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CASE NO.: 10 DC 00053 1B  
DEPT. NO.: II

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

THE NEVADA MINING ASSOCIATION, INC, )  
a Nevada nonprofit corporation, )  
  
Plaintiff, )  
  
v. )  
  
ROBERT A. FULKERSON, an individual; PAMELA )  
GALLOWAY, an individual; MICHAEL GINSBURG, )  
an individual; HOWARD WATTS III, an individual; )  
THE PROGRESSIVE LEADERSHIP ALLIANCE )  
OF NEVADA, a Nevada nonprofit corporation; )  
NEVADANS FOR FAIR MINING TAXES, a Nevada )  
ballot advocacy group; ROSS MILLER, in his capacity )  
as Secretary of State for the State of Nevada; and DOES )  
I-XX, inclusive, )  
  
Defendants. )

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S  
COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

**MEMORANDUM OF POINTS AND AUTHORITIES**

The initiative petition (the "Petition") identified as having been filed with the Nevada Secretary of State (the "Secretary") by the ballot advocacy group Nevadans for Fair Mining Taxes seeks to alter radically the manner in which mineral property has been taxed in Nevada since statehood by commanding the Legislature to enact statutory provisions according to its terms. The Petition as submitted, however, violates Nevada's single-subject provision for initiative measures, provides a legally-insufficient and misleading description of effect, violates on its face a raft of state and federal constitutional provisions—including contravening the basic requirement that property taxation in Nevada be uniform, equal and based on just valuations—and furthermore constitutes an impermissible use of the initiative process. The Petition should be declared invalid and the Secretary should be enjoined from placing the measure on the 2010 General Election ballot.

**THE INITIATIVE PETITION**

On January 19, 2010, Defendants Nevadans for Fair Mining Taxes, the Progressive Leadership Alliance of Nevada, Robert A. Fulkerson, Pamela Galloway, Michael Ginsburg, and Howard Watts III (collectively, the "Proponents") filed the Petition with the Nevada Secretary of State's office. A true and accurate copy of the Petition is here attached as **Exhibit 1** to this Memorandum.

The Petition proposes to amend Article 10, Section 5 of the Nevada Constitution by changing the words "net" to "gross" at every such instance it appears therein and also by altering the rate of taxation of mineral property from a ceiling of 5 percent of the net proceeds of that property to a floor of 5 percent of gross proceeds of mineral property. **Ex. 1.**

Filed concurrently with the Petition is the following description of effect:

"The Nevada Constitution limits the state's ability to tax mining to the net proceeds of mining production. The purpose of this initiative is to amend the Nevada Constitution to allow for the taxation of gross proceeds rather than net proceeds of mineral production at a rate not less than 5 percent."

Id.

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## LEGAL ANALYSIS

For the entirety of Nevada's history, the proceeds of mineral property have been subject to an *ad valorem* property tax on fair market value. The net proceeds system contained in the state constitution, and refined in N.R.S. Chapter 362 over many decades, is an evolving effort to determine that fair market value. It reflects the simple truth that mineral property must be located, extracted, refined, and processed; it is not just lying around the valleys of Nevada waiting to be picked up by passersby. The current net proceeds tax is a system for appraisal of the mineral property to be taxed on an *ad valorem* basis. It is not, and has never been, an income tax on the market price of gold or silver. This is what the Petition threatens: a gross income tax applied to mineral proceeds, without regard to the costs of extraction. This artificially inflates the assessed value of the property to be taxed, far beyond fair market value and contrary to every concept of fair taxation.

If valuable minerals were lying around Nevada, however, at least the current system, which takes into account the costs of extraction, would recognize the difference between a major digging operation thousands of feet below the surface and pocketing a nugget found on the ground while walking the dog. It is that difference that has always informed Nevada's system for taxing mineral proceeds. The Petition's scheme does not recognize or respect this difference, and is an attack on a century and a half of uniform, equal, and just taxation.

### **I. THE INITIATIVE PETITION VIOLATES THE SINGLE SUBJECT RULE CONTAINED IN N.R.S. 295.009(1)(a) & (2)**

The Petition purports to amend Article 10, Section 5, Subsections 1 & 2 to insert "gross" for "net" at each instance the latter appears. It also commands the Legislature to enact a new "gross proceeds" tax on mineral property at a minimum of 5 percent, rather than the current constitutionally-mandated maximum of 5 percent of net proceeds. These both represent precipitous alterations of Nevada's historic constitutional scheme, and would properly be the separate subjects of two distinct initiative petitions. Under a single-subject analysis, Proponents can attempt one or the other, but not both, in a single petition. As currently drafted, the Petition violates N.R.S. 295.009(1)(a) & (2), and should be declared invalid on those grounds.

