

ALLISON MacKENZIE, LTD.
402 North Division Street, P.O. Box 646, Carson City, NV 89702
Telephone: (775) 687-0202 Fax: (775) 882-7918
E-Mail Address: law@allisonmackenzie.com

1 KAREN A. PETERSON, ESQ.
Nevada State Bar No. 366
2 JUSTIN TOWNSEND, ESQ.
Nevada State Bar No. 12293
3 ALLISON MacKENZIE, LTD.
402 North Division Street
4 Carson City, NV 89703
Telephone: (775) 687-0202
5 Email: kpeterson@allisonmackenzie.com
6 Email: jtownsend@allisonmackenzie.com

Attorneys for Plaintiffs

8 IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
9 IN AND FOR CARSON CITY

10 THE HONORABLE JAMES SETTELMAYER,
11 THE HONORABLE JOE HARDY,
12 THE HONORABLE HEIDI GANSERT,
13 THE HONORABLE SCOTT HAMMOND,
14 THE HONORABLE PETE GOICOECHEA,
15 THE HONORABLE BEN KIECKHEFER,
16 THE HONORABLE IRA HANSEN, and
17 THE HONORABLE KEITH PICKARD,
18 in their official capacities as members of the
Senate of the State of Nevada and individually;
19 GREAT BASIN ENGINEERING
20 CONTRACTORS, LLC, a Nevada limited
liability company; GOODFELLOW
21 CORPORATION, a Utah corporation qualified
22 to do business in the State of Nevada; and
23 KIMMIE CANDY COMPANY, a Nevada
24 corporation,

Plaintiffs,

vs.

21 STATE OF NEVADA *ex rel.* THE
22 HONORABLE NICOLE CANNIZZARO,
in her official capacity as Senate Majority
23 Leader; THE HONORABLE KATE
MARSHALL, in her official capacity as
24 President of the Senate; CLAIRE J. CLIFT,
in her official capacity as Secretary of
25 the Senate; THE HONORABLE STEVE
SISOLAK, in his official capacity as
26 Governor of the State of Nevada; NEVADA
DEPARTMENT OF TAXATION;
27 NEVADA DEPARTMENT OF MOTOR
VEHICLES; and DOES I-X, inclusive,

Defendants.

REC'D & FILED
2019 JUL 19 PM 2:38
AUBREY ROWLATT
CLERK
BY V. Alegria
DEPUTY

Case No: 190C00187 IB
Dept. No: II

ALLISON MacKENZIE, LTD.
402 North Division Street, P.O. Box 646, Carson City, NV 89702
Telephone: (775) 687-0202 Fax: (775) 882-7918
E-Mail Address: law@allisonmackenzie.com

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

COMPLAINT

(Arbitration Exemption: Declaratory and Injunctive Relief Sought)

Plaintiffs, by and through their attorneys, ALLISON MacKENZIE, LTD., allege and complain against the above-named Defendants as follows:

PARTIES, JURISDICTION AND VENUE

1. Plaintiffs, Senators JAMES SETTELMAYER, JOE HARDY, HEIDI GANSERT, SCOTT HAMMOND, PETE GOICOECHEA, BEN KIECKHEFER, IRA HANSEN, and KEITH PICKARD are and were at all times relevant hereto duly elected members of the Senate of the 80th (2019) Session of the Nevada Legislature performing their duties in accordance with Article 4 of the Nevada Constitution, including Article 4, Section 1 and Article 4, Section 18(2) of the Nevada Constitution.

2. In the 80th (2019) Session of the Nevada Legislature, each of the Plaintiff Senators voted against Senate Bill 542 (“SB 542”) and voted against Senate Bill 551 (“SB 551”) and all amendments thereto.

3. Each of the Plaintiff Senators identified in Paragraph 1 above is a member of the NEVADA SENATE REPUBLICAN CAUCUS. Collectively, Plaintiff Senators constitute the entire membership of the NEVADA SENATE REPUBLICAN CAUCUS and at all times relevant hereto held enough votes to defeat SB 542 and SB 551 which required a two-thirds vote of the members elected to the Senate to pass pursuant to Article 4, Section 18(2) of the Nevada Constitution.

4. As a result of the actions alleged in this Complaint, Plaintiff Senators and each of them have been injured in fact because the Defendants (except Defendants, NEVADA DEPARTMENT OF TAXATION and NEVADA DEPARTMENT OF MOTOR VEHICLES) acted improperly to nullify Plaintiff Senators’ votes against SB 542 and SB 551 and infringe upon and deprive Plaintiff Senators of their power to act. Plaintiff Senators’ votes have been adversely affected by said Defendants’ actions which directly and materially altered how the votes of individual Senators in the 80th Session of the Nevada Legislature effectively determined legislative action.

