' results on the American College Testing exam (ACT),
5 a college admission exam that measures college readiness, exposes the disconnect
6 between the State's stated goal of ensuring college readiness and the reality for most
7 students.

8 54. Nevada has the worst ACT scores in the United States, scoring last in
9 English, Reading, Math, and Science. Only 38% of Nevada students succeed in
10 English, 27% succeed in Reading, 22% succeed in Math, and 19% in Science. This
11 exam is an essential measurement of readiness in most college and universities.

12 55. Even when Nevada students do manage to attain places in institutions
13 of higher education, high remediation rates stifle students' ability to succeed.

14 56. According to a recent report by the Nevada System of Higher Education
15 (NSHE) titled "Traditional Remediation is Not Working," 27% of Nevada graduates
16 that attend a four year university in Nevada require remedial education courses.
17 Two-year university have a much higher rate of remedial students, at 67%. The
18 report explains that students placed in remedial college course are less successful
19 and less likely to take full advantage of educational opportunities than their non-
20 remedial counterparts.

21 57. Remedial Placement and Enrollment reporting pursuant to NRS
22 396.548 illustrates how more than half of all recent high school graduates attending
23 NSHE institutions are placed into remedial courses in Math and/or English. Even
24 more concerning, Black/African American students are placed at a rate of 70%,
25 Hispanic/Latino at 63%, and American Indian/Alaska Native at 55%.

26 58. Career and Technical Education (CTE) schools improve college and
27 career readiness, but are unavailable for many students, and are unfunded for
28 primary grades. Similarly, other courses and programs for earning college credits

1 are unavailable to many students.

2 **C. Constitutional Provisions Related To The Basic**

3 **Right To Education In Nevada**

4 59. Nev. Const., Article XI, Section 1, states, “The legislature shall
5 encourage by all suitable means the promotion of intellectual, literary, scientific,
6 mining, mechanical, agricultural, and moral improvements.”

7 60. Nev. Const., Article XI, Section 2, reads, in relevant part, “The
8 legislature shall provide for a uniform system of common schools, by which a school
9 shall be established and maintained in each school district [...]”

10 61. Nev. Const., Article XI, Section 6, reads, “In addition to other means
11 provided for the support and maintenance of said university and common schools, the
12 legislature shall provide for their support and maintenance by direct legislative
13 appropriation from the general fund. The Legislature shall enact one or more
14 appropriations to provide the money the Legislature deems to be sufficient, when
15 combined with the local money reasonably available for this purpose, to fund the
16 operation of the public schools in the State for kindergarten through grade 12.”

17 **D. Statutes, Regulations, Official State Policies, Standards,**

18 **And Goals In Nevada Public Education**

19 62. By devising an intricate statutory and regulatory scheme of content and
20 curriculum requirements to be implemented by common schools in this state, the
21 Legislature and the State of Nevada have already defined the contours of a the
22 meaning of a basic, sufficient public education, and a uniform system of common
23 schools.

24 63. A constitutional, basic education must mean the State provides for an
25 education that prepares all students to participate in civic and social life as informed
26 citizens, who are able to read, write, and think critically and understand and solve
27 practical mathematic problems, and to exit the K-12 education system able to
28 succeed in a 21st-century workforce, college, and a lifetime of continued learning.

1 64. The State must provide sufficient opportunity for all students to succeed
2 in core academic subjects; ensure the availability of high quality teachers and staff
3 with appropriate endorsements; provide access to appropriate class sizes and
4 adequate, safe facilities; ensure students and educators have access to necessary
5 tangible resources; and make available additional supports for students with
6 exceptional needs, such as English Language Learners (ELL), special education
7 students, students who are at risk or living in poverty and gifted and talented
8 students.

9 65. By the State’s own standards, policies, and expectations, it has not
10 provided for the support and maintenance of those common schools, or provided the
11 necessary appropriations to districts to achieve the very system they have put in
12 place. The State has not funded districts at a constitutional level to achieve its own
13 mandated standards, and has failed in a concrete way to fund to the cost of providing
14 a constitutionally-adequate education.

15 66. Nevada has statewide academic standards, rules, and regulations
16 governing nearly every facet of public education, and several reports and findings
17 useful in defining an adequate or constitutional education

18 67. Furthermore, the State, its agents and elected representatives have
19 made official pronouncements of goals and standards that assist in fashioning a
20 definition and structure of a basic education in Nevada.

21 68. NRS 385.005(3) states “[t]he State Board shall [...] advise the
22 Legislature at each regular session of any recommended legislative action to ensure
23 high standards of equality of educational opportunity for all children in the State of
24 Nevada.”

25 69. Further, per NRS 385.3593(2)(d)(1)(I)-(III), the State Board is required
26 to make plans to improve the achievement of children in public schools, including
27 strategies to “instruct pupils who are not achieving to their fullest potential...,” which
28 includes ensuring an appropriate curriculum, improving instruction so that students

1 can achieve on necessary examination and college and career readiness assessments,
2 and ensuring instruction and curricula that improves achievement and for all
3 student groups identified in measurements of statewide accountability.

4 70. At a minimum, according to the State's own statutory, regulatory, and
5 policy pronouncements, a sufficient and basic public education must address and
6 achieve the following:

- 7 • All students are expected to master the Common Core standards,
8 which "will need to be translated into classroom teaching in a
9 manner which will ensure that teachers help all pupils master these
10 new standards." S.B. 14, 2011 Nev. Leg. (2011) (enacted as preamble
11 to NRS 389.0187).
- 12 • Students must be taught in English, mathematics, science, and
13 social studies. NRS 389.018(1)
- 14 • High school students also need access to laboratory courses and
15 several history courses. NRS 389.018(2).
- 16 • High school student must pass four end-of-course examinations in
17 courses designed to prepare them college and career to receive a high
18 school diploma. NRS 389.805(2)(a).
- 19 • All students should have the opportunity to take the subjects to
20 ensure career readiness. NRS 388.380.
- 21 • Certain tangible classroom supplies are necessary to achieve
22 academically. For example, "tools might include pencil and paper,
23 concrete models, a ruler, a protractor, a calculator, a spreadsheet, a
24 computer algebra system, a statistical package, or dynamic geometry
25 software." Common Core State Standards Initiative, Standards for
26 Mathematical Practice, (last visited January 1, 2020), available at
27 <http://www.corestandards.org/Math/Practice/> (as referenced in the
28 State Board regulations).

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- Additionally, clean and safe campuses, lab space, air conditioned rooms, desks, pencils, paper, computers, or other supplies and learning spaces are needed to achieve. NRS 393.100 (buildings must be in a condition of “comfort and health”); NAC 388.290 (facilities in areas assigned for special education must be comparable to facilities for regular education); NRS 388.133, NRS 388.1342 (statutes related to ensuring a safe and respectful learning environment).
- “States and districts recognize that there will need to be a range of supports in place to ensure that all students, including those with special needs and English language learners, can master the standards. It is up to the states to define the full range of supports appropriate for these students.” Common Core State Standards Initiative, *Read the Standards* (last visited January 1, 2020), available at <http://www.corestandards.org/read-the-standards/> (as referenced in the State Board regulations).
- High quality pre-k, especially for children who are at risk or with special needs, is deemed necessary to close the achievement gap and prepare students for successfully entering the K-12 system. NRS 388.475 (for children with special needs); NRS 388.475 (a “special program for gifted and talented students);
- The State should impose and enforce class size restrictions to ensure student reasonable teacher to student ratios for all students. NAC 388.150 (special education); NRS 388.700 (regulates teacher to student ratios for Core Curriculum classes, with full time, licenses teachers).
- Teachers must receive particular training, endorsements, and licensure to teach and to teach particular grades and subjects. NRS 391.100 (professional license requirements); 391.111 (junior high

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school/high school requirements); NAC 391.087 (Pre-k requirements);
NAC 391.098, NAC 391.125, NAC 391.133, NAC
391.1301(endorsements in varying subjects and bilingual); NAC
391.083 (Licensure requirements); Secondary License (NAC
391.120); NAC 391.180, NAC 391.187 (school counselor); see also
NAC 391.192 – 391.339 (various other relevant and specific teacher
endorsements); NAC 391.3393, NAC 391.343, NAC 391.360-370,
.376, .378, 391, .393 (various special education
qualifications/endorsements); NAC 391.394 (endorsement gifted and
talented education)

- School district personnel must meet certain qualifications and obtain endorsements. NAC 391.160 (endorsements for nursing, psychology, speech therapy, physical therapy, occupational therapy); NAC 3391.170 (professional); NAC 391.175 (conditional); NAC 391.175 (to act as a supervisor of curriculum and instruction).
- The State Board must make a plan to improve achievement to instruct students not achieving which includes a “curriculum appropriate to improve achievement.” NRS 385.3593(2)(d)(1)(I).
- The State Board must provide “appropriate professional development [...] to teachers to ensure their ability to instruct and monitor the achievement of pupils in the Common Core Standards.” *Id*
- Teachers should utilize assessments provide appropriate interventions for students struggling to be college and career ready. NRS 389.807(4)(b).
- Schools must provide students with special need access while still ensuring a free and appropriate education in the least restrictive environment. NAC 388.284(1)(d); *see also* 20 U.S.C.A. 1412 (a)(5) (“A State funding mechanism shall not result in placements that violate

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the requirements of subparagraph (A), and a State shall not use a funding mechanism by which the State distributes funds on the basis of the type of setting in which a child is served that will result in the failure to provide a child with a disability a free appropriate public education according to the unique needs of the child as described in the child’s IEP”).

- Courses of study in academic, career, and personal and social development are to be taught from Kindergarten through 12th grade. NAC 389.187 (teaching students “how to implement strategies and activities which support and maximize the ability of a pupil to learn,” “how to provide the foundation for the development of skills, attitudes and knowledge which are necessary for the pupil to make a successful transition from school to his or her career and from career to career throughout his or her life span,” and “how to develop the foundation for the personal and social development of the pupil as the pupil progresses from kindergarten through high school and into adulthood”).
- ELL students require high-quality education that addresses the academic and linguistic needs that is culturally relevant and emphasizes parental involvement and reducing the achievement gap. NAC 388.640; NRS 388.405; NRS 388-407.
- Gifted and talented eligible students must receive not less than 150 minutes of differential educational activities each week during the school year, unless the student’s individualized plan states otherwise. NAC 388.435(5). Students should be eligible for services from grade K-12, and students under the age of 6 are not ineligible. *Id.* at (1),(3).
- All students must have access to a “safe and respectful learning

1 environment,” as the Legislature has declared it “necessary for
2 [students] to achieve academic success and meet the State’s high
3 academic standards.” NRS 388.132(2). This includes mandating that
4 school staff devote time and attention to reporting and preventing
5 incidents of bullying and cyber-bullying, as well as training. *See e.g.*
6 NRS 388.1343, 388.1351.

7 **E. Curricular Mandates, Standards, And Accountability**

8 71. In recent years, the State has adopted the new academic standards
9 called Common Core standards. The Legislature declared in 2011, Nevada “ha[s]
10 signed on to participate in the Common Core Standards, which are internationally
11 benchmarked standards designed to provide a clear understanding of what pupils are
12 expected to learn so that all pupils in this country have access to a high quality
13 education and are fully prepared for the future and for competing successfully in a
14 global economy.” S.B. 14, 2011 Nev. Leg. (2011) (enacted as preamble to NRS
15 389.0187).

16 72. Further, the Legislature declared that adoption of the standards would
17 “help guide and accelerate Nevada’s K-12 public education system into the future by
18 ensuring that every pupil in this State receives the same standard of education in
19 English language arts and mathematics and by ensuring that pupils are held to a
20 common set of expectations and goals regardless of the geographic region or county
21 within which a pupil attends public school.”

22 73. Rather than list the Common Core standards directly in the Nevada
23 Administrative Code (NAC), the State Board promulgated regulations that cite the
24 Common Core website for every grade level in mathematics and English Language
25 Arts/Literacy. The State Board thus deems the information contained in the website
26 as a proper reference for students and districts to understand the expectations of the
27 State. The website’s information, therefore, can properly be employed to help define
28 the contours of a basic education. *See e.g.* NAC 389.232 (referencing

1 www.corestandards.org for information on adopted state academic content
2 standards).

3 74. According to the web-based information referenced by the NAC,
4 Common Core standards were designed to “help prepare students for college, career,
5 and life,” with specific learning expectations for each grade level. The standards aim
6 to “align with college and career expectations” and are designed to “prepare all
7 students for success in the global economy and society.”

8 75. The English Language Arts (ELA) standards stress “critical thinking,
9 problem solving, and analytical skills that are required for success in college, career,
10 and life.” The ELA standards impose an expectation that students “must learn to
11 read, write, speak, listen, and use language effectively in a variety of content areas,
12 the standards promote the literacy skills and concepts required for college and career
13 readiness in multiple disciplines.” The ELA standards are expected to prepare a
14 student for life outside the classroom in the 21st Century.

15 76. Students are expected to be to be fluent readers, and able to read
16 diverse and progressively challenging text from multiple sources. To meet the
17 “College and Career Readiness Anchor Standards” (CCR Anchor Standards),
18 Common Core requires a “curriculum [that] is intentionally and coherently
19 structured to develop rich content knowledge within and across grades.” These CCR
20 Anchor Standards require students read a variety of text, from multiple disciplines,
21 and that students can identify key ideas and think critically about what they are
22 reading.

23 77. The CCR Anchor Standards for Writing require students write various
24 types of texts, with clear organizational skills, that is well researched, and under
25 varying time frames. To achieve these requirements, students must be able to
26 “devote significant time and effort to writing, producing numerous pieces over short
27 and extended time frames throughout the year.”

28 78. The mathematics standards are designed to impart the “knowledge and

1 skills students need to be prepared for mathematics in college, career, and life...”
2 However, the mathematics standards do not include CCR Anchor Standards, rather
3 the skills need for college, career, and life are “woven throughout” the mathematics
4 standards. More specifically, students are expected to be proficient in understanding
5 and solving problems, reasoning abstractly and quantitatively, constructing viable
6 arguments and critiquing reasoning, modeling with mathematics or using math to
7 solve problems in “everyday life, society, and the workplace,” using math tools
8 strategically, using precision in language, definitions, and calculations, identifying
9 and use structures, and identifying and using regularity in reasoning.

10 79. These standards and expectations, adopted or referenced by the State,
11 identify a workable, broad definition of a basic constitutional education, comprised of
12 the opportunity for all students to attain the skills, in a reasonably equal setting, to
13 think critically and read, speak, and write fluently and in a variety of formats;
14 understand and demonstrate practical mathematical skills; successfully participate
15 in the 21st century workforce and/or college; participate as an active and informed
16 voting citizen; and obtain the skills to be socially viable and a life-long learner.

17 **F. The State Improvement Plan**

18 80. Among the most useful tools in defining and measuring the performance
19 of the State in providing a constitutionally-adequate education is the State
20 Improvement Plan (STIP).

21 81. Pursuant NRS 385.3593, the State Board must develop an annual STIP,
22 to report on the Board strategy for improving student achievement.

23 82. The STIP is useful in defining what the State deems constitutionally
24 adequate, because among other components, the report reviews and analyzes student
25 data collected by the NDOE, identifies problems or factors common in school districts
26 and charter schools, strategizes on ways to improve student achievement, details
27 ways to improve the allocation of resources and the effectiveness of legislative
28 appropriations, and defines goals and benchmarks.

1 83. The STIP identifies what is lacking and what needs to be improved in
2 order to meet the state’s obligation to provide a basic education.

3 84. The STIP must also identify, for each strategy, staff responsible for its
4 success, how long for completion, what criteria to measure success, and an
5 appropriate budget.

6 85. Each of the indicators the STIP considers—assessments, graduation
7 rates, student safety, teacher quality, and others—operates as a discrete measure for
8 achievement in providing the required constitutionally-adequate education

9 86. The STIP states the Nevada Assessment System is designed to ensure
10 “all public school students, no matter where they attend school, receive an adequate
11 education.” The STIP identifies various assessments used to measure student
12 achievement from Pre-K through high school.

13 87. The STIP lays out the vision of the NDOE and the State Board, which
14 is, “All Nevadans ready for success in a global 21st century.”

15 88. The mission of the NDOE and the State Board is “[t]o improve student
16 achievement and educator effectiveness by ensuring opportunities, facilitating
17 learning, and promoting excellence.”

18 89. NDOE’s goal is to ensure Nevada is the “[f]astest improving state in the
19 nation.”

20 90. NDOE judges its progress towards this goal by becoming fastest in the
21 nation several goals, including:

- 22 a. Graduation rate;
- 23 b. ACT average composite score;
- 24 c. Children with disabilities in inclusive early childhood programs;
- 25 d. National Assessment of Educational Progress (NAEP) English
26 language proficiency exam; and
- 27 e. Career and Technical Education (CTE) completers.

28 91. The stated goals of the State Board include:

- 1 a. All students are proficient in reading by the end of 3rd grade;
- 2 b. All students enter high school with the skills necessary to
- 3 succeed;
- 4 c. All students graduate college-, career-, and community-ready;
- 5 d. All students served by effective educators;
- 6 e. Efficient and effective use of public funds in service to students;
- 7 and
- 8 f. All students learn in an environment that is physically,
- 9 emotionally, and intellectually safe.

10 92. The STIP reports on essential indicators of student achievement,
11 identifies problems and factors, and reveal the State’s strategies, goals, and
12 benchmarks that are aligned with the NDOE vision, mission, and goals, along with
13 other strategic plans developed by the state education officials.

14 93. The STIP identifies assessments as a measure and descriptor of student
15 performance. The assessments measure a student’s proficiency in reading, writing,
16 mathematics, and science.

17 94. The STIP specifically demarcates assessment data on the success of
18 ELL, Special Education, Free and Reduced Lunch students, black, white, Hispanic,
19 Asian, American Indian/Alaska Native, and two or more races. Many of the
20 subgroups continue to demonstrate significant deficits in achievement on these
21 assessments, while students in specialized college and career readiness programs
22 demonstrate relatively higher achievement levels.

23 95. The STIP uses graduation rates as an indicator for achievement. The
24 report notes graduation rates for varying racial and ethnic groups. The STIP reveals
25 that American Indian/Alaska Native, Hispanic, and black subgroups graduate at
26 significantly lower levels than white, Asian or multi-racial groups.

27 96. The STIP also reports the number of disciplinary incidents, suggesting
28 the State properly considers a “Safe and Respectful Learning Environment” an

1 essential element in student achievement. The report indicates incidences of violence
2 towards other students, violence towards school staff, weapons possession,
3 distribution of controlled substances, possession or use of alcoholic beverages, and
4 bullying and cyber bullying, and indicates trends year-over-year.

5 97. The STIP states that in accordance with the state's federal Every
6 Student Succeeds Act ("ESSA") plan, NDOE is required to ensure students from low-
7 income families and students of color are not taught by inexperienced, unqualified, or
8 out-of-field teachers at a higher rate than other students.

9 98. The STIP reports the statewide total of staffing and vacancies,
10 distinguishing between various school types, such as Zoom, Victory, 1-star, 2-star, 3-
11 star, 4-star, 5-star schools. It further reports staffing and vacancies at Clark,
12 Washoe, and "other districts." The STIP notes that the high number of teacher
13 vacancies in the past three years is "of particular concern," and notes that there is
14 "an inequitable distribution of high teacher vacancies in 1- and 2-star schools" and at
15 Victory and Zoom schools.

16 99. The STIP reports NDOE monitoring of School Performance Plans to
17 evaluate inclusion of family engagement practices and strategies, expecting that
18 inclusion of these strategies will improve student achievement.

19 100. State law also requires the STIP to identify problems or factors common
20 across the districts and charter schools, revealed through data and analysis.

21 101. The list of problem areas in the 2019 STIP included:

- 22 a. Student performance in reading;
- 23 b. Student performance in mathematics (specifically in middle
24 school);
- 25 c. Student performance in middle school level;
- 26 d. Achievement gaps between student subgroups;
- 27 e. Early childhood preparation;
- 28 f. College and Career Readiness;

- 1 g. Equitable distribution of effective educators; and
- 2 h. Support and respect for educators.

3 102. The 2019 STIP also identified three key levers based on “conversation
4 between Department staff and stakeholders” to improve Nevada’s achievement.

5 These include:

- 6 a. Identifying and improving the state’s lowest performing schools;
- 7 b. Developing and supporting great school leaders; and
- 8 c. Making data informed policy and instructional decisions.

9 103. The STIP further lists and discusses the goals the State itself has
10 identified as crucial in meeting a required constitutionally mandated basic education.

11 104. The State acknowledges, through the STIP, that all students should be
12 proficient in reading by the end of Third Grade.

13 105. The State acknowledges, through the STIP, quality early childhood
14 education (birth through 3rd grade), that includes effective early literacy programs
15 and intervention, is “key to developing the solid groundwork for learning” and
16 ensures equal access to future success for students.