1           **A.     The Single-Subject Rule For Initiatives**

2           N.R.S. 295.009 "plainly sets forth the standard to be applied in determining whether an  
3 initiative encompasses more than one subject." *Nevadans for the Protection of Property Rights v.*  
4 *Heller*, 122 Nev. 894, 906-907, 141 P.3d 1235 (2006):

5           N.R.S. 295.009 (1)(a) requires that:

- 6                     1. Each petition for initiative or referendum must:  
7                     (a) Embrace but one subject and matters necessarily connected therewith  
                      and pertaining thereto;

8           N.R.S. 295.009(2) provides that:

- 9                     2. For the purposes of paragraph (a) of subsection 1, a petition for  
10                    initiative or referendum embraces but one subject and matters necessarily  
11                    connected therewith and pertaining thereto, if the parts of the proposed  
12                    initiative or referendum are functionally related and germane to each other  
13                    in a way that provides sufficient notice of the general subject of, and of the  
14                    interests likely to be affected by, the proposed initiative or referendum.

15           Each part of an initiative petition "must be functionally related and germane to one other"  
16 and "every provision must be functionally related and germane to the subject" or primary purpose  
17 of the initiative. *Nevadans for the Protection of Property Rights*, 122 Nev. at 907. As the Nevada  
18 Supreme Court has stated, the single-subject requirement helps both in promoting informed  
19 decisions and in preventing the enactment of unpopular provisions [through] logrolling." *Las Vegas*  
20 *Taxpayer Accountability Committee v. City Council of Las Vegas*, 125 Nev. \_\_\_, 208 P.3d 429, 437  
21 (2009), citing *Nevadans for the Protection of Property Rights* 122 Nev. at 905.

22           The single-subject rule "prevent[s] the public from being confronted with confusing or  
23 misleading petitions," and "is designed to assist voters in determining whether to change the laws of  
24 Nevada and the structure of government, and ultimately protects the sanctity of Nevada's election  
25 process." *Nevadans for the Protection of Property Rights*, 122 Nev. at 1243. In a case that both the  
26 Nevada Supreme Court and the United States District Court for the District of Nevada have relied  
27 upon in upholding Nevada's single-subject requirement, *Campbell v. Buckley*, 203 F.3d 738 (10th  
28 Cir. 2000), the United States Court of Appeals for the Tenth Circuit found that single-subject rules  
"serve to prevent voter confusion and promote informed decisions by narrowing the initiative to a  
single matter and providing information on that single matter to the voter," and that "the state has a

1 valid interest in making sure that initiatives granted access to the ballot are bona fide and actually  
2 supported, on their own merits, by those who provided the statutorily required petition or ballot  
3 support.” *Campbell*, 203 F.3d at 746.

4 The Florida Supreme Court has stated time and again that the "single-subject requirement  
5 was designed to protect against multiple precipitous and cataclysmic changes in the constitution by  
6 limiting to a single subject what may be included in any one amendment proposal.” *Ray v.*  
7 *Mortham*, 742 So.2d 1276, 1281 (Fla. 1999), internal citations omitted, citing *Advisory Opinion to*  
8 *Attorney General re Term Limits Pledge*, 718 So.2d 798, 801 (Fla. 1998), *Advisory Opinion to the*  
9 *Attorney General re Fish & Wildlife Conservation Commission*, 705 So.2d 1351, 1353 (Fla.1998));  
10 see also *In re Advisory Opinion to the Attorney General-Save Our Everglades*, 636 So.2d 1336,  
11 1339 (Fla. 1994).

12 The Petition proposes multiple precipitous changes to the Nevada Constitution. It treats a  
13 number of separate subjects—each requiring separate initiatives themselves, and none of them  
14 necessarily connected with, functionally related to, or germane to one another or to the avowed  
15 purpose of the initiative—but also does its best to de-emphasize the real, and precipitous,  
16 constitutional change it seeks: This Petition attempts to change the fundamental nature of mineral  
17 property taxation from a constitutionally-mandated *ad valorem* property tax to some form of a gross  
18 income tax. If a primary purpose can be divined from the text of the Petition, surely that is it.