5. Plaintiff, GREAT BASIN ENGINEERING CONTRACTORS, LLC, is a Nevada limited liability company, duly formed under and qualified to do business pursuant to the laws of the

1 State of Nevada and does conduct its business within the State of Nevada such that it is subject to and
2 does, in fact, pay the Modified Business Tax (“MBT” or “payroll tax”), which is imposed and collected
3 by Defendant NEVADA DEPARTMENT OF TAXATION pursuant to NRS Chapter 363B. Plaintiff
4 GREAT BASIN ENGINEERING CONTRACTORS, LLC is a construction contractor of primarily
5 civil projects.

6 6. Plaintiff, GOODFELLOW CORPORATION, is a Utah corporation duly qualified and
7 authorized to do business in the State of Nevada and does conduct its business within the State of
8 Nevada such that it is subject to and does, in fact, pay the Modified Business Tax (“MBT” or “payroll
9 tax”), which is imposed and collected by Defendant NEVADA DEPARTMENT OF TAXATION
10 pursuant to NRS Chapter 363B. Plaintiff GOODFELLOW CORPORATION distributes and sells
11 rock crushing, construction and mining machinery and related equipment throughout the world and
12 provides all in-house industry services including custom work, fabrication, parts and electrical
13 services.

14 7. Plaintiff, KIMMIE CANDY COMPANY, is a Nevada corporation, duly formed under
15 and qualified to do business pursuant to the laws of the State of Nevada and does conduct its business
16 within the State of Nevada such that it is subject to and does, in fact, pay the Modified Business Tax
17 (“MBT” or “payroll tax”), which is imposed and collected by Defendant NEVADA DEPARTMENT
18 OF TAXATION pursuant to NRS Chapter 363B. Plaintiff Kimmie Candy Company is a state of the
19 art candy making manufacturer located in Reno, Nevada.

20 8. All individually named Plaintiffs are citizens, residents and taxpayers of the State of
21 Nevada and are subject to and do pay the technology fee that is imposed and collected by Defendant
22 NEVADA DEPARTMENT OF MOTOR VEHICLES pursuant to NRS 481.064.

23 9. Defendant, NICOLE CANNIZZARO, is named herein in her official capacity and is
24 and was at all times relevant hereto a duly elected member of the Senate of the 80th (2019) Session of
25 the Nevada Legislature and the Senate Majority Leader during the 80th Session of the Nevada
26 Legislature, whose official duties include signing bills that have been passed by the Senate in
27 conformity with the Nevada Constitution. Defendant, NICOLE CANNIZZARO, was the sponsor of
28 SB 551, and allowed a vote of less than two-thirds of the Senate to approve both SB 542 and SB 551.

1 10. Defendant, KATE MARSHALL, is named in her official capacity and is and was at all
2 time relevant hereto the duly elected Lieutenant Governor of the State of Nevada acting as President
3 of the Senate during the 80th Session of the Nevada Legislature whose official duties include signing
4 bills that have been passed by the Senate in conformity with the Nevada Constitution. Defendant,
5 KATE MARSHALL, deemed SB 542 and SB 551 constitutionally passed with less than a vote of two-
6 thirds of the Senate necessary to approve both SB 542 and SB 551 under the Nevada Constitution.

7 11. Defendant, CLAIRE J. CLIFT, is named in her official capacity and is and was at all
8 times relevant hereto the Secretary of the Senate during the 80th Session of the Nevada Legislature
9 whose official responsibilities include transmitting to the Legal Division for enrollment bills passed
10 by the Senate in conformity with the Nevada Constitution. Defendant, CLAIRE J. CLIFT, deemed
11 SB 542 and SB 551 constitutionally passed with less than a vote of two-thirds of the Senate necessary
12 to approve both SB 542 and SB 551 under the Nevada Constitution.

13 12. Defendant, STEVE SISOLAK, is named in his official capacity and is and was at all
14 times relevant hereto the duly elected Governor of the State of Nevada whose official responsibilities
15 include approving and signing bills passed by the Legislature in conformity with the Nevada
16 Constitution and to see that the laws of the State of Nevada are faithfully executed. Defendant, STEVE
17 SISOLAK, approved and signed SB 542 and SB 551 with a vote of less than two-thirds of the Senate
18 into law.

19 13. Defendant, NEVADA DEPARTMENT OF TAXATION, administers the duly enacted
20 tax statutes of the State of Nevada and collects the payroll tax.