17 106. The State, through the STIP, details several strategies for meeting this
18 objective, including increasing the number of seats of high quality childhood program
19 and increasing access to these programs for students living in poverty, and improving
20 rate of children ages 3-5 with IEPs attending regular programs and receiving
21 services through those programs

22 107. To ensure Kindergarten readiness, the State acknowledges the need to
23 improve the quality of early childhood programs and access to these quality
24 programs.

25 108. The State acknowledges, through the STIP, that effective literacy
26 instruction for both emergent skills and domains of literacy are necessary for student
27 success, along with an aligned system of screening and assessment across early
28 childhood programs, are necessary to ensure all students are proficient in reading, as

1 measured by the Measures of Academic Progress (MAP) assessment.

2 109. The State acknowledges, through the STIP, that all students should
3 enter high school with the skills necessary to succeed, and that all students should
4 graduate secondary school college, career, and community ready.

5 110. The STIP emphasizes the importance of properly implementing
6 academic content standards in English language arts, mathematics, and science.
7 This includes maintaining high quality standards, appropriate professional
8 development and support, implementation of state-approved, evidenced-based
9 instructional materials, and building capacity of school leaders to identify and
10 support high quality instruction.

11 111. The State acknowledges, through the STIP, the state must have an
12 assessment and accountability system aligned with the Nevada Academic Content
13 Standards. Further, the data from these assessments from pre-k through high school
14 “reflects progress towards college and career readiness.”

15 112. The State acknowledges, through the STIP, the need for data-informed
16 improvements. It states that data, analytic support, and assistance in a timely
17 manner are necessary to support lowest performing schools, develop and retain
18 school leaders, and make data-driven decisions.

19 113. The State acknowledges, through the STIP, that NDOE has “a moral
20 and statutory obligation to ensure that schools in all zip codes are performing at the
21 highest levels for students across the state.”

22 114. The STIP states that all 1- and 2-star schools shall become 3-star
23 schools in three years, and that all non-5-star schools must have a plan to become 5-
24 star schools.

25 115. The State acknowledges, through the STIP, the improvement of
26 underperforming schools essential to meeting the goal of college and career
27 readiness. Specialized college and career readiness program tend to yield higher
28 graduation and assessment results.

1 116. The State acknowledges, through the STIP, the need to increase number
2 of students who enter college with credit via dual enrollment, Advanced Placement
3 courses, and IB programs. It further identifies the need for equitable access to these
4 programs, advanced coursework, and work-based learning.

5 117. The State acknowledges, through the STIP, the need to increase adult
6 high school student achievement.

7 118. The State acknowledges, through the STIP, the need to increase the
8 overall cohort graduation rates, along with specifically identifying the need to
9 increase the graduation rates of ELL, African-American students, Latino students,
10 and students with IEPs (special education).

11 119. The State acknowledges, through the STIP, each of these objectives as
12 fundamentally necessary to achieve college and career readiness by graduation for all
13 students, an essential element of an adequate education.

14 120. The STIP demonstrates that quality, effective teachers and support are
15 essential for, and therefore necessary to, appropriate student achievement.

16 121. The State has announced objectives for meeting this standard, including
17 strengthening education preparation programs, reducing licensing barriers and
18 maintaining meaningful measures for full-state certification, identifying and
19 addressing educator equity gaps for all students, building capacity for teacher
20 preparation programs.

21 122. The State acknowledges through the STIP, the need to increase high
22 performing educator preparation programs, including increasing program completer
23 specifically for diverse, high-needs schools.

24 123. The State acknowledges, through the STIP, the need to reduce
25 provisional licenses (temporary licenses issued with deficiencies in coursework or
26 testing).

27 124. The State acknowledges, through the STIP, the need for improved
28 parent engagement and NDOE is equally responsible for supporting parent

1 engagement as district and school staff.

2 125. The STIP makes clear the need for access to high quality instructional
3 materials for teachers.

4 126. The STIP notes family engagement as key to educational success, and
5 aims to increase schools using the Nevada Parent Family Engagement Standards.

6 127. The State acknowledges, through the STIP the need to reduce the
7 chronic absenteeism rate by engaging families.

8 128. The State acknowledges, through the STIP, each of these objectives as
9 being essential to meeting the goal of having effective educators serving the needs of
10 all students, a fundamental aspect to providing an adequate education.

11 129. The State has acknowledged, through successive annual STIP, that
12 appropriate levels of funding, and proper and efficient use of funds, are key to
13 providing an adequate education.

14 130. The STIP recognizes the need for modernized audits, effective internal
15 systems for distribution and oversight of funds, and better compliance with usage
16 and tracking of funds.

17 131. The State acknowledges, through the STIP, that social and emotional
18 learning is essential for student success, and is linked to improved performance in
19 within the classroom and assessment.

20 132. The State acknowledges, through the STIP, the need for increased
21 school safety, including additional supports, programs, and social workers; a decrease
22 in violence, expulsions, and suspensions, and decreases in bullying and chronic
23 absenteeism.

24 133. The State acknowledges, through the STIP, that the STIP must include
25 analysis and strategies to improve the allocation of resources to public education, but
26 the State has failed to create the statutorily mandated automated system for
27 accountability under NRS 386.650. NDOE, therefore, proposes continuing 2014
28 exploratory work of analyzing how State allocation of resources improved academic

1 achievement.

2 134. As delineated herein, the State has set forth concrete, measurable
3 standards by which to gauge whether the public education system in Nevada has met
4 the necessary constitutional requirements.

5 **G. Nevada's Public School Finance System**

6 135. The State currently funds public schools and charters through a
7 formula-based funding mechanism known as The Nevada Plan. NRS 387.121.
8 Pursuant to Senate Bill 543 (2019), the State will transition to a new school funding
9 formula known as the Pupil-Centered Funding Plan (PCFP) in the 2021-2022 school
10 year.

11 136. Under both models, public schools receive funding from a combination
12 state, local, and federal sources. Currently, public education funds are comprised of
13 34% state, 57% local, and 9% federal funds.

14 137. Pursuant to NRS 387.121(1), the Legislature "declares that the proper
15 objective of state financial aid is to ensure each Nevada child a reasonably equal
16 educational opportunity."

17 138. The Nevada Plan formula divides up a legislatively-determined
18 allocation to school districts and charter schools, determining a guaranteed per pupil
19 funding amount, derived from both state and local sources. This guaranteed funding
20 source accounts for approximately 80% of school districts' and charter schools'
21 general fund resources.

22 139. Nevada Plan funding consists of state level funds through the
23 Distributive School Account (DSA) and local revenue sources such as Local School
24 Support Tax (LSST) set at 2.6% and one-third of proceeds from a 75-cent ad valorem
25 property tax. State law dictates both the LSST and the property tax rate, therefore
26 counties cannot raise additional revenue to support district general fund revenues
27 outside state law mandated restrictions.

28 140. The Legislature determines the statewide guaranteed per-pupil funding

1 levels by taking the total amount the legislature dedicates for public education and
2 dividing that total by the number of students enrolled in the state. That base per-
3 pupil funding level is then adjusted to account for cost variances due to geography,
4 scarcity, density, and available local wealth.

5 141. The difference between total guaranteed support and available local
6 funds (LSST and 1/3 ad valorem property tax) determines the state contribution to
7 the basic support guarantee. Theoretically, if local revenue sources come up short in
8 any given year, the state aid would increase to make up the shortfall. However, in
9 practice, the State has failed to make up for shortfalls.

10 142. In addition to the basic support guarantee, school districts receive local
11 funds that are not guaranteed by the State. This revenue includes 2/3 of the proceeds
12 of the 75-cent ad valorem property tax rate, a share of the basic governmental service
13 tax, franchise tax, interest income, tuition, unrestricted federal funds, and other local
14 revenues. Like the basic support revenue sources, state law dictates revenue sources
15 and rates, and local counties cannot raise additional revenue for the district general
16 fund outside of these restrictions. Additionally, since these outside local resource are
17 not guaranteed by the state, if actual revenue levels come in under projections, the
18 district incurs a loss in available funding.

19 143. Special education services are funded through a weighted funding
20 model, where students eligible for special education services receive a multiplier of
21 the statewide average basic support per pupil amount. NRS 387.122 (2015).
22 However, districts that exceed 13% enrollment of eligible students receive 50% of the
23 weighted funding level.

24 144. The State provides no weighted funding for GATE students. Instead,
25 GATE is funded with a limited appropriation, where many districts are forced to
26 limit GATE offerings to certain grade levels. Eleven out of 17 districts receive no
27 state funding to provide GATE services.

28 145. The State provides no weighted funding for at-risk or low-income

1 students, FRL, or ELL students. High-needs schools may benefit from limited pilot
2 programs funded outside the Nevada Plan funding formula and through direct
3 legislative appropriation. These programs often dictate how funds can be used and
4 which schools are eligible. The Zoom programs provide additional supports to high-
5 concentration ELL schools, Victory programs serve high concentration low-income
6 schools, and SB 178 serves low achieving students in low performing schools. These
7 programs are funded directly from the state and outside the Nevada Plan funding
8 formula. Mandates for how funding is spent limit the use of most funds for
9 designated purposes, such as pre-kindergarten, extended school day, summer
10 programs, reading skills centers, or professional development, and cannot be used to
11 support other school or district needs. An estimated 68% of ELL students and 84% of
12 FRL students receive no state funding to support programs and services to meet their
13 unique needs.

14 146. Rural school districts often receive so little funding through categorical
15 grants that they must spend additional dollars out of their general education budget
16 in order to effectively utilize grant funding to serve vulnerable student groups.

17 147. One problem that looms large for rural school districts, but is a problem
18 generally for school finance in Nevada, is the lack of state support for facilities and
19 maintenance. Research consistently links availability and condition of school
20 facilities with student performance. Nevada provides no reliable state support for
21 capital outlay, unlike the vast majority of states. The State also fails to provide
22 guidance and oversight for districts that have been struggling to provide adequate
23 and safe spaces for student learning.

24 148. The State has left funding to support school buildings and facilities to
25 local districts, yet the State largely dictates limits on how funds can be raised. NRS
26 387.328, 387.335. Taxes authorized by the Legislature and counties, voter approved
27 funding, and other local and federal revenues support capital funding. See NRS
28 377.B160, NRS 244.307, 244.3354, 375.070, 387.328, 387.3285, 387.3228, 387.331,

1 387.3326. Voter approval, tax-rate caps, and abatement caps have created significant
2 challenges for districts. The State’s “Fund to Assist School Districts in Financing
3 Capital Improvements” is currently unfunded. NRS 387.333. School districts are
4 completely reliant on these revenue sources, and do not have the authority to
5 independently raise revenue.

6 149. Further exacerbating the problem, operational fund dollars are often
7 used for repair and maintenance of facilities. Deferred maintenance has become a
8 chronic and growing problem. Insufficient maintenance of school buildings has led to
9 increases in capital construction costs over time. The legislatively-commissioned
10 Spending and Government Efficient (SAGE) Commission reported that districts
11 estimate that every \$1 in deferred maintenance cost will result in \$4 in future capital
12 costs.

13 150. CCSD is currently facing a \$6.1 billion shortfall for capital and
14 maintenance needs through 2025. Common problems include insufficient space for
15 appropriate class sizes and a triage approach to maintaining a crumbling
16 infrastructure, rather than replacing and modernizing older buildings. Children
17 attempt to maintain focus in cramped rooms and portables, sometimes without A/C
18 in triple digit temperatures, and they face a myriad of other infrastructure related
19 challenges.

20 151. Rural counties, with even less options for raising capital funding, do not
21 have a foreseeable way out of their aging infrastructure. White Pine CSD maintains
22 over \$10 million in deferred maintenance, and has two school buildings that are over
23 100 years old. Attempts to update the building to account for newer technology, A/C,
24 and heating have led to a patchwork of visible wires and cables covering walls.
25 Schools struggle with adequate space for parking and are unable to implement
26 disaster preparedness strategies. Students with limited mobility must be carried up
27 flights of stairs due to lack of elevators or ramps. Insufficient funding has left the
28 schools non-compliant with the Americans with Disabilities Act, and more

1 importantly, has hindered access for students with unique needs.

2 152. The SAGE commissioned recommended reforms to increase the state's
3 involvement in capital and maintenance needs, but the State has failed to take
4 action.

5 153. Other revenue funds outside the Nevada Plan include various
6 categorical funds from state, local, federal, and private sources. Typically, school
7 districts and schools can only use these funds for limited purposes, and therefore
8 these revenue source cannot support many basic operational expenses.

9 154. In 2019, lawmakers passed SB 543, changing some aspects of the
10 Nevada Plan. Rather than distinguishing between funds inside and outside the
11 Nevada Plan funding formula, the PCFP deposits various revenue sources into a
12 single account, the State Education Fund. NRS 387.1214. The Legislature will
13 continue to determine a base per-pupil funding amount, which will then be adjusted
14 by different cost factors to account for cost differential related to small districts,
15 necessarily small schools, and wage differences. NRS 387.1214. Like the Nevada
16 Plan, these cost factors are used to divide the legislatively determined funds made
17 available for public education in the state, not to determine actual funding necessary
18 to meet student needs.

19 155. Additionally, the PCFP will convert categorical funding for programs
20 such as Zoom, Victory, and SB 178 into a per-pupil weight for ELL and low-income
21 students. NRS 387.1212, 387.1213. However, there are no target weights codified in
22 statute, and there is no indication the weight will be determined based on actual
23 student need or constitutional sufficiency.

24 156. Similarly, GATE grant funds will also convert to a weight. *Id.* Again, no
25 target weights are codified in statute, and no indication the weight will be
26 determined based on actual student need.

27 157. Neither the Nevada Plan nor the PCFP provide weighted funding or
28 account for pre-kindergarten needs, which is currently funded through state

1 categorical grants and federal funds. Access to pre-kindergarten services is scant and
2 unpredictable, despite recognition by the state that it is essential to kindergarten
3 readiness.

4 158. Importantly, the Legislature did not allocate additional state funding to
5 support the PCFP.

6 159. Accordingly, the PCFP will merely redistribute the existing funding
7 sources and will spread thin dollars that currently serve only a fraction of low income
8 and ELL students. *See Meeting Minutes of the Assembly Committee on Ways &*
9 *Means and the Senate Committee on Finance Joint Hearing on SB 543 (May 21,*
10 *2019) (Testimony of David Jensen, Superintendent, Humboldt County School District*
11 *stating that SB 543 “simply redistributes inadequate resources creating a series of*
12 *winners and losers”).*

13 160. Currently, the Commission on School Funding is examining potential
14 cost factors, weights, and optimal levels of funding for districts and charter schools.
15 CITE. The Commission’s role is purely advisory, and ultimately the State holds
16 complete authority to ensure sufficient resources for all student pursuant to
17 constitutional requirements.

18 161. Historically, the State failed to implement recommendations from
19 numerous State-commissioned studies and recommending bodies.

20 162. In 2006 and 2018, the State commissioned two studies, conducted by
21 Augenblick, Palaich and Associates (“APA”), to determine the resources necessary for
22 all students to have the opportunity to meet Nevada academic content standards.
23 Both studies found Nevada public schools were grossly under-resourced. The studies
24 recommended adequate levels of educator, administrative, and other staff positions,
25 as well as supports, supplies, technology, and other essential resources. Further, it
26 recommended adequate weights for students with unique needs. *See John*
27 *Augenblick, et al., Estimating a Cost of an Adequate Education in Nevada, APA (Aug.*
28 *2006); APA, Nevada School Finance Study (Oct. 22, 2018).*

1 163. The 2018 APA study recommended base per-pupil funding levels under
2 an adequacy or “professional judgment” approach at \$9,238 for all students, with
3 additional funding for ELL students at a weight of 0.50, FRL at 0.30, and students
4 with disabilities at 1.10. This funding excludes available federal funds and
5 transportation funding. The legislatively commissioned Task Force on K-12
6 Education Funding (“Task Force”) recommended similar weighted funding targets.
7 Other studies have also recommended significant changes to Nevada’s public
8 education system and funding levels. *See e.g. Jay Chamber, et al., Study of a New*
9 *Method of Funding Nevada Public Schools*, Amer. Inst, for Research (2012); APA,
10 *Professional Judgment Study Report*, Lincy Inst., (2015).

11 164. The State has failed to implement the recommendations of its own
12 studies and the Task force. Over the past ten years, state per-pupil funding levels
13 have remained largely flat when accounting for inflation, and have failed to come
14 close the State’s own recommendations.

15 165. Base per-pupil funding for the 2020-21 school year, excluding federal
16 funding and transportation, are \$3,020 below APA’s recommendation.

17 166. When using APA’s recommended adequate base per-pupil funding as
18 the basis for applying weighted funding for students with unique needs, a conversion
19 of existing categorical funds to weights demonstrate a stark disconnect between the
20 resources available to these students and what the State’s own study recommends.

21 167. ELL per-pupil funding levels in the 2020-21 school year amount to a
22 0.09 weight when converting current Zoom school funding dollars, compared to
23 APA’s 0.50 recommended weight.

24 168. FRL per-pupil funding levels in the 2020-21 school year amount to a
25 0.04 weight when converting SB 178 and Victory school funding dollars, compared to
26 APA’s 0.30.

27 169. The 2020-21 school year per pupil weight for special education is 0.21,
28 compared to APA’s recommended weight of 1.10.

1 170. The Commission on School Funding is yet again developing
2 recommendations for appropriate base per pupil funding and weights, but if past
3 actions are any indication, these recommendations are likely to be ignored.

4 171. There is no indication in state law, regulations, or otherwise that the
5 funding levels are determined by accounting for actual costs of ensuring all students
6 have the opportunity to meet state standards or mandates, or by reference and
7 faithfulness to the requirements of a constitutionally-adequate public education.

8 **H. Nevada's Failure To Provide Sufficient**
9 **Resources To Its Students**

10 172. The discrepancy between the legal requirements, policies, and goals for
11 student achievement in this State and the reality of Nevada's public school student
12 performance leaves no doubt that the system serving those students is inadequate to
13 its constitutional task.

14 173. No state can long perform at this woeful educational level and expect its
15 citizens to sit idly by while generations of schoolchildren fall between the ever-
16 widening cracks in the system.

17 174. From achievement scores to class sizes, from teacher quality to on-the-
18 ground resources for student learning, Nevada has failed its schoolchildren.

19 175. It is now abundantly clear that the political branches of Nevada's state
20 government are unable to remedy the deep constitutional infirmities of the statewide
21 public education system, and so this lawsuit, unfortunately, has become necessary.

22 **FIRST CAUSE OF ACTION**

23 **Violation of Nev. Const. Article XI, Section 1**

24 176. The allegations in the preceding paragraphs are realleged and
25 incorporated herein by reference.

26 177. Defendants have failed to provide Plaintiffs' children/students a
27 sufficient education, both qualitatively and quantitatively, as mandated by the
28 Nevada Constitution's Education Clause.

1 178. Defendants have failed to address, implement, enforce, or otherwise
2 meets the guidelines, policies, and goals that it acknowledges form the basis for
3 meeting its constitutional duties in providing a sufficient education for the students
4 of Nevada.

5 179. The primary cause of this failure is the arbitrary and inadequate
6 Nevada public school finance system, which is compounded by Defendants' failure to
7 monitor effectively the expenditure of public funds for education in the State.

8 180. Inadequate and arbitrary funding of critical programs for Plaintiff
9 students deprive them of a qualitative sufficient education.

10 181. Further, failure to implement appropriately and support fully, with
11 sufficient resources, the obligations and duties owed under other constitutional
12 provisions and the State and its Legislature's laws and pronouncements, which
13 inform and give meaning to the Education Clause, violates the Plaintiff students'
14 basic right to a sufficient education in this State.

15 **SECOND CAUSE OF ACTION**

16 **Violation of Nev. Const. Article XI, Section 2**

17 182. The allegations in the preceding paragraphs are realleged and
18 incorporated herein by reference.

19 183. Defendants have failed to provide Plaintiffs' children/students a
20 sufficiently uniform system of common schools, both qualitatively and quantitatively,
21 as mandated by Nevada Constitution, Article XI, Section 2.

22 184. Defendants have failed to address, implement, enforce, or otherwise
23 meets the guidelines, policies, and goals that it acknowledges form the basis for
24 meeting its constitutional duties in providing a sufficient education for the students
25 of Nevada.

26 185. The primary cause of this failure is the arbitrary and inadequate
27 Nevada public school finance system, which is compounded by Defendants' failure to
28 monitor effectively the expenditure of public funds for education in the State.

1 186. Inadequate and arbitrary funding of critical programs for Plaintiff
2 students deprive them of a qualitative sufficient uniform system of common schools.

3 187. Further, failure to implement appropriately and support fully, with
4 sufficient resources, the obligations and duties owed under other constitutional
5 provisions and the State and its Legislature's laws and pronouncements, which
6 inform and give meaning to Nevada Constitution, Article XI, Section 2, violates the
7 Plaintiff students' basic right to a uniform system of common schools.