19 **B. The Primary Purpose Of The Petition Is To Change The Nature Of Taxation Of**  
20 **Mineral Property From An *Ad Valorem* Property Tax To A Gross Income Tax,**  
21 **And Its Command To The Legislature To Enact A Certain Minimum Tax Rate**  
22 **Constitutes A Separate Subject**

23 Initiative proponents do not determine, for purposes of a legal analysis, the primary purpose  
24 or subject of their petition; that is the task of the court performing the analysis. In determining an  
25 initiative petition's primary purpose or subject, Nevada courts "look to its textual language and the  
26 proponent's arguments." *Las Vegas Taxpayer Accountability Committee*, 208 P.3d at 439.  
27 Proponents here cannot offer up a simplified concept, like "taxes," and ask this Court to consider it  
28 the primary subject, any more than proponents of the recent *Personhood Nevada* initiative could  
claim the primary subject of their petition was "life," or "personhood." *Bristol v. Personhood*

1 Nevada, First Judicial District Court Case No. 09-OC-00506-1B. Excessive generalities fail to  
2 explain the true nature of the measure to the voters, and do not meet the objectives of the state's  
3 regulatory scheme for initiatives and referenda.

4 Neither can initiative proponents misstate a petition's primary purpose or subject by clever  
5 sleight of language. Here, the appended description of effect states that,

6 "The purpose of this initiative is to amend the Nevada Constitution to  
7 allow for the taxation of gross proceeds rather than net proceeds of  
mineral production at a rate not less than 5 percent."

8 (Emphasis added.) But inserting a preposition and leaving out a conjunction—using *at*, while  
9 avoiding *and*—does not determine the primary purpose of the Petition, and does not mean that the  
10 second aspect, the command to the Legislature to set the new proposed gross income tax at a  
11 minimum of 5 percent, merges with the first aspect to form a seamless whole subject under the  
12 terms of the Petition. Nor does such language make the tax rate aspect connect necessarily, for  
13 purposes of a single-subject analysis, with the primary purpose of the initiative.<sup>1</sup> It is quite enough  
14 for Nevadans to digest the complicated and far-reaching implications of a change in the  
15 fundamental manner of assessing and taxing one of the most important industries in the state,  
16 implications not even hinted at in the Petition. What necessary connection, what functional  
17 relation, is manifest in also forcing voters simultaneously to confront the crucial issue of legislative  
18 prerogative, legislative expertise, and legislative deliberation in implementing the proposed  
19 constitutional amendment?

20 The taxation rate aspect of the Petition is an example of logrolling, the very thing the single-  
21 subject rule is designed to prevent. In *Nevada Resort Association v. Nevada State Education*  
22 *Association*, First Judicial District Court Case No. 07-OC-01540-1B, Senior Justice Shearing found  
23 portions of the *Save Our Schools With Additional Funding* initiative to have "the earmarks of  
24 logrolling" because "designating a major portion of the funds [to be raised by the initiative's tax  
25 hike] to employee salary and benefits, training and incentive pay is not germane and functionally  
26

27 <sup>1</sup> Another similar argument can be made regarding the Petition's primary purpose: If the  
28 purpose is to transform a maximum taxation rate into a minimum taxation rate, what "necessary  
connection" does that have with whether the tax is an *ad valorem* property tax or a gross income  
tax?

1 related to the purpose of increasing funds for education," and appeared to tuck itself into a larger  
2 project sold to voters as a school-funding measure. In *Nevadans for the Protection of Property*  
3 *Rights*, the Nevada Supreme Court found certain provisions of the petition too broad and invasive of  
4 government actions unrelated to the initiative's primary purpose, and struck those portions for  
5 violating N.R.S. 295.009(1)(a) & (2). *Nevadans for the Protection of Property Rights*, 122 Nev. at  
6 906-909. In other words, if the people see the need for statutes or amendments executing the  
7 portions of initiative petitions not connected necessarily with their primary purposes, they are free  
8 to propose separate initiatives addressing those matters or to press their representatives to do so  
9 through legislation.