21 14. Defendant, NEVADA DEPARTMENT OF MOTOR VEHICLES, administers the duly
22 enacted statutes involving the technology fee and collects the technology fee.

23 15. Defendants DOES I-X, inclusive, are not known at this time and are therefore identified
24 by the fictitious designation of DOES I-X. Once the true identities and capacities, whether individual,
25 corporate, associate or otherwise, of Defendants named herein as DOES I-X, inclusive, are known,
26 Plaintiffs will seek leave of this Court to amend this Complaint to insert the true names and capacities
27 of DOES I-X and join said Defendants in this action. Plaintiffs are informed and believe, and thereon
28

1 allege, that each of the Defendants designated herein as DOE is responsible in some manner for the
2 events and happenings referred to herein.

3 16. This is an action to challenge the substantive constitutionality of SB 542 and SB 551
4 as well as the constitutionality of the manner in which each such bill was deemed passed into law.

5 17. This action involves an issue of significant public and statewide importance as it seeks
6 to uphold and protect the constitutional amendment proposed by citizen ballot initiative adopted and
7 overwhelmingly approved by Nevada voters in 1994 and 1996. As provided in Article 1, Section 2 of
8 the Nevada Constitution, political power is inherent in the people. Government only has power from
9 the consent of the governed, and the residents and citizens of the State of Nevada twice voted strongly
10 in favor of amending the Nevada Constitution to add the two-thirds requirement, and the two-thirds
11 requirement has, at least prior to 2019, been applied consistently to legislative bills extending sunsets
12 by the Nevada Legislature.

13 18. Each of the Plaintiff Senators are the appropriate parties to bring this action as there is
14 no one else in a better position or who can bring an action to vindicate their votes individually and
15 collectively against SB 542 and SB 551, which votes were sufficient in number to defeat said bills.
16 The Plaintiff Senators are capable of fully advocating their position in Court.

17 19. The Plaintiff business taxpayers paying the payroll tax and the individual Plaintiff
18 citizens, residents and taxpayers paying the technology fee are appropriate parties to litigate this action.
19 Said Plaintiff businesses, citizens, residents, taxpayers and fee payers may have no other means of
20 redress to raise the constitutional challenges to SB 542 and SB 551, said constitutional challenges may
21 not be otherwise raised without their claims for relief set forth in this Complaint, the potential
22 economic impact from SB 551 alone is approximately \$98.2 million over the biennium and the
23 economic impact from SB 542 is approximately \$7 million per year, and said Plaintiffs can assist the
24 Court in developing and reviewing all relevant legal and factual questions.

25 20. The Court has subject matter jurisdiction pursuant to Article 6 of the Nevada
26 Constitution which vests the judicial power of the State in a court system including the district courts
27 of the State of Nevada.
28

- 1 32. Less than two-thirds of the Senate voted to pass SB 542.
- 2 33. SB 542 specifically extended the expiration, or sunset, of NRS 481.064 from June 30,
3 2020 to June 30, 2022.
- 4 34. NRS 481.064 provides Defendant NEVADA DEPARTMENT OF MOTOR
5 VEHICLES “shall add a nonrefundable technology fee of \$1 to the existing fee for any transaction
6 performed by the Department for which a fee is charged.”
- 7 35. The effect of SB 542, therefore, is to create, generate, and increase public revenue from
8 July 1, 2020 through June 30, 2022.
- 9 36. SB 551 is a bill to eliminate the procedure used by Defendant NEVADA
10 DEPARTMENT OF TAXATION to reduce the rate of payroll taxes and to extend indefinitely the
11 then current rates of said taxes.
- 12 37. SB 551 was introduced in the Senate by Defendant, NICOLE CANNIZZARO, as an
13 Emergency Request on May 27, 2019.
- 14 38. The Senate voted on SB 551 on June 3, 2019 and the vote was 13 in favor and 8
15 opposed. Sections 2, 3, 37 and 39 of SB 551 were effective immediately upon passage and approval.
- 16 39. Less than two-thirds of the Senate voted to pass SB 551.
- 17 40. SB 551 specifically impacted the provisions of NRS 363A.110, NRS 363B.130, and
18 NRS 360.203 in that it eliminated the computation bases for reducing the payroll tax rates set forth
19 therein and extended indefinitely the then current payroll tax rates.
- 20 41. NRS 360.203, prior to passage and enrollment of SB 551, provided that Defendant
21 NEVADA DEPARTMENT OF TAXATION should, before September 30 of each even-numbered
22 year, perform a computation, the result of which would dictate whether the rates set forth in NRS
23 363A.110 and NRS 363B.130 should be reduced.
- 24 42. Prior to September 30, 2018, Defendant NEVADA DEPARTMENT OF TAXATION
25 performed the computation required by NRS 360.203 and determined that the rates set forth in NRS
26 363A.110 and NRS 363B.130 would be reduced.