8 **THIRD CAUSE OF ACTION**

9 **Violation of Nev. Const., Article I, Section 8(2)**

10 188. The allegations in the preceding paragraphs are realleged and
11 incorporated herein by reference.

12 189. Nevada's Due Process Clause provides that "no person shall be deprived
13 of life, liberty, or property without due process of law." Nev. Const. Art. I, Sec. 8(2).

14 190. Plaintiff students have a basic right to a sufficient education but they
15 have been denied the due process in acquiring that right and the successive right to
16 graduation with credentials as established under state statutes.

17 191. Defendants have denied Plaintiff students' due process by a public
18 education funding system that irrationally and unreasonably denies basic
19 educational opportunities and outcomes at the levels set by the State itself.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiffs ask that the Court:

22 A. Declare, following the Nevada Supreme Court, that a sufficient
23 education is a basic right under the Nevada Constitution;

24 B. Declare that the Nevada public education system's current funding
25 system is insufficient to guarantee or secure the basic right of a sufficient education
26 to all Nevada schoolchildren, in violation of the mandates of the Nevada
27 Constitution;

28 C. Enjoin Defendants from giving force and effect to any school finance

1 system unless it satisfies the principles of sufficiency established under Nevada law
2 and policy, and remedies the constitutional, statutory, and regulatory violations
3 identified herein;

4 D. Retain jurisdiction until this Court is satisfied fully with the remedies
5 enacted by Defendants pursuant to the Court's direction;

6 E. Grant Plaintiffs their court costs and reasonable attorney's fees as
7 provided by law and equity; and

8 F. Grant other and further relief as this Court deems just and proper.
9

10 DATED this 4th day of March, 2020. WOLF, RIFKIN, SHAPIRO, SCHULMAN &
11 RABKIN, LLP

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9 *Attorneys for Plaintiffs*

10 **IN THE FIRST JUDICIAL DISTRICT COURT**
11 **OF THE STATE OF NEVADA IN AND FOR CARSON CITY**
12

13 CARYNE SHEA, individually and as next
friend of her minor children A.S. and M.S.;
14 VENECIA SANCHEZ, individually and as
next friend of her minor child Y.S.; BETH
15 MARTIN, individually and as next friend of
her minor children R.E. and H.E.; CALEN
16 EVANS, individually and as next friend of his
minor child C.E.; PAULA ARZOIAN,
17 individually and as next friend of her minor
child A.A.; KAREN PULEO, individually and
18 as next friend of her minor children J.D.Jr.,
Jas.D., and Jac.D.; CHRISTINA BACKUS,
19 individually and as next friend of her minor
child D.B.; CAMERON BACKUS,
20 individually and as next friend of his minor
child D.B.; ALEXANDRA ELLIS, individually
21 and as next friend of her minor children L.E.,
M.E., and B.E.,

CASE NO.: 20 OC 00042 1B
DEPT.: II

22 **Plaintiffs,**

23 vs.

24 THE STATE OF NEVADA; THE NEVADA
25 DEPARTMENT OF EDUCATION; JHONE
EBERT, Nevada Superintendent of Public
26 Education, in her official capacity; NEVADA
STATE BOARD OF EDUCATION; DOE
27 INDIVIDUALS, I-XXV; ROE ENTITIES, I-
XXV,
28

Defendants.

1 **ACCEPTANCE OF SERVICE OF SUMMONS AND COMPLAINT**

2 The undersigned counsel is authorized to and hereby accepts service of the summons and
3 complaint on behalf of the following Defendants:

4 THE STATE OF NEVADA;

5 THE NEVADA DEPARTMENT OF EDUCATION;

6 JHONE EBERT, Nevada Superintendent of Public Education, in her official capacity; and

7 NEVADA STATE BOARD OF EDUCATION

8 DATED this 9th day of March, 2020

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10 FIRST JUDICIAL DISTRICT COURT OF NEVADA

11 CARSON CITY

12 CARYNE SHEA, individually and as next
friend of her minor children A.S. and M.S.;
13 VENECIA SANCHEZ; individually and as
next friend of her minor child Y.S.; BETH
14 MARTIN, individually and as next friend
of her minor children R.M. and H.M.;
15 CALEN EVANS, individually and as next
friend of his minor child C.E.; PAULA
16 ARZOIAN, individually and as next friend
of her minor child A.A.; KAREN PULEO,
17 individually and as next friend of her
minor children J.D.Jr., Jas.D., and Jac.D.;
18 CHRISTINA BACKUS, individually and as
next friend of her minor child D.B.;
19 CAMERON BACKUS, individually and as
next friend of his minor child D.B.;
20 ALEXANDRA ELLIS, individually and as
next friend of her minor children L.E.,
21 M.E., and B.E.,

22 Plaintiffs,

23 THE STATE OF NEVADA; THE NEVADA
DEPARTMENT OF EDUCATION;
24 JHONE EBERT, Nevada Superintendent
of Public Education, in her official
25 capacity; NEVADA STATE BOARD OF
EDUCATION; DOE INDIVIDUALS, I-
26 XXV; ROE ENTITIES, I-XXV,

27 Defendants.
28

Case No. 20 OC 00042 1B

Dept. No. II

1 **DEFENDANTS’ MOTION TO DISMISS**

2 Defendants State of Nevada, the Nevada Department of Education, Jhone Ebert,
3 Nevada Superintendent of Public Education, in her official capacity, and the Nevada State
4 Board of Education (the “Education Defendants”), through their counsel of record, move to
5 dismiss Plaintiffs’ complaint pursuant to NRCP 12(b)(5). This Motion to Dismiss is made
6 and based upon the following points and authorities, the pleadings and papers on file, and
7 any oral argument the Court may allow.

8 **MEMORANDUM OF POINTS AND AUTHORITIES**

9 **I. Introduction**

10 This court should dismiss Plaintiffs’ complaint for failure to state a claim pursuant
11 to NRCP 12 (b)(5). Plaintiffs seek a declaration that a sufficient education is a basic right
12 and that the current school funding system deprives them of this basic right in violation of
13 Article XI, §§ 1 and 2 and Article I, § 8 of the Nevada Constitution. Plaintiffs also seek to
14 enjoin the Education Defendants from implementing any school finance system that fails
15 to satisfy (what amounts to Plaintiffs’) standards of sufficiency under the guise that it is
16 required by Nevada law and policy. Plaintiffs’ claims are nonjusticiable political questions.
17 Even if the court determines the claims are justiciable, Plaintiffs’ complaint should still be
18 dismissed because they fail to allege facts demonstrating violations of the Constitution.

19 First, what constitutes a “sufficient” education and the funding required to provide
20 it are decisions for the Legislature as they “revolve around policy choices and value
21 determinations” that are outside the purview of the judiciary under the political question
22 doctrine. See, *N. Lake Tahoe FPD v. Washoe Cty. Comm’rs*, 129 Nev. 682, 687, 310 P.3d
23 583, 587 (2013).

24 Second, even if the court determines the claims are justiciable, Plaintiffs have failed
25 to plead facts demonstrating that the constitutional provisions at issue guarantee a
26 “sufficient” education or dictate education expenditures. Where the language of a
27 constitutional provision is clear, the analysis should end. Since Plaintiffs have failed to

28 . . .

1 allege facts stating claims for violations of Article XI and Article I of the Constitution, their
2 complaint should be dismissed.

3 **II. Background**

4 **A. The Legislature determines Nevada’s education policy**

5 The blueprint for Nevada’s education policy is found in Article XI of the Constitution.
6 It consists of ten (10) sections that delineate an outline for education policy as determined
7 by the Legislature. Of significance to the instant matter are Sections 1, 2, and 6, which
8 read in part as follows:

9 “The legislature *shall encourage by all suitable means* the promotion of intellectual,
10 literary, scientific, mining, mechanical, agricultural, and moral improvements, ...” NEV.
11 CONST. art. XI, § 1 (emphasis added).

12 “The legislature *shall provide for a uniform system of common schools*, by which a
13 school shall be established and maintained in each school district at least six months in
14 every year, ...” NEV. CONST. art. XI, § 2 (emphasis added).

15 “[T]he Legislature shall enact one or more appropriations to provide the money *the*
16 *Legislature deems to be sufficient*, when combined with the local money reasonably
17 available for this purpose, to fund the operation of the public schools ...” NEV. CONST. art.
18 XI, § 6 (2) (emphasis added).

19 These constitutional provisions were effectuated through the enactment of laws now
20 codified in the Nevada Revised Statutes, Title 34, Chapters 385-400.

21 **B. The Legislature enacts legislation to fund the operation of the public 22 schools**

23 Nevada law declares that “the proper objective of state financial aid to public
24 education is to ensure each Nevada child a *reasonably equal educational opportunity*” and
25 the Nevada Plan was initially adopted to accomplish that objective. NRS 387.121. The
26 Nevada Plan is a formula-based plan under which the Legislature establishes an estimated
27 basic support guarantee per pupil consisting of state funding, local revenues, and other
28 local funds that are not guaranteed by the State. NRS 387.121 (1). The State guarantees a

1 certain level of financial support to each school district. The amounts vary by school district
2 and are set forth in Senate Bill 555 for the current biennium. The basic support guarantee
3 for each school district is calculated by multiplying the amount of the guarantee by the
4 number of pupils enrolled. The state financial aid to each school district equals the
5 difference between the school district basic support guarantee and local funds from taxes
6 minus local funds attributable to pupils in the county who attend non-public schools. *Id.*
7 State financial aid to public schools is also provided through other programs that target
8 certain categories of pupils like English language learners, or gifted and talented pupils.
9 See, NRS 387.121 (2).

10 In the 80th (2019) session of the Legislature, Senate Bill 543 was enacted replacing
11 the Nevada Plan with the Pupil-Centered Funding Plan effective 2021. See, NRS 387.121
12 (July 1, 2021). Like the Nevada Plan, the Pupil-Centered Funding Plan combines state
13 money with local funds to provide a certain base level of support to each pupil. The figure
14 is adjusted to account for variation in local costs to provide a reasonably equal educational
15 opportunity and for the costs of providing a reasonably equal educational opportunity to
16 pupils with certain additional educational needs. See, NRS 387.121(1) (July 1, 2021).
17 Charter schools also receive state and local funds, but there are some differences in the
18 calculation and distribution of those funds. See, NRS 387.1214(2)(d) (July 1, 2021).
19 Plaintiffs maintain that neither funding system is adequate to provide a “sufficient”
20 education.

21 **C. The Legislature has enacted legislation providing for instruction and**
22 **curricula for a uniform system of common schools**

23 The Legislature determined that public education was a matter for local control
24 imparting the boards of trustees of local school districts with the rights and powers
25 necessary to maintain control of the education of the children within their districts. NRS
26 385.005 (1). Provided, however, that the State Board of Education shall advise the
27 Legislature at each regular session of any recommended legislative action to ensure high
28 standards of *equality of educational opportunity*. NRS 385.005 (3) (emphasis added).

1 Nevada pupils are educated pursuant to laws that provide for: core academic subjects (NRS
2 389.026) and required instruction (NRS 389.054); establishment of academic content and
3 performance (NRS 389.520); programs for gifted and talented students (NRS 388.52353),
4 students with disabilities (NRS 388.419), and English language learners (NRS 388.407);
5 and the annual submission of strategic plans to improve student achievement and the
6 allocation of resources (NRS 385.111-113).

7 **D. Plaintiffs' complaint**

8 Plaintiffs are parents of minor children who attend public schools in the Clark,
9 Washoe, and White Pine County School Districts. Plaintiffs plead three causes of action.
10 First, they claim Defendants violated Article XI, § 1 by failing to provide students a
11 “sufficient education, both quantitatively and qualitatively.” Compl. 34, ¶ 177. Second,
12 they claim Defendants violated Article XI, § 2 by failing to provide a “sufficiently uniform
13 system of common schools, both qualitatively and quantitatively.” Compl. 35, ¶ 183. Third,
14 Plaintiffs claim they have a “basic right to a sufficient education” and they have been
15 denied due process in acquiring that right in violation of Article I, § 8. Compl. 36, ¶ 190.
16 In each instance, Plaintiffs allege that the primary cause of the purported violation is
17 inadequate funding so they seek an injunction to prohibit the Education Defendants from
18 giving force and effect to any school finance system that doesn’t remedy these alleged
19 deficiencies. Additionally, Plaintiffs ask the court to declare that a sufficient education is
20 a basic right under the Nevada Constitution and that Nevada’s current funding system is
21 insufficient to guarantee that basic right.

22 **III. Legal Standards**

23 A motion to dismiss raising justiciability arguments is subject to the NRCP 12(b)(5)
24 standard of review. *Citizens for Cold Springs v. City of Reno*, 125 Nev. 625, 218 P.3d 847
25 (2009). A complaint should be dismissed for failure to state a claim if it appears beyond a
26 doubt that plaintiff could prove no set of facts, which, if true, would entitle plaintiff to relief.
27 *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008). In
28 Nevada, an actual justiciable controversy is a predicate to judicial relief. *Stockmeier v. Nev.*

1 *Dep't of Corr.*, 122 Nev. 385,393, 135 P.3d 220, 225 (2006) (abrogated by *Buzz Stew* on other
2 grounds) (citing *Doe v. Bryan*, 102 Nev. 523, 525, 728 P.2d 443 (1986)). And to obtain
3 declaratory or injunctive relief, there must be a justiciable controversy. *Kress v. Corey*, 65
4 Nev. 1, 26, 189 P.2d 352, 364 (1948); see also, *Lamb v. Doe*, 92 Nev. 550, 551, 554 P.2d 732,
5 733 (1976). Controversies that “revolve around policy choices and value determinations
6 constitutionally committed for resolution to the legislative and executive branches” are
7 political questions outside the purview of judicial review. *N. Lake Tahoe*, 129 Nev. at 687,
8 310 P.3d at 587 (internal citations omitted).

9 **IV. Argument**

10 Plaintiffs have failed to state claims upon which relief can be granted as their
11 complaint presents a nonjusticiable political question. Plaintiffs essentially ask the court
12 to substitute its judgment for that of the Legislature regarding the education system and
13 funding. To do so would contravene the political question doctrine as well as separation of
14 powers. Even if the court disagrees that the complaint presents a nonjusticiable political
15 question, Plaintiffs have failed to allege facts stating violations of the Constitution.
16 Therefore, Plaintiffs’ complaint should be dismissed.

17 **A. Plaintiffs’ complaint presents a nonjusticiable political question**

18 “[N]o persons charged with the exercise of powers properly belonging to [another
19 branch] shall exercise any functions, appertaining to either of the others.” NEV. CONST.
20 art. 3, § 1. The political question doctrine exists to uphold this mandate. See, *N. Lake*
21 *Tahoe*, 129 Nev. at 686, 310 P.3d at 586 (citing *Comm’n on Ethics v. Hardy*, 125 Nev. 285,
22 292, 212 P.3d 1098, 1103 (2009)).

23 “Judicial Power’ is the authority to hear and determine justiciable controversies.”
24 *Id.* at 687, 587 (citing *State v. Second Judicial District Court*, 116 Nev. 953, 962, 11 P.3d
25 1209, 1214 (2000)). Controversies that “revolve around policy choices and value
26 determinations constitutionally committed for resolution to the legislative and executive
27 branches” are political questions outside the purview of judicial review. *Id.* A claim
28 presents a non-justiciable political question where there is: (1) a textually demonstrable

1 constitutional commitment of the issue to a coordinate political department; (2) a lack of
2 judicially discoverable and manageable standards for resolving it; (3) the impossibility of
3 deciding without an initial policy determination of a kind clearly for nonjudicial discretion;
4 (4) the impossibility of a court's undertaking independent resolution without expressing
5 lack of the respect due coordinate branches of government; (5) an unusual need for
6 unquestioning adherence to a political decision already made, or (6) the potentiality of
7 embarrassment from multifarious pronouncements by various departments on one
8 question. *Id.* at 688, 587 (citing *United State v. Munoz-Flores*, 495 U.S. 385, 389-90)
9 (quoting *Baker v. Carr*, 369 U.S. 186, 217 (1962)). If *any one* of these factors has been met,
10 the political question doctrine mandates dismissal. *Id.* (emphasis added).

11 **1. There is a textually demonstrable constitutional commitment**
12 **of education policy in Nevada to the Legislature**

13 The Nevada Constitution commits the administration of education policy to the
14 Legislature. See, NEV. CONST. art. XI. Inherent in that authority is the power of the
15 Legislature to enact laws establishing a system of public schools and the means and
16 manner to fund it. Plaintiffs' complaint is essentially asking this court to usurp the
17 Legislature's authority and substitute its judgment in place of theirs on matters that are
18 purely policy based. This not only contravenes the political question doctrine, but the
19 separation of powers doctrine as well.

20 **a. The separation of powers doctrine supports the textually**
21 **demonstrable constitutional commitment of education**
22 **policy to the Legislature**

23 "The Nevada Constitution specifically delineates the power belonging to each branch
24 of government in this state". *N. Lake Tahoe*, 129 Nev. at 687, 310 P.3d at 587 citing *Berkson*
25 *v. LePome*, 126 Nev. ___, 245 P.3d 560, 564 (2010). Commensurate with that authority is
26 the "inherent power [of each branch] to administer its own affairs and perform its duties,
27 so as not to become a subordinate branch of government." *Berkson*, 126 Nev. at 498, 245
28 P.3d at 564 (quoting *Halverson v. Hardcastle*, 123 Nev. 245, 261, 163 P.3d 428, 439 (2007)).

...

1 Under Article IV, the Legislature is authorized to frame and enact laws. NEV.
2 CONST. art. IV; see also, *Galloway v. Truesdell*, 83 Nev. 13, 20, 422 P.2d 237, 242 (1967).
3 And except where limited by state or federal constitutions, that power is so broad as to be
4 practically absolute. *Id.* at 20, 242. Article XI squarely delegates the administration of
5 education policy to the Legislature. Beginning with Section 1, it states “[t]he legislature
6 shall encourage by all suitable means the promotion of intellectual, literary, scientific,
7 mining, mechanical, agricultural, and moral improvements.” NEV. CONST. art. XI, § 1
8 (emphasis added). “Use of the phrase ‘by all suitable means’ reflects the framers’ intent to
9 confer broad discretion on the Legislature in fulfilling its duty,” which would necessarily
10 include issues related to funding. See, *Schwartz v. Lopez*, 132 Nev. 732, 747, 382 P.3d 886,
11 897 (2016). This is supported by Article XI, Section 6 which states that “the Legislature
12 shall enact one or more appropriations to provide the money the *Legislature deems to be*
13 *sufficient.*” NEV. CONST. art. XI § 6 (2) (emphasis added). And what funding amounts the
14 Legislature deems sufficient to fund the school system is purely a policy decision colored
15 by a myriad of factors that the Legislature is best suited to resolve. To conclude otherwise
16 would essentially blur the lines between these co-equal branches of government, contrary
17 to the long-standing principles of separation of powers. See, *N. Lake Tahoe*, 129 Nev. at
18 686, 310 P.3d at 587 (citing *Berkson*, 126 Nev. at 498, 245 P.3d at 565) (if “the power of
19 judging [were] joined with the legislative, the life and liberty of the subject would be
20 exposed to arbitrary control, for the judge would be the legislator.”)

21 That education policy was textually committed to the Legislature is also supported
22 by the constitutional framers. Before adopting the provisions of Article XI, the framers
23 engaged in lengthy debate that recognized education within the purview of the Legislature.
24 See, *Debates & Proceedings of the Nevada State Constitutional Convention of 1864*, at 571,
25 572, 576 (Mr. Warwick: “I think there are some subjects which are justly and properly
26 objects of legislation, and among them, one of the most worthy is that of education.”); (Mr.
27 McClinton: “education is a proper subject of legislation [] leave the rest to the wisdom,
28 intelligence, and patriotism of those legislators.”); (Mr. Collins: “this constitutional

1 provision is merely an outline by which the Legislature is to be governed. It contemplates
2 that the Legislature shall establish a school system.”). Pairing the plain language of Article
3 XI, which clearly commits education policy to the Legislature, with the broad discretion to
4 effectuate those policies pursuant to separation of powers, can lead to only one plausible
5 conclusion. Namely, Plaintiffs’ complaint presents a nonjusticiable political question and
6 should, therefore, be dismissed. See, *Gilligan v. Morgan*, 413 U.S. 1 (1973) (judicial
7 intervention flew in the face of a textually demonstrable commitment to a coordinate
8 branch where the constitution assigned to Congress the “responsibility for organizing,
9 arming and disciplining the Militia”) (citing U.S. CONST. art. I, § 8, cl. 16).