10 Proponents here are attempting to go beyond the already-seismic assault on a constitutional  
11 scheme for taxation of mineral property that has been refined over more than a century by  
12 converting it into an ill-explained "gross" tax. They want to prevent the Legislature from  
13 determining through the deliberative process the proper level of that "gross" tax at a legally-  
14 mandated uniform, just, and equitable rate.

15 The Fiscal Note to the Petition, prepared by the Fiscal Division of the Legislative Counsel  
16 Bureau and filed on February 3, 2010 with the Secretary, supports the argument that the Petition  
17 embraces more than a single subject. See Fiscal Note, attached here as **Exhibit 2**. While Plaintiff  
18 has objections to the manner in which the Fiscal Note explains the character of the Petition, the  
19 Note does clearly identify the change in taxation and the minimum rate requirement as separate  
20 subjects that it analyzes accordingly. **Ex. 2**, pp. 1-2. As is discussed in succeeding sections, it is  
21 unlikely any of what Proponents propose can be achieved constitutionally, but what is certain is that  
22 they cannot achieve it all at once under a single initiative petition.

23 In current form, it will be impossible to determine, for example, whether the electorate  
24 favors altering the constitutional *ad valorem* property tax but without an accompanying restriction  
25 on the Legislature's ability to set that rate at what it may consider a just, equitable, and uniform  
26 level, or whether voters favor raising the net proceeds tax but not the radical conversion to a gross  
27 income tax. Nothing prevents initiative proponents from putting forth multiple single-subject  
28 petitions. In fact, with respect to a matter of great importance portending such a sharp departure

1 from long-held constitutional mandates in Nevada, "requiring proponents to pursue separate  
2 initiatives on separate subjects might encourage more speech on each subject." *Campbell*, 745. It  
3 serves the interests of all Nevadans—and serves the explicit goals and basic interpretation of the  
4 single-subject rule—to find the Petition invalid for violating N.R.S. 295.009(1)(a) & (2), and  
5 ordering either that it be struck entirely, revised to reflect only one subject, or that Proponents be  
6 directed to file two separate initiatives to achieve their various purposes.

7 **II. THE INITIATIVE PETITION VIOLATES THE DESCRIPTION OF EFFECT**  
8 **REQUIREMENTS CONTAINED IN N.R.S. 295.009(1)(b)**

9 Even should this Court disagree that the Petition violates the single-subject rule for  
10 initiatives, the description of effect filed concurrently with the text of the Petition is fundamentally  
11 misleading and legally insufficient, in violation of N.R.S. 295.009(1)(b).

12 The purpose of the requirement that initiative proponents include an accurate description of  
13 effect with every copy of the petition itself is to "ensure that the people are properly and adequately  
14 notified about proposed constitutional amendments, that the people are able to understand the effect  
15 that the proposed amendment would have if enacted, and that the people are afforded an opportunity  
16 to study the initiative and debate its merits during the pre-election stage." *Nevadans for Nevada v.*  
17 *Beers*, 122 Nev. 930, 947, 142 P.3d 339 (2006). The description is "significant as a tool to help  
18 prevent voter confusion and promote informed decisions." *Las Vegas Taxpayer Accountability*  
19 *Committee*, 208 P.3d at 441, quoting *Nevadans for Nevada v. Beers*, 122 Nev. at 939, and  
20 *Campbell*, 203 F.3d at 746. The minimum requirements for a description of effect are 1) that it not  
21 be "materially misleading;" 2) that it does not "materially fail to accurately identify the  
22 consequences of passage;" and 3) that it be "straightforward, succinct, and non-argumentative." *Id.*

23 Here, the description of effect fails on several levels. It does not attempt to describe any  
24 "effects" at all. It misstates the current state of taxation regarding "mining." It misstates its own  
25 meaning and purposes. It takes misleading liberties in describing its direction to the Legislature.  
26 Most importantly, the description fails to explain in any manner whatsoever that it is attempting to  
27 strike *ad valorem* property taxation of mineral property and institute instead some form of gross  
28 income tax. If Proponents want to alter the current *property tax* on mineral proceeds, let them say



1 so openly. If they instead want to impose a *gross income tax* in place of the property tax system, let  
2 them state that as well. But because it avoids any reference to the nature of what the Petition is  
3 trying to achieve, the description of effect materially misleads potential petition signers. Given 200  
4 words with which to inform Nevada voters of its wide-ranging effects, Proponents have instead  
5 selected 51 words that probably serve them as useful campaign pith but do not meet the legal  
6 requirements for informing the voters of the effects of the initiative.