27
28

1 43. On October 11, 2018, Defendant NEVADA DEPARTMENT OF TAXATION
2 announced that rates under NRS 363A.110 and NRS 363B.130 would be reduced effective July 1,
3 2019.

4 44. SB 551 repealed NRS 360.203 and permanently fixed the rates set forth in NRS
5 363A.110 and NRS 363B.130. SB 551 retroactively nullified the payroll tax rate reduction computed
6 by Defendant NEVADA DEPARTMENT OF TAXATION required by NRS 360.203 for any fiscal
7 year beginning on or after July 1, 2015.

8 45. The effect of SB 551, therefore, is to create, generate, and increase public revenue as a
9 result of the elimination of scheduled reductions in payroll tax rates and the elimination of the
10 computation bases for future reductions thereof.

11 46. Because of Defendant NEVADA DEPARTMENT OF TAXATION's determination
12 and announcement that payroll tax rates would be reduced effective July 1, 2019, SB 551's permanent
13 fixing of the rates at higher rates is a change in the computation base of the MBT.

14 47. Where NRS 360.203, prior to enrollment of SB 551, allowed for reductions in the rate
15 of payroll tax under the MBT, the repeal thereof constitutes a change in the computation base of said
16 payroll tax.

17 48. Notwithstanding an opinion from the Legislative Counsel Bureau ("LCB") on or about
18 May 8, 2019, at various stages of the Senate's consideration of SB 551 and amendments thereto after
19 May 8, 2019, LCB's bill documentation showed that two-thirds of the Senate, or 14 Senators, would
20 have to vote to approve the bill, and at other stages of the Senate's consideration of SB 551, the two-
21 thirds requirement was removed from LCB's bill documentation for SB 551.

22 49. Defendant, NICOLE CANNIZZARO's actions on the Senate floor on June 3, 2019
23 show that if SB 551 did not have support from two-thirds of the Senate, the majority party, of which
24 she was leader, would pass the bill by simple majority.

25 50. Neither House by majority referred the SB 542 or SB 551 measures to the people of
26 the State at the next general election per Article 4, Section 18(3) of the Nevada Constitution.
27
28

THIRD CLAIM FOR RELIEF

1
2 65. Plaintiffs repeat and incorporate each of the foregoing paragraphs as though fully set
3 forth herein.

4 66. Plaintiffs' rights, status or other legal relations are affected by SB 542 and SB 551 and
5 Plaintiffs seek a declaration of their rights, status or other relations. Declaratory relief pursuant to
6 NRS Chapter 30 is appropriate because it will effectively adjudicate the rights, status or other legal
7 relations of the parties.

8 67. There exists an actual justiciable controversy between Plaintiffs and Defendants
9 concerning the applicability of Article 4, Section 18(2) of the Nevada Constitution to the voting on
10 and passage of SB 542 and SB 551.

11 68. Plaintiffs and Defendants have adverse interests, and an actual justiciable controversy
12 exists between them within the jurisdiction of this Court.

13 69. Plaintiffs have a legally protectable interest in this controversy by virtue of their votes
14 against SB 542 and SB 551 and/or their payment of the extended payroll tax and technology fee
15 deemed enacted without the required two-thirds vote of the Nevada Senate required by the Nevada
16 Constitution.

17 70. The controversy before this Court is ripe for judicial determination because relevant
18 portions of SB 551 were effective upon passage and approval and imposition of the extended payroll
19 tax rate went into effect on July 1, 2019. Taxpayer employers will be required to report and remit the
20 extended payroll tax to the NEVADA DEPARTMENT OF TAXATION that went into effect July 1,
21 2019 commencing on October 1, 2019. SB 542 was effective upon passage and approval and the
22 technology fee was extended from July 1, 2020, which occurs before the next legislative session, to
23 June 30, 2022. Plaintiffs seek a declaration from this Court prior to the State of Nevada's collection
24 of the payroll tax and technology fee from taxpayers and fee payers to avoid such taxpayers and fee
25 payers having to seek refunds from the State of Nevada and the State of Nevada having to issue refunds
26 of payroll taxes and technology fees unlawfully collected.