10 **b. Other States with similar constitutional provisions have**
11 **found education adequacy challenges to be**
12 **nonjusticiable political questions**

13 The Nevada Supreme Court has not yet squarely dealt with whether an
14 appropriation that the Legislature deemed sufficient to fund public schools is a
15 nonjusticiable political question. In *Schwartz*, the State Treasurer espoused that view
16 arguing that “the determination is a policy choice committed to the legislative branch.”
17 *Schwartz*, 132 Nev. at 775, 382 P.3d at 902, fn. 11 (citing *N. Lake Tahoe*, 129 Nev. at 687,
18 310 P.3d at 587). The Court chose not to foreclose that argument instead concluding that
19 “we do not pass judgment on whether the amount appropriated is in fact sufficient to fund
20 the public schools. Rather, the issue before us is whether the amount the Legislature *itself*
21 deemed sufficient in Senate Bill 515 must be safeguarded for and used by public schools
22 and cannot be diverted for other uses.” *Id.* at 755, 902, fn. 11.

23 Other courts have recognized similar challenges as nonjusticiable political
24 questions.¹ Of particular relevance is *Campaign for Quality Educ. v. State of Cal.*, 209 Cal.

25 ¹ See, *Neb. Coalition for Educ. Equity and Adequacy v. Heineman*, 731 N.W. 2d 164
26 (Neb. 2007) (the duty to pass suitable laws to encourage schools and provide free instruction
27 was directed to the legislature, thus a challenge to the discharge of that duty was dismissed
28 as a nonjusticiable political question.); *Educ. Ass’n v. State ex rel. Okla. Legislature*, 158
P.3d 1058, 1065-66 (Okla. 2007) (the duty of establishing a public school system and the
determination of the policy to pursue in discharging that duty rests solely with the
legislature.)

1 Rptr. 3d 888. (Cal. Ct. App. 2016) which involved challenges to California’s education policy
2 based on two constitutional provisions that mirror ours. Since Nevada relied on the
3 California Constitution as a basis for developing its own constitution, it is appropriate to
4 look at the decisions of their court in interpreting constitutional language. *State ex rel.*
5 *Harvey v. Second Jud. Dist. Ct.*, 117 Nev. 754, 763, 32 P.3d 1263, 1269 (2001). The
6 constitutional provisions at issue in *Campaign* read:

7 A general diffusion of knowledge and intelligence being essential
8 to the preservation of the rights and liberties of the people, the
9 *Legislature shall encourage by all suitable means the promotion*
 of intellectual, scientific, moral and agricultural improvement.
 (CA CONST. art. IX, § 1) (emphasis added).

10 The *Legislature shall provide for a system of common schools by*
11 *which a free school shall be kept up and supported* in each district
12 at least six months in every year, after the first year in which a
 school has been established. (CA CONST. art. IX, § 5) (emphasis
 added).

13 Appellants alleged that these provisions provide for a “judicially-enforceable right to an
14 education of ‘some quality’ [], and, alternatively, that the Legislature is currently violating
15 its constitutional obligations to ‘provide for’ and ‘keep up and support’ the ‘system of
16 common schools’ by its current educational financing system.” *Campaign* at 892. Rejecting
17 those arguments, the court of appeal held that the case was nonjusticiable because the
18 California constitutional provisions “evinced no constitutional mandate to an education of a
19 particular standard of achievement or impose on the Legislature an affirmative duty to
20 provide for a particular level of education expenditures.” *Id.* at 902. The Court summed
21 up its view as follows:

22 [S]ections 1 and 5 of article IX, standing alone, do not allow the
23 courts to dictate to the Legislature, a coequal branch of
24 government, how to best exercise its constitutional powers to
25 encourage education and provide for and support a system of
26 common schools throughout the state. Because section 1 and 5
27 of article IX do not impose on the Legislature any duties that can
28 be judicially enforced, there is no reason for a judicial evaluation
 as to whether there has been a breach of those alleged duties.
 Even if the matter were remanded for a trial, appellants would
 not be entitled to the declaratory and injunctive relief requested
 in their pleadings. “The quandary described in the complaint[s]
 is lamentable, but the remedy lies squarely with the Legislature,
 not the judiciary.”

1 *Id.* at 903 (quoting *Grossmont Union High Sch. Dist. v. State Dept. of Educ.*, 86 Cal. Rptr.
2 3d 890, 892 (Cal. Ct. App. 2008).

3 *Campaign* relied heavily on the analysis in *Bonner v. Daniels*, 907 N.E. 2d 516 (Ind.
4 2009) where Indiana’s public school finance system was challenged as violating students’
5 constitutional right to a quality education. Article VIII, Section 1 of the Indiana
6 constitution provides:

7 Knowledge and learning, generally diffused throughout a
8 community, being essential to the preservation of a free
9 government; it shall be the duty of the General Assembly to
10 encourage, by all suitable means, moral, intellectual, scientific,
and agricultural improvement; and to provide, by law, for a
general and uniform system of Common Schools, wherein tuition
shall be without charge, and equally open to all.

11 IND. CONST. art. VIII, § 1 (emphasis added). Like in *Campaign*, the *Bonner* court affirmed
12 the trial court’s dismissal of plaintiffs’ complaint for failure to state a claim concluding “the
13 framers and ratifiers certainly sought to establish a state system of free common schools
14 but not to create a constitutional right to be educated to a certain quality or other output
15 standard.” *Bonner*, 907 N.E. 2d at 522.

16 The similarities between the constitutional provisions for Indiana, California, and
17 Nevada are evident. In *Campaign*, Section 1 (“encourage by all suitable means”) was
18 ‘general and aspirational,’ [] mak[ing] no provision for how the Legislature is to achieve its
19 goal except to use all suitable means.” *Campaign*, 209 Cal. Rptr. at 897 (quoting *Bonner*,
20 907 N.E. 2d at 521); also citing *Comm. for Educ. Equality v. State*, 294 S.W. 3d 477, 489
21 (Mo. 2009) (“[t]he aspiration for a ‘general diffusion of knowledge and intelligence’ concerns
22 policy decisions, and these political choices are left to the discretion of the other branches
23 of government”). But Plaintiffs claim the Education Defendants’ purported failure to meet
24 “guidelines, policies, and goals” (Compl. at 35, ¶ 178) amounts to a constitutional violation,
25 thus ignoring the very nature of a guideline, policy, or goal. The existing education laws
26 aspire to achieve delineated objectives through the adoption of various guidelines, policies,
27 and goals, but the failure to attain any one of those objectives does not violate the
28 Constitution. See, *Bonner*, 907 N.E. 2d at 522 (“The historical facts do not evidence any

1 intention to require the establishment of a public education system with any particular
2 standards of educational output.”). Nevada’s Article XI, Section 1 is general and
3 aspirational merely providing goals for education with the ultimate policy determinations
4 to be made by the Legislature.

5 Section 5 of California’s constitution provided for the creation of “a system of
6 common schools,’ ‘free,’ and ‘kept up and supported in each district.’ (§ 5.) But, [] it does
7 not ‘delineate or identify any specific outcome standards to be achieved by the
8 [Legislature’s] performance of its duty to provide a system of common schools.” *Campaign*,
9 209 Cal. Rptr. at 897 (quoting *Bonner*, 907 N.E. 2d at 897); also citing *Kennedy v. Miller*,
10 97 Cal. 429, 432, 32 P. 558, ____ (Cal. 1893) (“[t]he term ‘system,’ [] imports a ‘unity of
11 purpose as well as an entirety of operation, and the direction to the [L]egislature to provide
12 a system of common schools means one system which shall be applicable to all the common
13 schools within the state”). This is consistent with our Court’s assessment of Section 2,
14 Article XI of the Nevada Constitution providing for “a uniform system of common schools.”
15 “Looking to the plain language of Section 2, it is clearly directed at maintaining uniformity
16 within the public school.” *Schwartz*, 132 Nev. at 746, 382 P.3d at 896. Based on the
17 foregoing considerations, there is a clear textually demonstrable commitment to the
18 Legislature to provide for Nevada’s education system and a recognition that educational
19 funding and adequacy issues involve policy considerations that are best left for the
20 Legislature to resolve.

21 Additionally, Plaintiffs recognize the textual commitment to the Legislature. They
22 simply argue that “the political branches of Nevada’s state government are unable to
23 remedy the deep constitutional infirmities of the statewide public education system. . .”
24 Compl. 34, ¶ 175. However, Plaintiffs’ dissatisfaction with the policy choices of the
25 Legislature does not erase the clear textual commitment of educational funding
26 determinations to the Legislature. Nor does the alleged failure of a political branch
27 abdicate a dedicated power to a separate branch. Plaintiffs’ admission that the issues
28 . . .

1 raised in their claims have been committed to the political branches of government
2 supports the clear conclusion that dismissal of these claims is appropriate and required.

3 **2. There is a lack of judicially discoverable and manageable**
4 **standards for resolving educational funding and adequacy**
5 **claims**

6 The U.S. Supreme Court has acknowledged the enormous task of promulgating and
7 implementing education policy and the deference that should be given to the Legislature
8 in so doing. See, *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 42 (1973). “The
9 very complexity of the problems of financing and managing a statewide public school
10 system suggests that ‘there will be more than one constitutionally permissible method of
11 solving them,’ and that, within the limits of rationality, ‘the legislature’s efforts to tackle
12 the problems’ should be entitled to respect.” *Id.* at 42 (quoting *Jefferson v. Hackney*, 406
13 U.S. 535, 546–47 (1972)). Moreover, a “lack of specialized knowledge and experience
14 counsels against premature interference with the informed judgments made at the state
15 and local levels.” *Id.*

16 **a. Education policy determinations are not consistent with**
17 **the judicial process**

18 Existing education law in Nevada consists of a comprehensive set of what Plaintiffs
19 have described as “guidelines, policies, and goals” necessary to comply with constitutional
20 mandates (although what the constitution actually mandates is different from what
21 Plaintiffs allege). The current system provides a perpetual process of review and analysis
22 at all levels recognizing the evolving nature of education, the diverse needs of Nevada
23 students, population distribution, technological issues, the demands of the workplace, and
24 the need to make constant adjustments. To address the complexities associated with
25 education finance in particular, the Legislature created the Commission on School
26 Funding. See, NRS 387.1211 (4). The Commission is responsible for determining the
27 multipliers² that impact the basic level of support for each pupil. See, NRS 387.1214.

28 ² The additional educational needs of English learners, at-risk pupils, pupils with
disabilities, and gifted and talented pupils are addressed through weighted funding
expressed as a multiplier to the statewide base per pupil funding amount. A pupil who

1 Similarly, the Legislative Finance Committee makes recommendations to the Department
2 of Education regarding adjustment factors³ that will impact the statewide basic level of
3 support. See, NRS 387.1215-.1218. These considerations are only one component of the
4 education policy analysis. With this in mind, how, in the context of one litigation involving
5 a finite group of plaintiffs, a court could properly assess the adequacy of education and the
6 funding required to attain it is problematic at best. See, *Japan Whaling Ass'n v. Am.*
7 *Cetacean Soc'y*, 478 U.S. 221, 230 (1986) (The judiciary is ill suited to make decisions that
8 revolve around policy choices and value determinations, “as courts are fundamentally
9 underequipped to formulate [state] policies or develop standards for matters not legal in
10 nature.”)

11 A court is also constrained by evidentiary standards that don't similarly inhibit the
12 Legislature in its fact-finding missions. This necessarily requires a reliance on the
13 witnesses, reports, and expert analyses presented by the parties before the court (to the
14 exclusion of divergent interests who would ordinarily have a platform before the
15 Legislature).⁴ And otherwise obligates the court to engage in a colossal undertaking
16 (normally reserved for those with specialized knowledge) to understand education policy,
17 including core subjects, instruction, model curriculum, special programs, and resource
18 allocation. The limits of the rules of evidence combined with the finality of a judgment that
19 ...

20 _____
21 belongs to more than one category only receives weighted funding for a single category with
22 the highest multiplier. See, NRS 387.121, NRS 387, 1214.

23 ³ Adjustment factors to the statewide base per pupil funding amount include
24 considerations of small school districts, necessarily small schools, and comparable wage.
25 See, NRS 387.1215-.1218.

26 ⁴ A partial list of stakeholders who have an interest in Nevada's education funding
27 who are not parties to this litigation and would thus be denied input into the determination
28 of its funding model if Plaintiffs are allowed to transfer responsibility for this decision from
the Legislature to the Court includes: Teachers, Educational support staff, school
psychologists, children representing 14 of Nevada's school districts, school district
superintendents, school boards, all of Nevada's charter schools, the Nevada System of
Higher Education, Nevada employers who will likely employ the majority of these students.

1 would have perpetual statewide implications cautions against addressing questions that
2 are political in nature.

3 **b. The judiciary lacks manageable standards to harmonize**
4 **the diverse education policy interests across the State**

5 The State of Nevada has seventeen (17) County school districts whose boundaries
6 are conterminous with the boundaries of the counties of the State. Nev Rev. Stat. § 386.010.
7 The State of Nevada also has a University School for Profoundly Gifted Pupils governed by
8 chapter 388C of the Nevada Revised Statues and a statewide charter school authorizer in
9 the State Public Charter School Authority. NRS 388A.150. Each County school district
10 has a school board of trustees having “such rights and powers as are necessary to maintain
11 control of the education of the children within their respective districts.” NRS 385.005 (1).
12 The State Public Charter School Authority currently has contracts with thirty-four (34)
13 schools serving almost fifty thousand students, more than all but Washoe and Clark
14 Counties. However, students from only three of those school districts are represented in
15 this litigation and no charter school or university school for profoundly gifted students.

16 The negative implications of substituting the court’s determination of a statewide
17 policy issue for that of the Legislature is far reaching. For example, the Legislature is
18 charged with balancing competing budgetary interests beyond education. This is normally
19 done in the context of numerous hearings before specialized committees that are
20 thoroughly versed in the subjects at issue. But a judicial decision on the adequacy of
21 education and its funding will not result from a similar process that takes into account the
22 broad range of factors impacting a state budget.

23 The judiciary would also encounter enforcement hurdles that would necessarily
24 challenge the bounds of separation of powers which the Nevada Supreme Court has already
25 indicated that it was not inclined to do. For example, in *Guinn v. State of Nev.*, 119 Nev.
26 460, 76 P.3d 22 (2003,) the high court explained that courts have “no ability to enforce [an]
27 order” requiring the Legislature to fund education. *Id.* at 30. Likewise, courts cannot
28 “direct the Legislature to approve any particular funding amount or tax structure.” *Id.*,

1 see also *Springfield Twp., Franklin Cty. v. Quick*, 63 U.S. 56, 69 (1859) (“[if] the school fund
2 was distributed partially, nevertheless those receiving the bounty from Congress have no
3 right to call on this court to interfere with the power exercised by the State Legislature in
4 laying and collecting taxes, and in appropriating them for educational purposes, at its
5 discretion”). But, a policy decision by the judiciary, especially in the context of education
6 funding, could place it in the unenviable position of trying to dictate the allocation of
7 legislative resources in order to effectuate its decision. This result flies in the face of
8 separation of powers and is exactly the type of situation that the political question doctrine
9 serves to avoid.

10 **3. It would be impossible for the Court to decide Plaintiffs’ claim**
11 **without making an initial policy determination regarding**
12 **education adequacy and funding**

13 For the court to determine that Nevada’s funding system is inadequate to guarantee
14 a “sufficient education,” as alleged by Plaintiffs, would first require a policy determination
15 that students were entitled to a sufficient education as well as a determination of what a
16 sufficient education is. But the framers assigned education policy to the Legislature. See,
17 *Debates & Proceedings of the Nevada State Constitutional Convention of 1864*, at 571, 572,
18 576 (Mr. Warwick: “I think there are some subjects which are justly and properly objects
19 of legislation, and among them, one of the most worthy is that of education”). The courts
20 have also recognized the Legislature’s authority over education. See, *Schwartz*, 132 Nev.
21 at 747, 382 P.3d at 897; *Guinn*, 119 Nev. at 472, 76 P.3d at 30; *Quick*, 63 U.S. at 69.

22 For the court to rule on the sufficiency of the state funding scheme or delineate what
23 a sufficient education is or that students are entitled to it would necessarily encompass
24 value determinations that heretofore were the subject of legislative authority. To maintain
25 the integrity of separation of powers, which our constitution intended, the court should
26 refrain from considering Plaintiffs’ claims as nonjusticiable political questions. See, NEV.
27 CONST. art. III, § 1 ([N]o persons charged with the exercise of powers properly belonging to
28 [another branch] shall exercise any functions, appertaining to either of the others.”)

...

1 **B. Even if the Court disagrees that Plaintiffs' claims are nonjusticiable**
2 **political questions, they fail to plead facts demonstrating a**
3 **constitutional violation**

4 When interpreting a constitutional provision, the rules of statutory construction
5 apply. *Schwartz*, 132 Nev. at 745, 382 P.3d at 895 (citing *Lorton v. Jones*, 130 Nev. 51, 57,
6 322 P.3d 1051, 1054 (2014)). Where there is no ambiguity, the court will look to its plain
7 language. *Id.* (citing *City of Sparks v. Sparks Mun. Ct.*, 129 Nev. 348, 359, 302 P.3d 1118,
8 1126 (2013)). And terms that are easily defined by reference to their common dictionary
9 meanings, are not vague or ambiguous. *Clancy v. State*, 129 Nev. 840, 847-48, 313 P.3d
10 226, 231 (2013) (citing *State v. Carpenter*, 334 N.W.2d 137, 139-140 (Iowa 1983)). We must
11 give words their plain meaning unless doing so would violate the spirit of the provision.
12 *Nev. Mining Ass'n v. Erdoes*, 117 Nev. 531, 538, 26 P.3d 753, 757 (2001) (citing *McKay v.*
13 *Bd. of Supervisors*, 102 Nev. 644, 648, 730 P.2d 438, 442 (1986)).

14 **1. Article XI, Section 1 does not provide for a "sufficient"**
15 **education, both qualitatively and quantitatively**

16 “The legislature *shall encourage by all suitable means* the promotion of intellectual,
17 literary, scientific, mining, mechanical, agricultural, and moral improvements.” NEV.
18 CONST. art. XI, § 1 (emphasis added). From this, Plaintiffs invent a legislative duty to
19 provide a “sufficient education, both qualitatively and quantitatively.” Compl. at 34, ¶ 177.
20 This view contravenes the plain language of the constitutional provision.

21 Plaintiffs extrapolate a far broader meaning from Section 1 terms than the
22 dictionary definitions could imply. But, a court is not “at liberty to search for [] meaning[s]
23 beyond the instrument.” *Lake Cty. v. Rollins*, 130 U.S. 662, 670 (1889). “If the words
24 convey a definite meaning, which involves no absurdity, nor any contradiction of other
25 parts of the instrument, then that meaning, apparent on the face of the instrument, must
26 be accepted, and neither the courts nor the legislature have the right to add to it or take
27 from it. *Id.* (internal citations omitted).

28 “Encourage” means “to inspire with courage, spirit, or hope,” “to spur on,” or “to give
 help or patronage to.” See, Merriam-Webster Online Dictionary (2015),

1 <https://www.merriam-webster.com/dictionary/encourage>. These definitions are consistent
2 with the common usage of “encourage” in other contexts. See, *Univ. of Nev. v. Tarkanian*,
3 110 Nev. 581, 589, 879 P.2d 1180, 1185 (1994), *holding modified by Exec. Mgmt., Ltd. v.*
4 *Ticor Title Ins. Co.*, 114 Nev. 823, 963 P.2d 465 (1998) (internal citations omitted) (civil
5 rights statutes were enacted “to *encourage* private enforcement of these laws through
6 compensation to attorneys”) (emphasis added). *Helsinn Healthcare S.A. v. Teva Pharm.*
7 *USA, Inc.*, 139 S. Ct. 628, 632, (2019) (internal citations omitted) (Federal patent system
8 that *encourages* “the creation and disclosure of new, useful, and nonobvious advances in
9 technology and design”) (emphasis added).

10 “Suitable” shares a commonality of usage akin to “encourage.” It is defined as
11 “adapted to a use or purpose,” “satisfying propriety,” or “able, qualified.” See, Merriam-
12 Webster Online Dictionary (2015), <https://www.merriam-webster.com/dictionary/suitable>;
13 see also, *United States v. Chudy*, 474 F.2d 1069, 1070 (9th Cir. 1973) (internal citations
14 omitted) (A registrant is not required to report his every move . . . [h]e is required to provide
15 a *suitable means* for being reached by the board) (emphasis added).

16 That “[t]he legislature shall encourage by all suitable means” *means* exactly what it
17 says. But the “suitable means” that the Legislature selects to “encourage” are solely within
18 its discretion. This is consistent with the framers intent that the “use of the phrase ‘by all
19 suitable means’ . . . confer[s] broad discretion on the Legislature in fulfilling its duty to
20 promote intellectual, literary, scientific, and other such improvements, and to encourage
21 other methods in addition to the public school system.” *Schwartz*, 132 Nev. at 747, 382
22 P.3d at 897.