7 **A. The Petition's Description Of Effect Is No Description Of Effect At All, But**  
8 **Rather A Mere Reiteration Of The Text Of The Petition Itself**

9 The 51-word description of effect included with the Petition reads:

10 "The Nevada Constitution limits the state's ability to tax mining to the net proceeds  
11 of mining production. The purpose of this initiative is to amend the Nevada  
12 Constitution to allow for the taxation of gross proceeds rather than net proceeds  
13 of mineral production at a rate not less than 5 percent."

14 This description makes no effort to describe anything at all, and offers no enlightenment to  
15 the prospective petition signer regarding any aspect of the Petition. It just re-states which words are  
16 struck and which are inserted into the constitutional provisions proposed to be amended.

17 N.R.S. 295.00991((b) demands more than re-statement. A quick glance at recent petitions  
18 reveals that most petition filers, whether ultimately successful in their efforts to place measures on  
19 the ballot or to win elections, take seriously their duty to provide adequate descriptions. The  
20 "Angle Property Tax Restraint Initiative," filed in 2005 and attached here at **Exhibit 3**, offers a raft  
21 of details of the precise effects of the measure. With the "Nevada Property Owner's Bill of Rights,"  
22 the "Nevada Taxpayers' Protection Act," or the "Property Tax Reform Initiative for Nevada," as  
23 examples attached here as **Exhibits 4, 5, and 6**, proponents at least attempted to make good faith  
24 efforts to provide the tools of informed decision-making to the voters. In 2006, the district court at  
25 first rejected the description of effect attached to the "Tax and Spending Control for Nevada"  
26 initiative as failing to "fully and accurately describe the TASC initiative's effects;" but the  
27 ultimately revised version, here attached at **Exhibit 7**, offered a wealth of information to the voters,  
28 and even included internal citations to the initiative text for reference. *Nevadans for Nevada v.*  
*Beers*, 122 Nev. 930, 935-936, 142 P.3d 339 (2006).

1 The problem with descriptions like the one appended by Petitioners is "not with what the  
2 summary says, but, rather, with what it does not say." *Askew v. Firestone*, 421 So.2d 151, 156 (Fla.  
3 1982). As the Nevada Supreme Court found in *Nevada Judges Association v. Lau*, 112 Nev. 51,  
4 910 P.2d 898 (1996), a summary or description that does not explain the ramifications of a proposed  
5 constitutional amendment has the inherent potential to mislead the electorate. Proponents of the  
6 present Petition avoid any discussion of the ramifications of changing the nature and object of  
7 taxation of mineral property in Nevada and, therefore, the description of effect is invalid pursuant to  
8 N.R.S. 295.009(1)(b).

9 **B. The First Sentence Of The Description Of Effect Is Misleading Because It Fails**  
10 **To Describe Accurately The Current Taxation Of "Mining"**

11 In an attempt to minimize the voters' understanding of the tax contribution into the state  
12 treasury by mining entities and to inflate support for the Petition, the first sentence of Proponents'  
13 description of effect misstates the current tax situation. It reads:

14 "The Nevada Constitution limits the state's ability to tax mining to the net  
15 proceeds of mining production."

16 The Nevada Constitution does no such thing. "Mining" is not a defined term in any event,  
17 and does not appear anywhere in the constitutional provisions at issue or in the initiative itself. If  
18 that term is meant to mean the mining industry in Nevada, then mining entities pay sales taxes,  
19 license taxes, business taxes, and all manner of other taxes to which any other business in Nevada is  
20 subject. Contrary to the claims in the description of effect, the state has the ability to levy all these  
21 taxes on mining entities, and it does. In addition these taxes, mining entities also pay a  
22 constitutionally-mandated tax on a percentage of the statutorily-defined net proceeds of mineral  
23 property. In 2008, the mining industry paid approximately **\$132,000,000** in taxes over and above  
24 the net proceeds tax calculated and paid pursuant to N.R.S. 362.120.<sup>2</sup> See Affidavit of Tim  
25 Crowley, President, Nevada Mining Association, here attached at **Exhibit 8**.