27 71. Plaintiffs request declarations that (a) SB 542 and SB 551 are bills which create,
28 generate, and/or increase public revenues or changes in the computation bases for taxes, fees,

1 assessments or rates; (b) Article 4, Section 18(2) of the Nevada Constitution required that two-thirds
2 of the Senate vote to pass both SB 542 and SB 551; (c) the votes of the eight Plaintiff Senators should
3 be given effect; and (d) the passage, signing, and enrollment of SB 542 and SB 551 must be invalidated
4 for lack of supporting votes of two-thirds of the Senate as required by Article 4, Section 18(2) of the
5 Nevada Constitution.

6 72. Plaintiffs have been required to engage the services of counsel to pursue their rights
7 and are entitled to reasonable attorneys' fees and costs of suit.

8 FOURTH CLAIM FOR RELIEF

9 73. Plaintiffs repeat and incorporate each of the foregoing paragraphs as though fully set
10 forth herein.

11 74. On or after September 30, 2019, the Court must enjoin the enforcement of SB 551 and
12 prior to July 1, 2020, the Court must enjoin the enforcement of SB 542, and the Court must also enjoin
13 the NEVADA DEPARTMENT OF TAXATION and NEVADA DEPARTMENT OF MOTOR
14 VEHICLES, respectively, from collecting any revenues pursuant to the subject revenue provisions of
15 SB 551 and SB 542 complained of herein.

16 75. If such injunctions are not entered, the Plaintiff Senators will suffer immediate,
17 irreparable harm in that the votes of said Senators will not be given effect as intended and as required
18 by Article 4, Section 18(2) of the Nevada Constitution.

19 76. If such injunctions are not entered, Plaintiff taxpayers and fee payers, and all similarly
20 situated taxpayers and fee payers throughout the State of Nevada, will suffer immediate, irreparable
21 harm in that (a) they will be deprived of funds through the payment of unlawfully enacted revenue-
22 raising measures and (b) the Constitutional protections against tax or fee public revenue measures
23 without the support of two-thirds of both legislative houses will effectively be eliminated.

24 77. Plaintiffs are likely to succeed on the merits of their claims made herein because both
25 SB 542 and SB 551 are revenue-generating bills and, therefore, clearly require at least the votes of
26 two-thirds of the Senate for passage.

1 78. Public interest weighs in favor of strict application of the Constitutional two-thirds
2 requirement for enacting revenue-raising measures, which was added to the Nevada Constitution by
3 the affirmative vote of the Nevada public in 1994 and 1996.

4 79. Defendants cannot be said to suffer any harm through strict adherence to the Nevada
5 Constitution while Plaintiffs and the constituents they represent will suffer severe and irreparable harm
6 if they are deprived of their rights under Article 4, Section 18(2) of the Nevada Constitution.

7 80. Plaintiffs have been required to engage the services of counsel to pursue their rights
8 under the Nevada Constitution and are entitled to recovery of reasonable attorneys' fees and costs of
9 suit.

10 **AFFIRMATION**

11 The undersigned hereby affirm that the foregoing document submitted for filing **DOES NOT**
12 contain the social security number of any person.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiffs pray for relief as follows:

15 1. For declarations that:

16 a. SB 542 and SB 551 are bills that create, generate, and/or increase public
17 revenue or changes in the computation bases for taxes, fees, assessments or rates;

18 b. Article 4, Section 18(2) of the Nevada Constitution required that two-
19 thirds of the Senate vote to pass both SB 542 and SB 551;

20 c. The votes of the eight Plaintiff Senators should be given effect; and

21 d. The passage, signing, and enrollment of SB 542 and SB 551 must be
22 invalidated for lack of supporting votes of two-thirds of the Senate.

23 2. For a temporary restraining order or a preliminary injunction if necessary effective on
24 or about September 30, 2019 for SB 551 and effective on or about July 1, 2020 for SB 542 and a
25 permanent injunction against the enforcement of SB 542 and SB 551.

26 3. For an award of attorneys' fees and costs of suit.

27 4. For such other and further relief as this Court may deem just and proper.

28 ///

ALLISON MacKENZIE, LTD.
402 North Division Street, P.O. Box 646, Carson City, NV 89702
Telephone: (775) 687-0202 Fax: (775) 882-7918
E-Mail Address: law@allisonmackenzie.com

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DATED this 19th day of July, 2019.

ALLISON MacKENZIE, LTD.
402 North Division Street
Carson City, NV 89703
Telephone: (775) 687-0202

By: 

KAREN A. PETERSON, ESQ.
Nevada State Bar No. 366
JUSTIN M. TOWNSEND, ESQ.
Nevada State Bar No. 12293
Email: kpeterson@allisonmackenzie.com
Email: jtownsend@allisonmackenzie.com

Attorneys for Plaintiffs