23 Plaintiffs fail to identify any language in Section 1 that expands the breadth of the
24 Legislature’s duty to include a qualitative or quantitative component. This is also
25 consistent with the intention of the framers who “explicitly and extensively addressed
26 education,” but yet refrained from expressly guaranteeing anything akin to a sufficient
27 education, both qualitatively or quantitatively. *Guinn*, 119 Nev. at 474-475, 76 P.3d at 32,
28 fn. 40.

1 The *Debates & Proceedings of the Nevada State Constitutional Conventional of 1864*
2 further illuminate this fact. The delegates had in-depth discussions on compulsory
3 attendance, the term of the superintendent, sectarian instruction, new school districts,
4 state universities, board of regents, time of maintaining schools, and even a special school
5 tax. See, *Debates & Proceedings of the Nevada State Constitutional Convention of 1864*, at
6 565-95. But absent was the adoption of any proviso that mandated a quantitative or
7 qualitative threshold. Rather, the delegates simply “acknowledged the need to vest the
8 Legislature with discretion over education into the future.” *Schwartz*, 132 Nev. at 747, 382
9 P.3d at 897 (citing *Debates & Proceedings of the Nevada State Constitutional Convention of*
10 *1864*, at 565-77 (Andrew J. Marsh off. Rep., 1866)).

11 Even if the court disagrees that Section 1 is unambiguous and is, therefore, subject
12 to more than one reasonable interpretation, the interpretation proposed by Plaintiffs
13 should not be one of them. “To get at the thought or meaning expressed in a [] constitution,
14 the first resort, in all cases, is to the natural signification of the words, in the order of
15 grammatical arrangement in which the framers of the instrument have placed them.”
16 *Rollins*, 130 U.S. at 670. No matter the infinite number of ways the words of Section 1
17 could be rearranged, Plaintiffs have not identified how a guarantee of a “sufficient
18 education” materializes from it because it doesn’t.

19 Affirming this is *Campaign* where sections 1 and 5 of Article IX of the California
20 Constitution (which mirror our constitutional sections) did not support a finding of “implied
21 constitutional rights to an education of ‘some quality’ [] or a minimum level of expenditures
22 for education” that could be judicially enforced. *Campaign*, 209 Cal. Rptr. 3d at 892. Based
23 on these considerations, Plaintiffs’ complaint should be dismissed for failure to state a
24 claim.

25 **2. Article XI, Section 2 does not provide for a sufficient uniform**
26 **system of common schools, both qualitatively and**
27 **quantitatively**

28 For the reasons already discussed, Plaintiffs have not pled facts demonstrating a
violation of Article IX, Section 2. The plain language of this provision does not provide for

1 a “sufficiently” uniform system of common schools. Moreover, the Nevada Supreme Court
2 has already ruled that “uniform system of common schools” as provided for in Section 2 is
3 “clearly directed at maintaining uniformity *within* the public school system” and nothing
4 more. *Schwartz*, 132 Nev. at 746, 382 P.3d at 896 (internal citations omitted). Nowhere in
5 its analysis did the Court adopt the view proposed by Plaintiffs. Instead concluding that
6 “so long as the Legislature maintains a uniform public school system, open and available
7 to all students, the constitutional mandate of Section 2 is satisfied. *Id.* at 898. Plaintiffs
8 allegations, even if true, do not show that the Education Defendants have acted contrary
9 to this mandate. Therefore, Plaintiffs’ complaint should be dismissed.

10 **3. Plaintiffs do not have a basic right to a sufficient education so**
11 **their due process claim must fail**

12 “Substantive due process guarantees that no person shall be deprived of life, liberty
13 or property for arbitrary reasons.” *Allen v. State*, 100 Nev. 130, 134, 676 P.2d 792, 794
14 (1984) (internal citations omitted). For a substantive due process challenge, a rational
15 basis review applies where a fundamental right is not burdened. *State v. Eighth Jud. Dist.*
16 *Ct.*, 129 Nev. 492, 501, 306 P.3d 369, 375-76 (2013); see also *Arata v. Faubion*, 123 Nev.
17 153, 159, 161 P.3d 244, 248-249 (2007). “Moreover, when considering the validity of
18 legislation which is under equal protection and due process attack, the state enjoys a wide
19 range of discretion to make reasonable classifications for enacting laws over matters within
20 its jurisdiction.” *Allen*, 100 Nev. at 134, 676 P.2d at 794 (citing *Graham v. Richardson*, 403
21 U.S. 365, 371 (1971). “The Legislature need not articulate its purpose in enacting a statute;
22 the statute will be upheld if any set of facts can reasonably be conceived of to justify it.”
23 *State*, 129 Nev. at 501, 306 P.3d at 375-76 (citing *FCC v. Beach Commc’ns, Inc.*, 508 U.S.
24 307, 315 (1993)). And a legislative decision “may be based on rational speculation
25 unsupported by evidence or empirical data.” *Id.* (quoting *FCC*, 508 U.S. at 315).

26 The Nevada Constitution, like the U.S. Constitution, provides that “no person shall
27 be deprived of life, liberty, or property without due process of law.” NEV. CONST. art. I, § 8
28 (2); U.S. CONST. art. XIV, § 1. But, education is not among the rights afforded explicit

1 protection under the U.S. Constitution. *Rodriguez*, 411 U.S. 1, 35. “Protected interests in
2 property are normally ‘not created by the [federal] Constitution. Rather, they are created
3 and their dimensions defined’ by an independent source such as state [laws].” *Goss v.*
4 *Lopez*, 419 U.S. 565, 572-573 (quoting *Bd. of Regents v. Roth*, 408 U.S. 564, 577 (1972)).

5 At issue here is Article XI of the Nevada Constitution and Plaintiffs’ allegations that
6 Education Defendants have failed to “address, implement, enforce, or otherwise meets [sic]
7 the guidelines, policies, and goals” to satisfy its constitutional duties. Compl. at 35, § 178.
8 But, as the preceding arguments demonstrate, Article XI does not guarantee a right to an
9 education of a particular standard of achievement nor does it impose an affirmative duty
10 on the Legislature to provide a particular level of education funding. Since Plaintiffs do
11 not have a basic right to a sufficient education their due process claim must fail.

12 a. **A sufficient education is not a basic right guaranteed by**
13 **the Constitution**

14 “A threshold requirement for a substantive-due process claim is the termination or
15 revocation of an existing property interest in a benefit created by an independent source,
16 such as a state or federal law.” *Armstrong v. Reynolds*, 2019 WL 1062364, at *3 (D. Nev.
17 Mar. 6, 2019) (citing *Roth*, 408 U.S. at 576). Although Nevada recognized a property
18 interest in public education entitling a student to procedural due process before suspension
19 (*Wynar v. Douglas Cty. Sch. Dist.*, 728 F.3d 1062 (9th Cir. 2013)(internal citations
20 omitted)), it has not similarly recognized a due process right to a “*sufficient* education, both
21 qualitatively or quantitatively.” (emphasis added). As such, the appropriate standard of
22 review is rational basis and the Legislature had a rational basis for adopting its education
23 policy, including funding, considering statewide budgetary constraints and other factors.
24 The plain language of Sections 1 and 2 of the Nevada Constitution cautions against the
25 interpretation espoused by Plaintiffs. This is supported by the framers’ intent in adopting
26 Article XI without expressly providing for an education of a particular quality or a specific
27 level of funding. For the reasons already discussed, Plaintiffs’ complaint should be
28 dismissed for failure to state a claim.

1 **V. Conclusion**

2 Plaintiffs' complaint should be dismissed as Plaintiffs' claims are nonjusticiable
3 political questions. Even if the claims are justiciable, Plaintiffs have failed to allege facts
4 demonstrating violations of the Nevada Constitution.

5 Respectfully submitted April 23, 2020.

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7 Attorney General

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1 CERTIFICATE OF SERVICE

2 I hereby certify that I am an employee of the State of Nevada, Office of the Attorney
3 General, and that on the 23rd day of April, 2020, I served the foregoing document by
4 causing a true and correct copy thereof to be served via U.S. Mail, postage prepaid,
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Traci Plotnick, an employee of the
14 Office of the Attorney General
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9
10 **IN THE FIRST JUDICIAL DISTRICT COURT**
11 **OF THE STATE OF NEVADA IN AND FOR CARSON CITY**

12 CARYNE SHEA, individually and as
13 next friend of her minor children A.S.
and M.S.; VENECIA SANCHEZ,
14 individually and as next friend of her
minor child Y.S.; BETH MARTIN,
15 individually and as next friend of her
minor children R.E. and H.E.; CALEN
16 EVANS, individually and as next friend
of his minor child C.E.; PAULA
17 ARZOIAN, individually and as next
friend of her minor child A.A.; KAREN
18 PULEO, individually and as next friend
of her minor children J.D.Jr., Jas.D., and
19 Jac.D.; CHRISTINA BACKUS,
individually and as next friend of her
20 minor child D.B.; CAMERON BACKUS,
individually and as next friend of his
21 minor child D.B.; ALEXANDRA ELLIS,
individually and as next friend of her
22 minor children L.E., M.E., and B.E.,

CASE NO.: 20 OC 00042 1B
DEPT.: II

23 Plaintiffs,

24 vs.

25 THE STATE OF NEVADA; THE
NEVADA DEPARTMENT OF
26 EDUCATION; JHONE EBERT, Nevada
Superintendent of Public Education, in
her official capacity; NEVADA STATE
27 BOARD OF EDUCATION; DOE
INDIVIDUALS, I-XXV; ROE ENTITIES,
I-XXV,

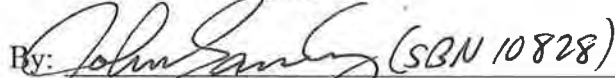
28 Defendants.

1 **PLAINTIFFS CARYNE SHEA, *ET AL.*'S RESPONSE TO DEFENDANTS'**
2 **MOTION TO DISMISS**

3 Plaintiffs, Caryne Shea *et al.*, here respond to Defendants' motion to dismiss
4 the complaint. This response is based upon the present memorandum of points and
5 authorities, all papers and exhibits on file herein, and any argument this Court sees
6 fit to allow.

7
8 DATED this 31st day of August, 2020.

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **I. INTRODUCTION**

3 Public education in Nevada is in an advanced state of malfunction; this is not
4 fairly debatable. The poor educational outcomes of Nevada students, year after
5 year, reflect a systemic failure to provide an adequate education as required by the
6 Nevada Constitution. When parents, on behalf of their schoolchildren, allege the
7 state has failed to provide for adequate education, the judiciary has the institutional
8 duty to interpret the pertinent education clauses to determine whether the state
9 has complied with its constitutional obligations. Below, Plaintiffs detail why their
10 complaint raises justiciable issues, can be governed by judicially-manageable
11 standards, and states claims for which relief can, and should, be granted.

12 **II. LEGAL STANDARDS**

13 Plaintiffs concur with the State's basic recitation of the appropriate legal
14 standards at issue in this motion, except that, plainly, Plaintiffs disagree that the
15 present controversy is non-justiciable or that the issues at stake in this litigation
16 are committed to a coordinate branch in a manner that places them beyond the
17 purview of this Court to hear and decide. Motion, 5-6. Insofar as this case presents a
18 justiciable dispute, therefore, declaratory and/or injunctive relief is appropriate.

19 **III. ARGUMENT**

20 **A. The Nevada Constitution's Education Clauses Do Not Support,**
21 **Much Less Mandate, Dismissal For Non-Justiciability**

22 The first of the *Baker v. Carr* factors counsels that if there exists "a textually
23 demonstrable commitment of the issue to a coordinate political department" that "is
24 inextricable from the case at bar," dismissal because of the presence of a political
25 question is appropriate. *Ctr. for Biological Diversity v. Mattis*, 868 F.3d 803, 822
26 (9th Cir. 2017) (quoting *Baker v. Carr*, 369 U.S. 186, 217, 82 S.Ct. 691 (1962)). The
27 State's Motion, however, offers only a superficial analysis of this issue. Upon deeper
28 examination, the textual commitment of education policy to the Nevada Legislature

1 does not render the present case non-justiciable.

2 **1. The judiciary’s deciding this case does not violate the**
3 **separation of powers doctrine**

4 The foundation of the separation of powers doctrine in Nevada stems from
5 Article 3, Section 1 of the Nevada Constitution, which states:

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

10 This doctrine exists “to prevent one branch of government from encroaching on the
11 powers of another branch.” *Comm’n on Ethics v. Hardy*, 125 Nev. 285, 292, 212 P.3d
12 1098, 1103 (2009).

13 Generally speaking, the Legislature is tasked with enacting laws, *see Nev.*
14 *Const. Art. 4*; the Executive is tasked with carrying out and enforcing those laws,
15 *see id.*, Art. 5; and the Judiciary is tasked with interpreting the laws and deciding
16 justiciable controversies, *see id.*, Art. 6; *N. Lake Tahoe Fire Prot. Dist. v. Washoe*
17 *Cty. Bd. of Cty Commissioners*, 129 Nev. 682, 687, 310 P.3d 583 (2013). Although
18 each branch of government has a distinct function, this does not mean that the
19 separate branches’ functions, like parallel lines, will never intersect. To be sure,
20 “once the Legislature has made policy and value choices by enacting statutory law,
21 that law’s construction and application is the job of the judiciary.” *Id.*, at 688.

22 Unlike the federal constitution, which is a charter of negative rights that
23 prohibits the government from infringing on individual rights, the Nevada
24 Constitution, like most other state constitutions, includes positive rights—such as a
25 right to education—that entitle individuals to a benefit or action from state
26 government. *See State ex rel. Morrison v. Sebelius*, 285 Kan. 875, 894-895, 179 P.3d
27 366 (2008) (“The difference in the inherent remedial power of state courts arises
28 because all state constitutions also grant positive rights, *i.e.*, rights that entitle

1 individuals to benefits or actions by the state,” and citing Herschkoff, *Positive*
2 *Rights and States Constitutions: The Limits of Federal Rationality Review*, 112
3 Harv. L.Rev. 1131, 1135 (1999) “Unlike the Federal Constitution, every state
4 constitution in the United States addresses social and economic concerns, and
5 provides the basis for a variety of positive claims against the government.”). As its
6 concrete example of positive rights mandated by state constitutions—which provide
7 the basis for that variety of positive claims against state government—the *Sebelius*
8 court noted that Article 6, § 6 of the Kansas Constitution requires the Kansas
9 Legislature to “make suitable provision for finance” of the public schools. *Id.*, citing
10 also *Montoy v. State*, 278 Kan. 769, 771, 120 P.3d 306 (2005). When a constitution
11 mandates a positive right, the legislative and executive branches are compelled to
12 carry out that constitutional goal. It is the state judiciary’s role to ensure that the
13 coordinate branches of government comply with their constitutional duties to
14 provide positive rights. Put another way, “to enforce a positive right, courts must
15 mandate a positive remedy by requiring the state government to act and thereby
16 fulfill the constitutional right.” *Sebelius*, at 894 (internal citation references
17 excluded). For this reason, the *Baker v. Carr* factors espoused by the State, see Mot.
18 to Dismiss at 6-7, are of limited applicability¹ in state-law positive-rights cases.²

19
20 ¹ This is, of course, notwithstanding the Nevada Supreme Court’s adoption of
21 the *Baker v. Carr* factors in *N. Lake Tahoe*, 129 Nev. at 685. However, it is worth
22 noting that in the seven years since *N. Lake Tahoe* was decided, the Nevada
23 Supreme Court has not held any other issue non-justiciable under the political
24 question doctrine. But cf. *Rimer v. Herndon*, 18-oc-00231-1B, 2019 Nev. Dist. LEXIS
25 136 at *1-2 (Nev. Dist. Ct. Feb. 15, 2019) (dismissing as non-justiciable political
26 question where plaintiff’s requested relief was impeachment of defendants from
27 public office, an express prerogative of the Legislature alone).

28 ² Even in federal court, non-justiciability on the basis of political question
doctrine is a narrow exception to federal court jurisdiction. See *Baker v. Carr*, 369
U.S. 186, 217, 82 S. Ct. 691, 710 (1962) (holding that unless political question issues
were “inextricable from the case at bar, there should be no dismissal for non-
justiciability on the ground of a political question’s presence.”).

1 Inherent in the positive rights found in state constitutions, such as the right to
2 enjoy adequately-resourced public education, is the ability to vindicate and remedy
3 their violation; justiciability of claims like Plaintiffs' is, therefore, essential to the
4 entire constitutional scheme.

5 The Nevada Supreme Court has not shied away from its mandate to interpret
6 the law and ensure the Legislature effectuates positive rights such as the right to
7 education. Indeed, the Court has in the past decided questions of great political
8 importance involving the two other branches of government. *See, e.g., Guinn v.*
9 *Legislature*, 119 Nev. 277, 71 P.3d 1260 (2003) (hereinafter *Guinn I*) (granting
10 Governor's petition for writ of mandamus to compel Legislature to fulfill its
11 constitutional duty to approve balanced budget and to fund K-12 education),
12 *overruled on other grounds by Nevadans for Nevada v. Beers*, 122 Nev. 930, 142 P.3d
13 339 (2006). The Court is likely aware of the myriad lessons of *Guinn I*, and to be
14 sure, the manner in which it proceeded, ending in the granting of a writ of
15 mandamus against the Legislature, requested by the Governor, is not among the
16 finest hours of any of the state's three branches of government.

17 What is surely recoverable from *Guinn I*, however, is the Supreme Court's
18 recognition that, first and foremost, it is the province of the Nevada judiciary to
19 interpret the state constitution to resolve the collision of rights and prerogatives
20 that arise in a dynamic, democratic society. Furthermore, the *Guinn* court rightly
21 recognized "the vital role that education plays in our state" and the mandatory
22 nature of the Education Clauses. *Id.* at 286. Critically, the Court found that
23 "constitutional provisions imposing an affirmative mandatory duty upon the
24 legislature are judicially enforceable in protecting individual rights, such as
25 educational rights." *Id.* (quoting *Campbell Cnty. School Dist. v. State*, 907 P.2d
26 1238, 1264 (Wyo. 1995)). The most important aspect of the *Guinn* case, however, is
27 not political or juridical, it is the finding—surviving today, even if the case itself has
28 receded into our state's political background—that the Nevada Constitution affords

1 Nevadans a judicially enforceable right to an adequate and sufficient public
2 education.

3 In short, the Nevada Constitution provides a positive right of great
4 importance to the citizens of Nevada—that the Legislature provide sufficient and
5 adequate resources for the state’s system of public education—which the Nevada
6 Supreme Court has found to be judicially enforceable. Accordingly, the State’s
7 motion to dismiss must be denied.

8 **2. Mandatory education clauses in other states have been**
9 **found to be justiciable, for reasons that resonate in the**
10 **Nevada context**

11 In state after state, courts have found education adequacy cases justiciable,
12 and have denied motions to dismiss by state defendants, with reasoning that is
13 instructive for the present case. A sampling:

14 **Minnesota.** In *Cruz-Guzman v. State*, 916 N.W.2d 1 (Minn. 2018), the
15 plaintiffs brought claims alleging that the State had failed to provide students with
16 an adequate education under the Minnesota Constitution’s Education, Equal
17 Protection, and Due Process Clauses. The State moved to dismiss the complaint on
18 multiple grounds, including for lack of subject matter jurisdiction, on the basis that
19 the claims presented a non-justiciable political question.

20 While the court noted that “specific determinations of educational policy are
21 matters for the Legislature,” it found that “it does not follow that the judiciary
22 cannot adjudicate whether the Legislature has satisfied its constitutional duty
23 under the Education Clause.” *Id.* at 9. To so determine would be to “leave Education
24 Clause claims without a remedy... [which] is incompatible with the principle that
25 where there is a right, there is a remedy.” *Id.* Further, “[p]roviding a remedy for
26 Education Clause violations does not necessarily require the judiciary to exercise
27 the powers of the Legislature.” *Id.* The court found that the claims in essence
28 “ask[ed] the judiciary to answer a yes or no question – whether the Legislature has
violated its constitutional duty[.]” *Id.* And, to resolve that question, the judiciary did

1 not need to “devise particular educational policies[.]” *Id.* The Court found the
2 Education Clause claims justiciable. *Id.* at 10.

3 Here, Plaintiffs have not gone so far as to sue or name the Legislature, but
4 instead ask the Court to declare that Defendants do not operate under a
5 constitutional scheme and to enjoin them from continuing to do so, at the expense of
6 Nevada’s schoolchildren.

7 **Colorado.** In *Lobato v. State*, 218 P.3d 358, 372-73 (Colo. 2009), the Supreme
8 Court of Colorado considered whether the political question doctrine prohibited its
9 consideration of a challenge to the general assembly’s fulfillment of the Colorado
10 Constitution’s mandate that the “general assembly shall . . . provide for the
11 establishment and maintenance of a thorough and uniform system of free public
12 schools,” Colo. Const. art. IX, § 2.

13 The court “acknowledge[d] that the General Assembly enjoys broad
14 legislative responsibility. . . to raise and spend funds for government purposes” but
15 concluded that “[t]his general authority must be exercised in conformity with
16 express or implied restraints imposed thereon by specific constitutional provisions.”
17 *Lobato*, 218 P.3d at 372-73 (internal quotation marks omitted). Conclusively, a
18 “ruling that the plaintiffs’ claims are non-justiciable would give the legislative
19 branch unchecked power, potentially allowing it to ignore its constitutional
20 responsibility to fashion and to fund a ‘thorough and uniform’ system of public
21 education.” *Id.* at 372.

22 Separation of powers, in other words, cannot be permitted to resolve into
23 unchecked power by one branch to the exclusion of the others, especially in the
24 realm of rights and prerogatives as important as public education.

25 **Kansas.** In *Gannon v. State*, 319 P.3d 1196 (Kan. 2014), the Kansas Supreme
26 Court considered the justiciability of a challenge to the legislature’s failure to meet
27 the Kansas Constitution’s mandate that “[t]he legislature shall provide for
28 intellectual, educational, vocational and scientific improvement by establishing and

1 maintaining public schools, educational institutions and related activities which
2 may be organized and changed in such manner as may be provided by law,” and
3 that “[t]he legislature shall make suitable provision for finance of the educational
4 interests of the state.” Kan. Const. art. VI, §§ 1, 6(b). The court concluded that,
5 rather than giving absolute discretion to the Legislature with respect to education,
6 the word “shall” in these provisions “reflects a constitutional duty” that is
7 mandatory and judicially enforceable. *Gannon*, 319 P.3d at 1220.

8 Nevada’s inclusion of the self-same directive—“shall”—argues for the
9 oversight by the judiciary of the state’s compliance with its educational mandates.
10 Further, use of the word “suitable” in the Kansas Constitution’s defining of the
11 provision of education finance indicates that the Legislature did not have absolute
12 discretion in finance of schools. *Id.* The State of Nevada is similarly constrained, in
13 Nev. Const. art. XI, sec. 1, to provide by “all suitable means” the adequate and
14 sufficient education Plaintiffs here have brought suit to demand.

15 **Connecticut.** The Connecticut Constitution states that “[t]here shall always
16 be free public elementary and secondary schools in the state [and the] general
17 assembly shall implement this principle by appropriate legislation.” Conn. Const.
18 art VIII, § 1. In *Conn. Coal. for Justice in Educ. Funding, Inc. v. Rell*, 990 A.2d 206
19 (Conn. 2010), the state argued that this provision delegated authority regarding
20 education solely to the Legislature, rendering any challenge non-justiciable. The
21 court held, however, that “the phrase ‘appropriate legislation’ in article eight, § 1,
22 does not deprive the courts of the authority to determine what is ‘appropriate.’” *Id.*,
23 at (2010) (quoting *Sheff v. O’Neill*, 678 A.2d 1267, 1276 (Conn. 1996)). The court
24 contrasted the education article with other constitutional provisions which

25 unambiguously confer full authority over the respective subject matter
26 to the legislature, and do not contain qualifying terms such as
27 “appropriate legislation” that imply a judicial role in disputes arising
28 thereunder, particularly when coupled with the word “shall,” which
itself implies a “constitutional duty” that is “mandatory and judicially
enforceable.”

1 *Id.* at 220 (citation omitted).

2 The Connecticut Constitution, therefore, like Nevada’s, contains language
3 that essentially presumes the ability of citizens to vindicate their rights to adequate
4 and sufficient public education through resort to the courts.

5 Delaware. In *Delawareans for Educ. Opportunity v. Carney*, 199 A.3d 109
6 (Del. Ch. 2018), the State moved to dismiss the plaintiffs’ challenge to the adequacy
7 of the education of “Disadvantaged Students,” arguing, *inter alia*, that obligations
8 enumerated in the Delaware Constitution’s Education Clause were not rights the
9 courts could enforce—that “[t]he shortcomings of the public schools . . . present a
10 non-justiciable political question[.]” *Id.* at 119. The State further argued that “it is
11 impossible for a court to determine in the abstract what constitutes a meaningful
12 education.” *Id.* at 20.

13 The court found, however, that the plaintiffs were not asking that question in
14 the abstract; rather, they made “a more basic and straightforward claim: When
15 educating Disadvantaged Students, Delaware’s public schools must meet the
16 standards and criteria that the Delaware Department of Education has chosen for
17 itself.” *Id.* The court found that, using this standard, it could “readily apply these
18 establish standards to the facts of the case.” *Id.* Thus, the court found the case
19 justiciable and denied the State’s motion to dismiss. *Id.*

20 Similar to the present case, Plaintiffs here are not theorizing about abstract
21 notions of educational adequacy. Instead, they are employing the state’s own
22 standards to measure the rank inadequacy of public education in Nevada. Such
23 questions are not about airing policy disagreements, but rather about the state’s
24 failure to meet, first, its constitutional obligations, and second, its own statutory
25 and regulatory mandates for fulfilling those requirements.

26 In all, twenty-five states have seen plaintiffs prevail in court cases regarding
27
28

1 educational adequacy, almost all of them brought pursuant to state constitutional
2 provisions.³ Each of those, obviously, entailed a determination that the matter at
3 hand was, in fact, justiciable by the courts of each respective state. Each had
4 peculiarities of constitutional language or context that argued for courts to agree to
5 hear and determine the controversies, to be sure, but Nevada’s constitution appears
6 to have the hallmarks of justiciability—“shall,” “all suitable means,” a judicial
7 culture that takes very seriously its role as a coordinate branch with responsibility
8 to interpret and defend the positive rights enshrined in the state constitution. Each
9 of those adds a stone to the side of the scale arguing for justiciability.

10 Not every state, of course, has those same hallmarks, and admittedly courts
11 have found the questions posed in this suit non-justiciable in certain instances. In
12 its Motion, the State relies heavily upon the California case of *Campaign for*
13 *Quality Educ. v. State of Cal.*, 246 Cal.App.4th 896, 209 Cal. Rptr. 3d 888 (Cal. App.
14 2016), which held the issue of educational funding adequacy in that state non-
15 justiciable. *See Mot.* at 9-13.

16 But there, “the question before [the court was] whether the right to an
17 education of ‘some quality’ is enshrined, as a *constitutional* right.” *Id.*, at 907. Here,
18 the Nevada Supreme Court has answered that query, at least in the context of
19 Nevada’s own constitutional language, history, and force. Many of the issues here
20 are, of course, first-impression matters; the question of whether educational rights
21 in Nevada are *constitutional* rights, however, is not. *See below*, Section III.C.3, and
22 *Guinn I*, at 1275.

23 Further, *Campaign for Quality Education* was a suit brought, specifically, to
24 address educational funding levels. Here, Plaintiffs are not asking this Court to
25

26 ³ See the useful survey available at [http://www.schoolfunding.info/litigation-
28 map/](http://www.schoolfunding.info/litigation-
27 map/), collecting and discussing the entire range of school-resource cases across the
country (last accessed July 3, 2020).

1 settle mere questions of funding amounts, but rather to declare—by virtue of the
2 language of the Nevada Constitution and the repeated setting of benchmarks,
3 standards, and goals by the State that Nevada—that the rights to education
4 bestowed by the state constitution are not being enjoyed by the schoolchildren of
5 Nevada, and that the state must move from the hortatory to the actual in student
6 achievement.

7 Much like the constitutional provisions cited in the cases above where
8 justiciability was determined, Nevada’s Education Clauses constitute a mandatory
9 directive to effectuate the positive, judicially enforceable right to a sufficient and
10 adequate public education for all Nevadans. To find this issue non-justiciable would
11 be to leave the Legislature with unchecked power, potentially allowing it to abdicate
12 its constitutional responsibility, and to leave Nevadans without a remedy for their
13 right. Such a result is not just untenable, it would make of the constitutional right
14 to an adequate public education in this state an eternal empty promise.

15 **B. Manageable Judicial Standards Exist To Govern This Suit, And**
16 **The State Has Itself Provided Them**

17 In many ways, arguments over whether manageable judicial standards can
18 govern a state court’s handling of a school-resources adequacy case are relics of a
19 bygone era. It is certainly true that plaintiffs in the first wave of these types of
20 cases, fifty years ago, found great difficulty in convincing state courts that
21 manageable standards could be located, formulated, and applied appropriately and
22 efficiently. The foundational cases—foundational in the sense they initiated the
23 modern era of litigation over the resources and financing of public education
24 systems—of *McInnis v. Shapiro*, 293 F.Supp. 327 (N.D.Ill.1968) and *Burrus v.*
25 *Wilkerson*, 310 F.Supp. 572 (W.D.Va.1969) were both dismissed on what amounted
26 to grounds of lack of manageable judicial standards, the *Burrus* court specifically
27 writing that “courts have neither the knowledge, nor the means, nor the power to
28 tailor the public monies to fit the varying needs of these students throughout the

1 state.” *Burrus*, at 574.

2 That was a different time, however, and the world of educational policy
3 regarding standards and accountability has transformed utterly in the half-century
4 since. Standards now litter the field: federal educational standards, state standards,
5 local district goals, expertly-constructed benchmarks that policymakers track
6 through advanced metrics and analytics—measurable, and manageable, standards
7 are now the way in which we as a society conceive of and implement educational
8 policy, full stop.

9 In fact, remarkably, the Pennsylvania Supreme Court has put this evolution
10 into bright relief. In *Marrero v. Commonwealth of Pennsylvania*, 559 Pa. 14, 739
11 A.2d 110 (1999), the court found that funding adequacy was not justiciable, owing to
12 a lack of appropriate standards. Two decades later, in *William Penn School District*
13 *v. Pennsylvania Department of Education*, 642 Pa. 236, 170 A.3d 414 (2017), the
14 very same court overruled its prior rulings, agreeing with plaintiffs that

15 the recent proliferation of federal and state curricular mandates, in
16 tandem with elaborate student assessment and school accountability
17 measures, reflect a sea change in the legislative imposition
18 of standards. Specifically, the advent of the modern era of Common
19 Core curricula and elaborate tools for assessing educational success,
20 such as the PSSA and Keystone Exams, contradict any argument that
21 there are no judicially enforceable standards that might apply to test
the General Assembly's satisfaction of its mandate. And because a
court can rely upon standards already established by the legislature to
make a circumstance-specific determination of educational adequacy
without fashioning a fixed baseline standard out of whole cloth,
judicial oversight does not require an intrusion upon the General
Assembly's policy-making function.

22 *Id.*, at 289-290.

23 In other words, the analytical revolution in education policy occasioned by
24 federal programs like No Child Left Behind Act (2002), state and federal mandates,
25 accountability markers, legislative reports and district-level, etc., had, essentially,
26 offered courts the judicially manageable standards necessary to measure whether
27 states were living up to the promises of adequate and sufficient public education
28 made in so many state constitutions, including Nevada's.

1 Pennsylvania was not alone; it was not even first. This shift towards courts'
2 employing a state's own standards as barometers of constitutional compliance
3 actually began much earlier. The Kansas Supreme Court, in interpreting the
4 language of Kansas's education clause in *Unified School District No. 229 v. State*,
5 885 P.2d 1170, 1186-87 (Kan. 1994), *cert. denied*, 115 S. Ct. 2582 (1995) looked to
6 the state legislature's own statement of educational goals, embodied in the Kansas
7 School District Finance and Quality Performance Act, which listed ten goals that
8 the Kansas Board of Education was to meet in defining school accreditation. The
9 court acknowledged that the legislature's own standards were the product of a
10 comprehensive study by education experts, and thus reasoned that it was not
11 imposing its own judgment of suitability on the definition of adequacy. Instead, the
12 court saw itself as resolving the question of inadequacy by assisting the coordinate
13 branches without immersing itself in the creation and implementation of policy. In
14 this way, the court avoided intruding into the Kansas Legislature's proper sphere.

15 In the years since, state after state has been held to account under
16 constitutional education clauses, with reference to the standards they themselves
17 had pronounced. Not only does this help vindicate the positive rights of state
18 residents, it also gives meaning, consequence, and accountability to the promises of
19 improved educational outcomes made by successive generations of elected officials.
20 We cannot leave citizens with a right to an adequate education but without a
21 judicial remedy to enforce it.

22 The proper approach to a judicial definition of educational adequacy is to
23 adopt as mandatory the standards that the legislature and the education
24 bureaucracy have adopted for themselves in the form of accreditation standards or
25 statutory statements of educational goals. Such an approach gives the legislature
26 and administration clear guidance to help them correct noncompliance with their
27 constitutional duty, if necessary, but at the same time this "existing standards"
28 approach allows the court to stay within its narrow institutional role as interpreter

1 of the constitution.

2 Applied here, this approach is functional and appropriate. Plaintiffs'
3 complaint is rife with examples of the standards created and, presumably, tracked
4 as more than merely aspirational by the Nevada Legislature and the educational
5 bureaucracy within the state executive branch, introduced at Paragraph 62: "By
6 devising an intricate statutory and regulatory scheme of content and curriculum
7 requirements to be implemented by common schools in this state, the Legislature
8 and the State of Nevada have already defined the contours of a the meaning of a
9 basic, sufficient public education, and a uniform system of common schools." The
10 complaint goes on, and on, with examples of the State's own standards for public
11 education in Nevada, developed by the legislative and administrative apparatus of
12 the State, in conjunction with experts, consultants, and federal-level authorities.

13 Indeed, Paragraphs 62 through 134 detail, at exhaustive length, the
14 standards the State has set for public education, through statutes, regulations,
15 legislative declarations, the State Improvement Plan, Common Core standards,
16 College and Career Readiness Anchor standards, English Language Arts standards,
17 Measures of Academic progress standards, special-needs education standards, and
18 on and on. The complaint demonstrates that most of these are remarkably detailed
19 in their mandates. As for school finance, Paragraphs 135 through 171 detail the
20 Nevada Plan, and the new Pupil-Centered Funding Plan.

21 That Nevada's state-mandated educational standards are many, and
22 complex, is not a basis for dismissal; this promises to be a long and complex
23 litigation. There can be little argument, however, that judicially discoverable and
24 manageable standards for determining Nevada's compliance with its constitutional
25 obligations in public education. In fact, if anything, the complaint demonstrates
26 that Nevada's legislative and regulatory regime is a prodigious producer of
27 education standards. That, of course, is not the problem; anyone can announce a
28 standard. The proof comes in measuring educational outcomes against the stated

1 goals we have set for our students—exactly what this lawsuit is designed to achieve.
2 There is no basis for dismissing the suit on grounds of the inability of the Court to
3 divine and apply appropriate standards.

4 **C. Plaintiffs Have Pled Sufficiently To State Constitutional**
5 **Violations**

6 **1. Article XI, Section 1 is not merely hortatory, and**
7 **provides an obligation that the State provide for**
8 **meaningful educational opportunities**

9 Nev. Const. article XI, sec. 1 states, “The legislature shall encourage by all
10 suitable means the promotion of intellectual, literary, scientific, mining,
11 mechanical, agricultural, and moral improvements, and also provide for a
12 superintendent of public instruction and by law prescribe the manner of
13 appointment, term of office and the duties thereof.”

14 The plain language of this provision imposes a duty upon the State to provide
15 for a meaningful educational opportunity, and use of the word “shall” removes any
16 discretion associated with that duty. See e.g. *Goudge v. State*, 128 Nev. 548, 553,
17 287 P. 3d 301, 304 (2012). The Oxford Dictionary defines “encourage” as to “[g]ive
18 support, confidence, or hope to (someone), to “[g]ive support and advice to (someone)
19 so that they will do or continue to do something,” or to [h]elp or stimulate (an
20 activity, state, or view) to develop.”⁴ Further, Oxford defines “suitable” as “right or
21 appropriate for a particular person, purpose, or situation.”⁵ The final portion of
22 section 1 states the Legislature must promote “intellectual, literary, scientific,
23 mining, mechanical, agricultural, and moral improvements,” what the article’s title
24 calls, generally, “education,” or, per Oxford, the “body of knowledge acquired wile

25
26 ⁴ See, Lexico Powered by Oxford, available at
27 <https://www.lexico.com/en/definition/encourage> (last visited July 1, 2020)

28 ⁵ Id, at <https://www.lexico.com/en/definition/suitable> (last visited July 2,2020)

1 being educated.”⁶ The Tennessee Supreme Court, in interpreting their
2 constitutional education article, defined “education” as “[t]he act or process of
3 imparting or acquiring general knowledge, developing the powers of reasoning and
4 judgment, and generally of preparing oneself or others intellectually for mature
5 life.” *Tennessee Small School Systems v. McWherter*, 851 S.W.2d 139,150 (Tenn.
6 1993). The term “education” denotes, inarguably, a level of inherent quality. *Id.* The
7 particular level of quality is, of course, debatable, but there can be no dispute that,
8 taken holistically, Section 1 implies a miseducation in the disciplines it so
9 painstakingly identifies.

10 The terms employed in Art. XI, § 1, under the lens of history and the framing
11 constitutional debates, offer guidance on the enforceable meaning of a
12 constitutionally adequate education. See, for example, Debates & Proceedings of the
13 Nevada Constitutional Convention of 1864, at 566 (Andrew J. Marsh off. Rep.,
14 1866), for guidance on “moral improvement.” Nevada’s framers intentionally
15 included science, mining, mechanics, and agriculture as qualitative definitions of an
16 appropriate education, which were the contemporaneous fields and industries of the
17 “modern economy” of the mid 1860s. Russell R. Elliott, *History of Nevada*, 90-122
18 (2d ed Rev. 1987).⁷ They specifically equated “literacy,” quite rightly, with the
19 ability to participate in culture and democracy. Debates and Proceedings at, at 569.

20 Read as both aspiration and as creating positive rights of Nevadans,, Art. XI,
21 § 1 creates a duty to create, maintain, and support an education system that
22 prepares students to participate in the economy, our democracy, and civil society—
23 or, to employ the State’s own standards, education must ensure students are

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25 ⁶ *Id.*, at Lexico Powered by Oxford, available at
<https://www.lexico.com/en/definition/education> (last visited July 2, 2020).

26 ⁷ Preparing students for careers in mining was of particular importance to
27 the framers. See, Debates and Proceedings, at 590 (discussing the importance of
28 education in mining sciences and operations).

1 “College, Career, and Community Ready.” See Complaint, at ¶109.

2 Defendants look to *Schwartz v. Lopez*, 132 Nev. 732, 382 P.3d 886 (2016), to
3 support the notion of unchecked legislative discretion in this realm. Motion, at 9.
4 However, the Court in *Schwartz* determined only whether the term “by all suitable
5 means” provided discretion to enact programs in addition to the public education
6 system in performance of their duty to encourage education in the state, rather than
7 the qualitative aspects of the public system itself. *Schwartz*, at 748-49. The Court
8 specifically rejected the contention that the case required any analysis on whether
9 the school system is or has been sufficiently funded by the Legislature. *Id.* at 755, n.
10 11.

11 Other state courts with similar constitutional language to Nevada’s have
12 rejected interpretations providing legislatures with unchecked discretion regarding
13 constitutional education clauses. See, e.g. *Campbell County School Dist. v. State*,
14 907 P.2d 1238, 1257-1259, 1271-72 (Wyo. 1995)(Language reading “shall suitably
15 encourage” means “calculated to advance the sciences and liberal arts,” and did not
16 provide discretion to offer inadequate or inequitable resource levels). See also
17 *Serrano v. Priest*, 18 Cal. 3d 728, 775, 557 P.2d 929 (1976) (rejecting contention that
18 the constitutional provision similar to Nevada’s authorizes the legislature to
19 condition educational opportunity on district wealth.).

20 As noted earlier, the State’s reliance on California’s intermediate court
21 decision in *Campaign for Quality Education* ignores the unique structure and
22 debates around the Nevada Constitution. Nevada’s framers were, in fact,
23 particularly concerned to draft this portion of the state constitution in
24 contradistinction to California’s lack of fiscal effort to support meaningful public
25 education, and expressly sought to **avoid** making the mistakes California did with
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1 its education own education clauses.⁸

2 Specifically, inclusion of the word “shall” in original article XI, section 6
3 (regarding the provision of a special tax to provide for the support and maintenance
4 of the University and common schools) was the subject of considerable debate at the
5 time of its adoption in 1866. The word “shall” was included in the original draft of
6 the section, then removed and replaced with the words “may in its discretion.” See
7 Debates and Proceedings, at 587-88. On reconsideration, one of the Constitution’s
8 drafters proposed that the word “shall” be reintroduced and noted “the difficulty
9 with which the Legislature of California has been prevailed upon to make sufficient
10 appropriations for educational purposes.” *Id.* at 591. The concern was for too much
11 legislative discretion in supporting the education system, that the Legislature may
12 “take only half-way measures from year to year, neglecting to do its whole duty,”
13 and thus “will be doing injustice to the rising generation, and a discredit to
14 ourselves.” *Id.*

15 Another drafter expressed a similar view:

16 Many men feel that education is something that can be done without,
17 or delayed for a time. Private interests may be in the way, or the times
18 may be dull, and in the Legislature men will agree that for that
19 particular year they will make the taxes light by omitting this tax,
20 hoping, perhaps that the subject will be attended to the next year,
21 when times shall be better; and thus the matter will be postponed and
22 neglected from year to year. ***That is the way it has been in California***,
and in other States in the Union. The cause of education
has been thrust aside for other interests. I hope that no gentleman will
vote finally on this subject with-out first considering that the real issue
is this: Shall we, or shall we not, have established here a permanent
educational institution, which is indispensably necessary for the
permanent prosperity and for the credit of our proposed State?

25 ⁸ Contrast the original text of the Nev. Const, art. XI, sec. 6 “The
26 [L]egislature shall provide a special tax [...]. in addition to other means provided for
27 the support and maintenance of said University and common schools...” and an
28 absence of any such provision in the California Constitution. Cal. Const. art. IX
(1849).

1 *Id.* at 592 (emphasis added). Accordingly, the word “shall” was placed back in
2 section 6. *Id.* Given this background, California case law holds less persuasive
3 value, as Nevada’s framers made clear that the Legislature has a discrete duty,
4 which here Plaintiffs insist is one the judiciary can and should read as enforceable.

5 **2. Article XI, Section 2 imposes a duty on the Legislature**
6 **not only to devise a uniform system of common schools,**
7 **but to provide for that system as well**

8 Article XI, sec. 2 also imposes a duty on Legislature to provide for an
9 appropriate education system, and reads, in relevant part, “The legislature shall
10 provide for a uniform system of common schools, by which a school shall be
11 established and maintained in each school district at least six months in every
12 year...” Nev. Const. art. XI, sec. 2. The plain language of the provision requires the
13 Legislature to not just establish a uniform system of common schools, but to
14 “provide for” that system. Nev. Const. art. XI, sec. 2. The State obviously has
15 established a system of common schools—its uniformity is still an open question,
16 however—via state academic standards, mandates, and requirements imposed upon
17 districts and students, but the argument persists as to whether it has met its
18 obligation to “provide for” that system in a manner consistent with its duty.

19 The State’s interpretation of this provision effectively renders it meaningless
20 or at the very least subject only to the breezes of politics and lacking any
21 accountability to the purported subjects of the system, children and their parents.
22 Motion, at 18. Any contention that the Legislature can mandate a myriad of
23 standards and requirements as part of their duty to develop a uniform system of
24 common schools but then subsequently fail to provide for that system functionally
25 nullifies the duty imposed by the provision. It also violates the spirit of the
26 provision expressed by the drafters’ numerous statements identified in the previous
27 section regarding the necessary quality and purpose of public schools. As one
28 drafter notes, “What we want is a basis upon which to build the educational
superstructure, by means of which we can afford every child a sufficient amount of

1 instruction to enable it to go creditable through life.” See, Debates and Proceedings,
2 at 577. The guarantee of Art. XI, § 2 imposes a duty that is necessarily qualitative.

3 Reason also lends itself to finding a qualitative component to this provision.
4 It is difficult to fathom what exactly would constitute a constitutionally adequate
5 education under parameters suggested by Defendants. Is a child entitled to a
6 physical building to walk into, or could a child simply be given a state workbook to
7 take home? Could the State provide history textbooks that predate the moon
8 landing? Could it fail to provide materials abreast of current developments in math
9 or science? Do children need books to learn to read? These questions, when stated
10 frankly, sound absurd, because we understand instinctively that the right to
11 education must be meaningful to give it effect and that meaning is found in the
12 dynamic process of continued attention to resources that nourish the process of
13 instruction and learning. There can be no other way to conceive of education, and
14 thus no other way to understand a duty to provide for an education system.

15 Other states with similar constitutional language to Nevada’s interpret these
16 provisions as imposing a clear duty to provide for a minimum standard of quality in
17 their education systems. In *Leondro v. State*, 346 N.C. 336, 345-46, 488 S.E.2d 249,
18 254 (1997), the North Carolina Supreme Court in found similar language
19 guaranteed a quality of education defined as “sound basic education,” and finding
20 that “[a]n education that does not serve the purpose of preparing students to
21 participate and complete in the society in which they live is devoid of substance and
22 is constitutionally inadequate.” In *Connecticut Coalition for Justice in Education v.*
23 *Rell*, 295 Conn. 240, 243, 292-95, 990 A.2d 206, 210-11, 240-41 (2010), that state’s
24 high court found that similar provision guaranteed public school students “the right
25 to a particular minimum quality of education, namely, suitable educational
26 opportunities, which includes preparing students for the workforce and higher
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1 education, civic engagement, and protection of liberty.”⁹ In *Tennessee Small School*
2 *Systems*, 851 S.W.2d, at 150-51, the Tennessee court held that a similar provision
3 required the legislature to “maintain and support a system of free public schools
4 that provides, at least, the opportunity to acquire general knowledge, develop the
5 powers of reasoning and judgment, and generally prepare students intellectually for
6 a mature life”).¹⁰ In *Abbeville County School Dist. v. State*, 335 S.C. 58, 68, 515
7 S.E.2d 535, 540, the South Carolina agreed that its provision “requires the General
8 Assembly to provide the opportunity for each child to receive a minimally adequate
9 education.”¹¹ In *Campaign for Fiscal Equity et al. v. State*, 86 N.Y.2d 307, 314,
10 316-317, 655 N.E.2d 661, 665-666 (1995) New York interpreted its provision to
11 mean children are entitled to a “sound basic education,” meaning basic literacy,
12 calculating, and verbal skills provided via appropriate essential resources and
13 facilities.).¹²

14 Nev. Const. art. XI, sec. 2 imposes a solemn duty upon the Legislature
15 regarding our system of public schools. Taking taking the vast mountain of facts
16 alleged in the complaint concerning both the parameters of that duty and the
17 outcomes the State has produced among its student population—both historically

18
19 ⁹ Conn. Const. art. eighth, § 1 (“There shall always be free public elementary
20 and secondary schools in the state. The general assembly shall implement this
principle by appropriate legislation”).

21 ¹⁰ Tenn. Const., art. XI, § 12. (“The state of Tennessee recognizes the inherent
22 value of education and encourages its support. The General Assembly shall provide
23 for the maintenance, support and eligibility standards of a system of free public
schools.”)

24 ¹¹ S.C. Const., art. XI, § 3 (“The General Assembly shall provide for the
25 maintenance and support of a system of free public schools open to all children in
the State and shall establish, organize and support such other public institutions of
learning as may be desirable.”).

26 ¹² N.Y. Const. Art. XI, § 1 (“The legislature shall provide for the maintenance
27 and support of a system of free common schools, wherein all the children of this
state may be educated.”).

1 and currently—as true, as the Court obviously must at this stage of the
2 proceedings, it cannot be fairly said that sufficient facts have not been pled to make
3 a proper controversy of the State’s failures to discharge its constitutional duties
4 mandated by Section 2.

5 **3. The State Constitution provides the right to a**
6 **adequate, basic, and sufficient education to every**
7 **Nevada child**

8 The fundamental right to education pursuant to a state constitution, obviously,
9 should be evaluated differently than traditional federal due process rights. *See*
10 *McCleary v. State*, 173 Wash.2d 477, 519, 269 P.3d 227, 248 (2012). As discussed
11 *infra*, education is a positive right, created by a correlative duty upon the
12 Legislature to provide for meaningful educational opportunity. *Id.* at 518, 269 P.3d,
13 at 247-48 (citing *Seattle School Dist. No. 1 of King County v. State*, 90 Was.2d 476,
14 511-12, 585 P.2d 71,91 (1978); see also *Skeen v. State*, 505 N.W. 2d 299, 313 (Minn.
15 1993)(noting education is an explicit duty in the Minnesota Constitution, and
16 therefore correlates to a fundamental right). The question therefore becomes
17 whether the state has done enough to achieve its “constitutionally prescribed end,”
18 not whether the state overstepped its boundaries and impinged on a right, as in
19 common due process jurisprudence. *Id.* at 519 (quoting Hershkoff, Positive Rights
20 and State Constitutions: The Limits of Federal Rationality Review, 112 Harv. L.
21 Rev. 1131, 1137 (1999)).

22 Several states, where the legislature has a constitutional duty to provide
23 public education, have determined education is a fundamental right; likewise, these
24 states reject the contention that the *Rodriguez* case (cited here by the State)
25 precludes such a finding. *Mot.* at 20-21, (citing *San Antonio Indep. Sch. Dist. v.*
26 *Rodriguez*, 411 U.S. 1, 33 (1973)). *See e.g. Connecticut Coalition for Justice in*
27 *Education*, at 298-99 (finding education is basic, fundamental right, and that lack of
28 comparable provision in federal constitution rendered analysis of *Rodriguez* “largely
inapposite”); *Martinez v. State*, No. D-101-CV-2014-00793 (N.M. Dist. Ct. July 20,

1 2018) (rejecting *Rodriguez* analysis because state constitution clause that requires
2 “uniform system of free public schools sufficient for education” creates and positive,
3 fundamental right, thus precluding rational basis review.”) (quoting N.M. Const.
4 art. XII, § 1); *Rose v. Council for Better Educ., Inc.*, 790 S.W.2d 186, 212-13
5 (Ky.1989) (holding that every child has a fundamental right to receive an adequate
6 education and defining the minimum characteristics of that right); *Skeen*, at 313-14
7 (holding that education is a fundamental right, and because the education article
8 articulates a duty placed upon the legislature, distinguishable from the U.S.
9 Constitution).

10 The Nevada Constitution articulates a legislative duty to “encourage by all
11 suitable means...” and “provide for a uniform system of common schools,” creating a
12 correlative fundamental right to an education. Nev. Const. art. XI, secs. 1-2. As
13 previously discussed, the Nevada Supreme Court has already found children have a
14 substantive right to a basic education. As the Court stated,

15 “Our Constitution's framers strongly believed that each child should have the
16 opportunity to receive a basic education. Their views resulted in a
17 Constitution that places great importance on education. Its provisions
18 demonstrate that education is a basic constitutional right in Nevada.”

18 *Guinn I*, at 286 (emphasis added). The Court made clear that “[p]ublic education is
19 a right that the people, and the youth, of Nevada are entitled, through the
20 Constitution, to access.” *Id.* at 287.

21 Semantic parsing over whether that right is “fundamental,” “basic,” or
22 otherwise is not particularly germane. The right exists; it is explicitly recognized in
23 this state by its highest court; and it is found in and derived from the Nevada
24 Constitution. That, essentially, ought to end the argument regarding whether the
25 right so described is guaranteed to the schoolchildren of Nevada.

26 **IV. LEAVE TO AMEND THE COMPLAINT**

27 Alternatively, should the Court grant the State’s motion to dismiss, Plaintiffs
28 ask the Court to exercise its discretion and grant them leave to amend the

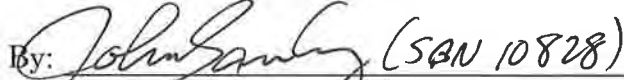
1 complaint, a request respectfully made and, according to long jurisprudential
2 custom, liberally granted.

3 **V. CONCLUSION**

4 Based upon the foregoing, Plaintiffs Caryne Shea *et al.* ask the Court to deny
5 the State's motion in its entirety.

6
7 DATED this 31st day of August, 2020.

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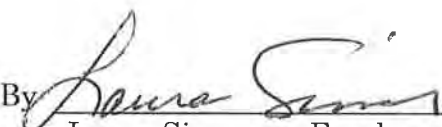
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CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of August, 2020 , a true and correct copy of the **PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTION TO DISMISS** was served upon all parties by mailing via U.S. Mail, First Class postage prepaid, at Reno, Nevada to the following:

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9 **FIRST JUDICIAL DISTRICT COURT OF NEVADA**

10 **CARSON CITY**

11 CARYNE SHEA, individually and as next friend
of her minor children A.S. and M.S.; VENECIA
12 SANCHEZ, individually and as next friend of her
minor child Y.S.; BETH MARTIN, individually
13 and as next friend of her minor children R.M. and
H.M.; GALEN EVANS, individually and as next
14 friend of his minor child C.E.; PAULA
ARZOIAN, individually and as next friend of her
15 minor child A.A.; KAREN PULEO, individually
and as next friend of her minor children J.D. Jr.,
16 Jas.D., and Jac.D.; CHRISTINA BACKUS,
individually and as next friend of her minor child
17 D.B.; CAMERON BACKUS, individually and as
next friend of his minor child D.B.;
18 ALEXANDRA ELLIS, individually and as next
friend of her minor children L.E., M.E., and B.E.,

19 Plaintiffs,

20 THE STATE OF NEVADA; THE NEVADA
21 DEPARTMENT OF EDUCATION; JHONE
EBERT, Nevada Superintendent of Public
22 Education, in her official capacity; NEVADA
STATE BOARD OF EDUCATION; DOE
23 INDIVIDUALS, I-XXV; ROE ENTITIES, I-
XXV,

24 Defendants.

Case No. 20 OC 00042 1B

Dept. No. II

25
26 **DEFENDANTS' REPLY SUPPORTING MOTION TO DISMISS**

27 Defendants State of Nevada, the Nevada Department of Education, Jhone Ebert, Nevada
28 Superintendent of Public Education, in her official capacity, and the Nevada State Board of Education

1 (“Education Defendants”), through their counsel of record, submit this Reply Supporting Education
2 Defendants’ Motion to Dismiss Plaintiffs’ Complaint pursuant to NRC 12 (b) (5). This Reply is made
3 and based upon the following points and authorities, the pleadings and papers on file, and any oral
4 argument the Court may allow.

5 **MEMORANDUM OF POINTS AND AUTHORITIES**

6 **I. Introduction**

7 Plaintiffs contend that poor education outcomes reflect a systemic failure to provide adequate
8 education in violation of Nevada’s Constitution. Opp. at 3:4-6. Yet, Plaintiffs fail to identify a
9 constitutional mandate that establishes a benchmark correlation between education inputs and outcomes.
10 The omission of such a mandate is not by happenstance but rather the result of the affirmative decisions
11 of the Framers after lengthy debate.

12 While Plaintiffs assert that manageable judicial standards exist to resolve this matter (they don’t)¹,
13 they fail to dispute that: (1) education is textually committed to the legislature; and (2) that the judiciary
14 would have to make an initial policy determination—each of which presents a nonjusticiable political
15 question that singularly mandates dismissal². *N. Lake Tahoe FPD v. Washington Cnty. Comm’rs*, 129
16 Nev. 682, 688, 310 P.3d 583, 587 (2013) (internal citations omitted). Notwithstanding that fact, Plaintiffs
17 cannot establish constitutional violations entitling them to relief and a court need not grant leave to amend
18 when the amendment would be an exercise in futility. *See Allum v. Valley Bank of Nevada*, 109 Nev. 280,
19 287, 849 P.2d 297 (1993). Accordingly, Plaintiffs’ complaint should be dismissed with prejudice.

20 **II. Argument:**

21 **A. Because other jurisdictions sidestepped the political question doctrine and**
22 **minimized the principles of separation of powers does not mean that the Nevada**
23 **judiciary should follow suit**

24 Nevada’s highest court recognized separation of powers as essential to the American system of
25 government and expressly adopted the *Baker* factors to determine whether dismissal is appropriate based
26

27 ¹ To avoid redundancy, Education Defendants respectfully direct the Court’s attention to Section
28 IV.A. 2 of its Motion to Dismiss as to the absence of judicially discoverable and manageable standards
to resolve education funding and adequacy claims.

² Other independent grounds establishing a nonjusticiable political question that are present here
include: the impossibility of a court resolving the matter without expressing lack of respect due to a co-
branch; and the potentiality of embarrassment from multifarious pronouncements by departments on one
question. *N. Lake Tahoe*, 129 Nev. at 688, 310 P.3d at 587 (internal citations omitted).

1 on the political question doctrine. *N. Lake Tahoe*, 129 Nev. at 686, 688, 310 P.3d at 586-87.
2 Consideration of those factors warrants dismissal in this instance.

3 **1. Education policy is textually committed to the Legislature**

4 Plaintiffs do not dispute that under Nevada law, the administration of education policy is textually
5 committed to the legislature. Opp. p. 3. Rather, they argue that with that textual commitment comes an
6 unspecified, but purportedly implicit, obligation to guarantee educational outcomes irrespective of the
7 impact on other legislative fiscal responsibilities. But, the plain language of Nevada's Constitution does
8 not require this and where the language is clear, a court "may not go beyond that language in determining
9 the framers' intent."³ *ASAP Storage, Inc. v. City of Sparks*, 123 Nev. 639, 646, 173 P.3d 734, 739 (2007).

10 The fact that Article XI, section 1 reads "[t]he legislature shall *encourage* by all *suitable* means"
11 acknowledges that the legislature's responsibility neither begins nor ends with education policy, but
12 includes a labyrinth of other statewide policy and budgetary considerations that effect what are "suitable
13 means" in the context of education. NEV. CONST. art. XI, section 1 (emphasis added). To construe this
14 provision any other way would impose an impossible burden on the legislature to obtain an educational
15 outcome that no amount of money or programming could possibly guarantee from year to year. The
16 Framers did not intend to impose such a burden. *See Schwartz v. Lopez*, 132 Nev. 732, 747, 382 P.3d
17 886, 897 (2016). Their intent was memorialized in Article XI, section 6 (2) which gave the legislature
18 the authority to appropriate money that the "Legislature deems to be sufficient." *Id.* While engaging in
19 constitutional interpretation, courts should review the document as a whole to ascertain the meaning of
20 any particular provision. *See In re Contested Election of Mallory*, 128 Nev. 436, 438, 282 P.3d 739, 741
21 (2012) (internal citations omitted). Construing the Nevada Constitution can only lead to one plausible
22 conclusion, namely that education policy is textually committed to the legislature, and dismissal of
23 Plaintiffs' complaint as a non-justiciable political question is warranted.

24 **2. Policy determinations are not within the purview of the judiciary**

25 A policy is a "definite course or method of action selected from among alternatives." "Policy."
26 *Merriam-Webster.com Dictionary*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/policy>. Accessed Aug. 20, 2020. Plaintiffs seek a declaration that "a sufficient education is a basic right
27 under the Nevada Constitution" and that the "public education systems' current funding system is
28 insufficient to guarantee or secure the basic right of a sufficient education." Compl. at 36. Such a
determination requires a policy analysis as to what is a "sufficient education" and what course of action

³ The result is the same even considering the Framers' intent, i.e. education policy is within the purview of the legislature. *See MTD* at 8.

1 is necessary to provide it. Is it: (1) the number of subjects offered or the amount of instruction time on a
2 particular subject; (2) the attainment of a specified grade point average; (3) the average score on
3 standardized tests; (4) the number of students who graduate; or (5) the percentage of graduates who
4 pursue post-secondary education? The answer to any one of these questions would require the Court to
5 make an initial policy determination that constitutes a nonjusticiable political question.

6 Plaintiffs reference *N. Lake Tahoe* to posit that the judiciary is empowered to adjudicate the
7 political questions that they have put before this Court. Opp. at 4. But Plaintiffs misread the expanse of
8 judicial review when what is being challenged is the underlying autonomy of the legislature to legislate,
9 as in this case. Because, as Plaintiffs contend, “the Court has in the past decided questions of great
10 political importance” by no means implies that the judiciary should start adjudicating political questions.
11 Opp. at 6. Simply put, questions of great political importance and political questions are not one in the
12 same. Here, Plaintiffs’ recourse is not with the judiciary, but rather at the election polls. Accordingly,
13 their complaint should be dismissed.

14 **3. That other jurisdictions have found education adequacy cases to be**
15 **justiciable has no bearing on Nevada**

16 Plaintiffs cite to non-binding authority from jurisdictions with state constitutions that differ from
17 Nevada’s to argue that since they ignored the political question doctrine, Nevada should too. The lunacy
18 of such a proposition is self-evident.

19 First, Nevada’s education clause does not impose an affirmative mandatory duty on the part of
20 the legislature to provide a minimum level of education funding or guarantee a particular education
21 outcome. See NEV. CONST. art. XI, sections 1 and 6 (2). Rather, it is purely aspirational. Plaintiffs
22 contend that they “are not asking this Court to settle mere questions of funding amounts” (Opp. at 11-
23 12), but in their claims, they allege that the primary cause of the Education Defendants’ failure is “the
24 arbitrary and inadequate Nevada public school finance system.” Compl. at ¶¶ 179, 185. However, there
25 is no plausible way to guarantee that a particular level of funding would in fact remedy any alleged
26 educational deficiency. Instead, Nevada’s approach incorporates a perpetual review and analysis of
27 processes and programs to account for the fluidity of educational needs versus the availability of
28 resources. The relief Plaintiffs seek would require the Court to second guess those determinations and
substitute its judgement for that of the legislature—a request this Court should reject.

Second, the Nevada Supreme Court adhered to the principles of separation of powers respecting
education policy concluding that it *could not direct the legislature to approve any particular funding*
amount. See *Guinn v. Nevada State Legislature*, 119 Nev. 460, 472, 76 P.3d 22, 30 (2003). Surely, if
the Supreme Court thought the Constitution mandated the legislature to appropriate a minimum level of

1 education funding or otherwise empowered the courts to make policy determinations about education
2 funding and programs, its conclusion would have differed. However, its view did not change in *Schwartz*
3 where the Court “refused to pass judgment” on whether the amount appropriated by the legislature to
4 fund public schools was in fact sufficient. *Schwartz*, 132 Nev. at 755, 382 P.3d at 902 fn. 11. This refusal
5 was a clear indication of the Court’s cognizance of both the principles of separation of powers as well as
6 the deference afforded to the legislative branch respecting education policy.

6 **B. Plaintiffs cannot plead viable claims for violations of Nevada’s Constitution**

7 Plaintiffs contend that Article XI, section 1 obligates the Education Defendants to provide
8 “meaningful educational opportunities.” *Opp.* at 16. But who determines when an educational
9 opportunity is meaningful and what standards are to be applied in making that determination is relegated
10 to the legislature. Plaintiffs admit that the particular level of education quality is debatable. *Opp.* at 17.
11 Accordingly, just because Plaintiffs disagree with the legislature’s determinations, they should not be
12 permitted to turn to a co-equal branch of government for a second opinion. Simply put, the legislature is
13 charged with the administration of education policy and this includes how much, when, and in what way.
14 To the extent Plaintiffs disagree, their recourse is through the legislative election process, not the courts.

14 Plaintiffs fair no better under Article XI, section 2. Plaintiffs challenge whether the legislature
15 has “provided for” a uniform system asserting that this provision actually requires the legislature to
16 guarantee a uniform educational outcome for every student. *Compl.* at 20. The Constitution imposes
17 no such requirement. Rather, section 2 is “directed at maintaining uniformity *within* the public school
18 system” and so long as it is open and available to all students, the constitutional mandate has been met.
19 *See Schwartz*, 132 Nev. at 746, 750, 382 P.3d at 896, 898 (internal citations omitted).

19 Plaintiffs reiterate that the Constitution mandates an education of a certain quality, which they
20 have already admitted was debatable. Even assuming the Constitution requires an education of a certain
21 quality (it doesn’t), the judiciary is not any better suited than the legislature to determine what a quality
22 education looks like and whether one has been offered. What it simply boils down to is that Plaintiffs
23 want a guarantee of a different education outcome which the constitution does not mandate the legislature
24 provides.

24 Finally, characterizing education as a “positive right” does not transform it into a fundamental
25 right⁴ under Nevada’s due process clause. *See NEV. CONST.* art I, section 8 (2). The “right” granted by

26 ⁴ Irrespective of state court decisions identified by Plaintiffs that are not binding on this Court,
27 neither the U.S. nor the Nevada Constitution recognize education as a fundamental right. *See San Antonio*
28 *Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1 (1973); *See also State v. Eighth Jud. Dist. Ct. (Logan D.)*, 129
Nev. 492, 504, 306 P.3d 369, 377 (2013) (“This court has consistently relied upon the [U.S.] Supreme

1 Nevada's Constitution is to a public-school education and the policies adopted by the legislature are
2 consistent with that right. Plaintiffs' contention that this right requires a judicial declaration that it
3 embodies an "adequate, basic, or sufficient education" would not resolve the issue because what is
4 adequate, basic, or sufficient to one person differs for another. The subjective determinations of how
5 best to educate Nevadans was expressly assigned to the legislature. Based on the plain language of the
6 constitutional provisions, Plaintiffs' challenge should be rejected by the Court.

6 **III. Conclusion**

7 Plaintiffs' claims present non-justiciable political questions. Even if they were justiciable,
8 Plaintiffs cannot establish violations of the Nevada Constitution and no amendment of the complaint will
9 rectify that deficiency. Accordingly, the Education Defendants request that Plaintiffs' complaint be
10 dismissed with prejudice.

11 Respectfully submitted this 31st day of August, 2020.

12 AARON D. FORD
13 Attorney General

14 By: /s/ Sabrena K. Clinton
15 Steve Shevorski (Bar No. 8256)
16 Chief Litigation Counsel
17 Sabrena K. Clinton (Bar No. 6499)
18 Deputy Attorney General

19
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27 _____
28 Court's holdings interpreting the federal Due Process Clause to define the fundamental liberties protected
under Nevada's due process clause.") (internal citations omitted).

AFFIRMATION

Pursuant to NRS 239B.030(4), the undersigned does hereby affirm that Defendants' Motion to Dismiss and documents filed in support thereof do not contain the Social Security number of any person or any other non-publicly available personal information. Upon filing additional documents, Defendants will submit an affirmation only if the document does contain personal information.

Dated this 31st day of August, 2020.

AARON D. FORD
Attorney General

By: /s/ Sabrena K. Clinton
Steve Shevorski (Bar No. 8256)
Chief Litigation Counsel
Sabrena K. Clinton (Bar No. 6499)
Deputy Attorney General

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1 CERTIFICATE OF SERVICE

2 I hereby certify that I am an employee of the State of Nevada, Office of the Attorney General,
3 and that on the 31st day of August, 2020, I served the foregoing document by causing a true and correct
4 copy thereof to be served via U.S. Mail, postage prepaid, addressed to the following:

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7 Las Vegas, NV 89120

8 Amanda Morgan
Educate Nevada Now
9 701 S. 9th St.
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10
11 /s/ Eddie Rueda
12 Eddie Rueda, an employee of the
13 Office of the Attorney General
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1 AARON D. FORD
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8 *Attorneys for Defendants*
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10 **FIRST JUDICIAL DISTRICT COURT OF NEVADA**

11 **CARSON CITY**

12 CARYNE SHEA, individually and as next friend
of her minor children A.S. and M.S.; VENECIA
13 SANCHEZ, individually and as next friend of her
minor child Y.S.; BETH MARTIN, individually
14 and as next friend of her minor children R.M. and
H.M.; GALEN EVANS, individually and as next
15 friend of his minor child C.E.; PAULA
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16 minor child A.A.; KAREN PULEO, individually
and as next friend of her minor children J.D. Jr.,
17 Jas.D., and Jac.D.; CHRISTINA BACKUS,
individually and as next friend of her minor child
18 D.B.; CAMERON BACKUS, individually and as
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19 ALEXANDRA ELLIS, individually and as next
friend of her minor children L.E., M.E., and B.E.,
20

21 **Plaintiffs,**

22 THE STATE OF NEVADA; THE NEVADA
DEPARTMENT OF EDUCATION; JHONE
EBERT, Nevada Superintendent of Public
23 Education, in her official capacity; NEVADA
STATE BOARD OF EDUCATION; DOE
24 INDIVIDUALS, I-XXV; ROE ENTITIES, I-
XXV,
25

26 **Defendants.**
27
28

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AUBREY J. PLATT
CLERK

BY _____
DEPUTY

Case No. 20 OC 00042 1B

Dept. No. II

1 **LEGAL STANDARD**

2 A motion to dismiss raising justiciability arguments is subject to the NRCP 12(b)(5) standard of
3 review. *Citizens for Cold Springs v. City of Reno*, 125 Nev. 625, 218 P.3d 847 (2009). A complaint
4 should be dismissed for failure to state a claim if it appears beyond a doubt that plaintiff could prove no
5 set of facts, which, if true, would entitle plaintiff to relief. *Buzz Stew, LLC v. City of N. Las Vegas*, 124
6 Nev. 224, 228, 181 P.3d 670, 672 (2008). In Nevada, an actual justiciable controversy is a predicate to
7 judicial relief. *Stockmeier v. Nev. Dep't of Corr.*, 122 Nev. 385,393, 135 P.3d 220, 225 (2006) (abrogated
8 by *Buzz Stew* on other grounds) (citing *Doe v. Bryan*, 102 Nev. 523, 525, 728 P.2d 443 (1986)). And to
9 obtain declaratory or injunctive relief, there must be a justiciable controversy. *Kress v. Corey*, 65 Nev.
10 1, 26, 189 P.2d 352, 364 (1948); see also, *Lamb v. Doe*, 92 Nev. 550, 551, 554 P.2d 732, 733 (1976).
11 Controversies that “revolve around policy choices and value determinations constitutionally committed
12 for resolution to the legislative and executive branches” are political questions outside the purview of
13 judicial review. *N. Lake Tahoe FPD v. Washoe Cnty. Comm'rs*, 129 Nev. 682, 687, 310 P.3d 583, 587
14 (2013) (internal citations omitted).

15 A claim presents a non-justiciable political question where there is: (1) a textually demonstrable
16 constitutional commitment of the issue to a coordinate political department; (2) a lack of judicially
17 discoverable and manageable standards for resolving it; or (3) the impossibility of deciding without an
18 initial policy determination of a kind clearly for nonjudicial discretion. *Id.* (citing *United State v. Munoz-
19 Flores*, 495 U.S. 385, 389-90) (quoting *Baker v. Carr*, 369 U.S. 186, 217 (1962)). If *any one* of these
20 factors has been met, the political questions doctrine mandates dismissal. *Id.* (emphasis added).

21 **CONCLUSIONS OF LAW**

22 1. Plaintiffs’ complaint presents nonjusticiable political questions not appropriate for
23 adjudication by this Court.

24 2. The plain language of Article XI of the Nevada Constitution textually commits the
25 administration of education policy in the state of Nevada to the legislature. This textual commitment
26 includes the discretion to: (1) appropriate the amount of money that the legislature deems sufficient to
27 fund the operation of the public schools; and (2) determine what programs and processes to adopt in
28 providing for a uniform system of public school in the state of Nevada.

3. The education clause in the Nevada Constitution is aspirational and does not guarantee an
education of a particular quality or quantity nor does it mandate the attainment of specific educational
outcomes.

...

1 4. The complexities associated with promulgating, implementing, and enforcing a statewide
2 system of education policy makes them better suited for determination by the legislature, not the courts
3 which lack judicially discoverable and manageable standards to effectively resolve those issues.

4 5. To declare, as Plaintiffs request, that “a sufficient education is a basic right under the
5 Nevada Constitution” and that the “public education systems’ current funding system is insufficient to
6 guarantee or secure the basic right of a sufficient education” (Compl. at 36) would require an initial
7 policy determination as to what is a “sufficient education” and what course of action is necessary to
8 provide it in contravention to the political question doctrine.

9 6. Consistent with the separation of powers doctrine, the Court will not substitute its
10 judgment for that of the legislature with respect to the education policy in the state of Nevada.

11 **IT IS HEREBY ORDERED** that Defendants’ Motion to Dismiss is GRANTED with prejudice.

12 Dated this 7 day of October, 2020.

13 
14 DISTRICT COURT JUDGE

15 Respectfully submitted,

16 AARON D. FORD
17 Attorney General

18 By: /s/ Sabrena K. Clinton
19 Steve Shevorski (Bar No. 8256)
20 Chief Litigation Counsel
21 Sabrena K. Clinton (Bar No. 6499)
22 Deputy Attorney General
23 *Attorneys for Defendants*
24
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CERTIFICATE OF SERVICE

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and that on the _____ day of _____, 2020, I served the foregoing document by causing a true
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Amanda Morgan
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8 *Attorneys for Defendants*
9

10 **FIRST JUDICIAL DISTRICT COURT OF NEVADA**

11 **CARSON CITY**

12 CARYNE SHEA, individually and as next
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19 individually and as next friend of his minor
child D.B.; ALEXANDRA ELLIS,
20 individually and as next friend of her minor
children L.E., M.E., and B.E.,

21 Plaintiffs,

22 vs.

23 THE STATE OF NEVADA; THE NEVADA
24 DEPARTMENT OF EDUCATION; JHONE
EBERT, Nevada Superintendent of Public
25 Education, in her official capacity;
NEVADA STATE BOARD OF
26 EDUCATION; DOE INDIVIDUALS, I-XXV;
ROE ENTITIES, I-XXV,

27 Defendants.
28

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2022 06 26 Date

AUBREY ROWLATT
CLERK

By Deputy

Case No. 20 OC 00042 1B

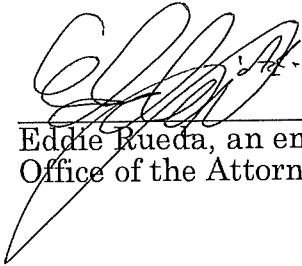
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Eddie Rueda, an employee of the
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EXHIBIT A

EXHIBIT A

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2 Steve Shevorsi (Bar No. 8256)
Chief Litigation Counsel
3 Sabrena K. Clinton (Bar No. 6499)
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BY _____
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8 *Attorneys for Defendants*
9

10 **FIRST JUDICIAL DISTRICT COURT OF NEVADA**
11 **CARSON CITY**

12 CARYNE SHEA, individually and as next friend
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Case No. 20 OC 00042 1B
Dept. No. II

20 Plaintiffs,

21 THE STATE OF NEVADA; THE NEVADA
22 DEPARTMENT OF EDUCATION; JHONE
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23 Education, in her official capacity; NEVADA
STATE BOARD OF EDUCATION; DOE
24 INDIVIDUALS, I-XXV; ROE ENTITIES, I-
XXV,

25 Defendants.
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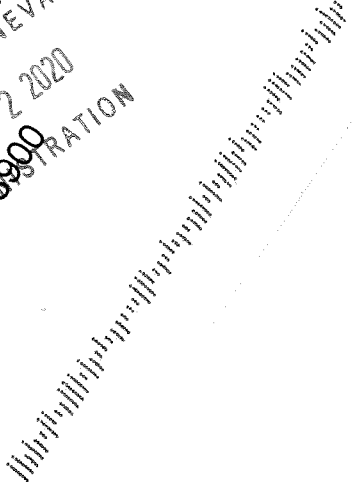
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STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL
555 E. Washington Avenue, Suite 3900
Las Vegas, Nevada 89101-1068

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LAS VEGAS, NEVADA
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Office of the Attorney General
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AUBREY ROHLATT
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BY K. PETERSON
DEPUTY

WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP

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Attorneys for Plaintiffs

IN THE FIRST JUDICIAL DISTRICT COURT

OF THE STATE OF NEVADA IN AND FOR CARSON CITY

CARYNE SHEA, individually and as next friend of her minor children A.S. and M.S.; VENECIA SANCHEZ, individually and as next friend of her minor child Y.S.; BETH MARTIN, individually and as next friend of her minor children R.E. and H.E.; CALEN EVANS, individually and as next friend of his minor child C.E.; PAULA ARZOIAN, individually and as next friend of her minor child A.A.; KAREN PULEO, individually and as next friend of her minor children J.D.Jr., Jas.D., and Jac.D.; CHRISTINA BACKUS, individually and as next friend of her minor child D.B.; CAMERON BACKUS, individually and as next friend of his minor child D.B.; ALEXANDRA ELLIS, individually and as next friend of her minor children L.E., M.E., and B.E.,

Plaintiffs,

vs.

THE STATE OF NEVADA; THE NEVADA DEPARTMENT OF EDUCATION; JHONE EBERT, Nevada Superintendent of Public Education, in her official capacity; NEVADA STATE BOARD OF EDUCATION; DOE INDIVIDUALS, I-XXV; ROE ENTITIES, I-

CASE NO.: 20 OC 00042 1B

DEPT.: II

COPY

PLAINTIFFS' NOTICE OF APPEAL

1 XXV,

2 Defendants.

3 **PLAINTIFFS' NOTICE OF APPEAL**

4 Pursuant to NRAP 3A, Plaintiffs, by and through their attorneys of record, hereby appeal
5 to the Supreme Court of Nevada the Order Granting Defendants' Motion to Dismiss, entered on
6 October 26, 2020, attached hereto as **Exhibit A**.

7 **AFFIRMATION**

8 The undersigned does hereby affirm that the foregoing document does not contain the
9 social security number of any person.

10 DATED this 12th day of November, 2020

11 **WOLF, RIFKIN, SHAPIRO,**
12 **SCHULMAN & RABKIN, LLP**

13 By: 

14 _____
15 Bradley S. Schrage, Esq., SBN 10217
16 Daniel Bravo, Esq., SBN 13078
17 3556 E. Russell Road, Second Floor
18 Las Vegas, Nevada 89120

19 **EDUCATE NEVADA NOW**
20 Amanda Morgan, Esq., SBN 13200)
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22 Las Vegas, Nevada, 89101

23 *Attorneys for Plaintiffs*

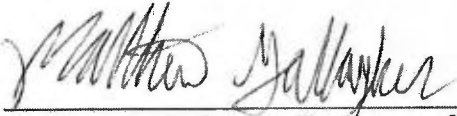
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CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of November, 2020, a true and correct copy of the
PLAINTIFFS' NOTICE OF APPEAL was served upon all parties by mailing via U.S. Mail,
First Class postage prepaid, at Las Vegas, Nevada to the following:

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Steve Shevorsi
Sabrina K. Clinton
STATE OF NEVADA OFFICE OF THE
ATTORNEY GENERAL
555 E. Washington Ave., Ste. 3900
Las Vegas, NV 89101

Attorneys for Defendants

By: 
Matthew Gallagher, an Employee of
WOLF, RIFKIN, SHAPIRO, SCHULMAN &
RABKIN, LLP

Index of Exhibits

1	Exhibit No.	Description	No. of Pages
3	A	Notice of Entry of Order	<u>10</u>
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EXHIBIT A

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Sept 26, 2020 Date

AUBREY ROWLATT
CLERK

By _____ Deputy

1 AARON D. FORD
Attorney General
2 Steve Shevorsi (Bar No. 8256)
Chief Litigation Counsel
3 Sabrena K. Clinton (Bar No. 6499)
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8 *Attorneys for Defendants*

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11 CARSON CITY

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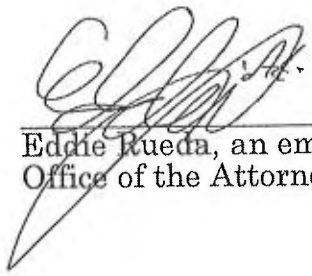
CERTIFICATE OF SERVICE

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Eddie Rueda, an employee of the
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8 *Attorneys for Defendants*

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CLERK
BY _____
DEPUTY

10 **FIRST JUDICIAL DISTRICT COURT OF NEVADA**
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LEGAL STANDARD

A motion to dismiss raising justiciability arguments is subject to the NRCPC 12(b)(5) standard of review. *Citizens for Cold Springs v. City of Reno*, 125 Nev. 625, 218 P.3d 847 (2009). A complaint should be dismissed for failure to state a claim if it appears beyond a doubt that plaintiff could prove no set of facts, which, if true, would entitle plaintiff to relief. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008). In Nevada, an actual justiciable controversy is a predicate to judicial relief. *Stockmeier v. Nev. Dep't of Corr.*, 122 Nev. 385,393, 135 P.3d 220, 225 (2006) (abrogated by *Buzz Stew* on other grounds) (citing *Doe v. Bryan*, 102 Nev. 523, 525, 728 P.2d 443 (1986)). And to obtain declaratory or injunctive relief, there must be a justiciable controversy. *Kress v. Corey*, 65 Nev. 1, 26, 189 P.2d 352, 364 (1948); see also, *Lamb v. Doe*, 92 Nev. 550, 551, 554 P.2d 732, 733 (1976). Controversies that “revolve around policy choices and value determinations constitutionally committed for resolution to the legislative and executive branches” are political questions outside the purview of judicial review. *N. Lake Tahoe FPD v. Washoe Cnty. Comm'rs*, 129 Nev. 682, 687, 310 P.3d 583, 587 (2013) (internal citations omitted).

A claim presents a non-justiciable political question where there is: (1) a textually demonstrable constitutional commitment of the issue to a coordinate political department; (2) a lack of judicially discoverable and manageable standards for resolving it; or (3) the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion. *Id.* (citing *United State v. Munoz-Flores*, 495 U.S. 385, 389-90) (quoting *Baker v. Carr*, 369 U.S. 186, 217 (1962)). If any one of these factors has been met, the political questions doctrine mandates dismissal. *Id.* (emphasis added).

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CONCLUSIONS OF LAW

1. Plaintiffs' complaint presents nonjusticiable political questions not appropriate for adjudication by this Court.

2. The plain language of Article XI of the Nevada Constitution textually commits the administration of education policy in the state of Nevada to the legislature. This textual commitment includes the discretion to: (1) appropriate the amount of money that the legislature deems sufficient to fund the operation of the public schools; and (2) determine what programs and processes to adopt in providing for a uniform system of public school in the state of Nevada.

3. The education clause in the Nevada Constitution is aspirational and does not guarantee an education of a particular quality or quantity nor does it mandate the attainment of specific educational outcomes.

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