26  
27  
28 <sup>2</sup> This figure includes approximately \$96,000,000 in sales and use taxes, \$32,000,000 in non-  
net proceeds property taxes, and \$4,000,000 in Modified Business taxes. See Crowley Affidavit,  
2.

Proponents need to be fair and accurate. Misleading voters into thinking that mining entities do not pay these other taxes may be a promising campaign tactic but is not proper for a description of effect. The first sentence of the description of effect misleads voters and amounts to argument, in violation of the requirements for such descriptions discussed in *Las Vegas Taxpayer Accountability Committee*, 208 P.3d at 441. (Quoting *Herbst Gaming, Inc. v. Heller*, 122 Nev. 877, 889, 141 p.3d 1224 (2006).

**C. The Second Sentence Of The Description Of Effect Filed Concurrently With The Petition Is Deficient In That Fails To Describe Accurately The Effect And Meaning Of Its Purported Amendment To The Nevada Constitution**

The second sentence of the description of effect reads:

"The purpose of this initiative is to amend the Nevada Constitution to allow for the taxation of gross proceeds rather than net proceeds of mineral production at a rate not less than 5 percent."

This is as fraught with misstatement and misleading rhetoric as the first sentence, and provides further reason why the petition has not met the procedural requirements for initiative petitions pursuant to N.R.S. 295.009.

**1. The Petition does not "allow" for taxation on the gross proceeds of mineral property, it commands the Legislature to enact statutory provisions according to its terms**

The Petition does not "amend the Nevada Constitution to *allow* for the taxation of gross proceeds rather than net proceeds" of mineral property. It *mandates* that the Legislature change the nature of taxation of mineral property from an *ad valorem* tax to a gross income tax. It *mandates* that mineral property, unlike any other property in the state, be assessed and taxed above its fair market value. And it *mandates* that the new gross income tax be set by the Legislature at a rate not less than five percent. The description's second sentence is written—again, cleverly—to conjure a notion of legislative flexibility under the Petition's terms. The only flexibility the Legislature would have, however, would be in settling on a precise figure north of 5 percent in levying the new gross income tax. The description of effect should be clear with potential petition signers regarding the effect of its provisions, not intimate a legislative pliability the Petition is clearly designed to foreclose.

///

- 1                   2.     **The "net proceeds" of mineral property are defined in the Nevada**  
2                             **Revised Statutes at N.R.S. 362.120, while "gross proceeds" of mineral**  
3                             **property are not defined, and the description of effect makes no attempt**  
                              **to explain to voters the meaning of the demand it makes upon the**  
                              **Legislature**

4             "Net proceeds" is the subject of a lengthy and refined definition in the Nevada Revised  
5 Statutes; its function is, in simple terms, an appraisal system for valuing and then taxing at fair  
6 market value the proceeds of mineral property in Nevada. Anyone interested in the matter may go  
7 to N.R.S. 362.120 and find the manner in which "net proceeds" are calculated and determined, and  
8 can then apply the taxation rates mandated by the Constitution. "Net proceeds," in other words, is a  
9 comprehensible legal concept in Nevada.

10            No one can say what "gross proceeds" means. There is no statutory definition, at least not in  
11 the sense of a potential application to mineral property. Plaintiff assumes that the Legislature, as  
12 part of the demands made upon it by this Petition, will be asked to provide such a definition; that  
13 lies several years in the future.<sup>3</sup> Until that time, Proponents are asking Nevada voters to make a  
14 dramatic shift in the nature of taxation in this state, from a known "net proceeds" system to a an  
15 unknown "gross proceeds" system that Proponents either cannot or will not explain in the  
16 description of effect.

17                   **D.     The Description Of Effect Fails To Inform Petition Signers Of Any Effects Of**  
18                             **The Initiative**

19            Just as the municipal initiative in *Las Vegas Taxpayer Accountability Committee* was found  
20 to be "materially misleading" when it did not "inform the voters" properly of the consequences it  
21 portended, so too the present Petition is misleading when it fails to present any effects or  
22 consequences of its passage. The Petition does not advise what advantages or disadvantages to the  
23 state coffers the Petition may have. It does not attempt to describe the potentially negative  
24 economic or social effects likely to be visited upon Nevada in the wake of passage. It does not even  
25 make clear to voters that any of the positive effects Proponents might expect from this measure  
26

27                   <sup>3</sup>     The earliest the Legislature could take up the demands of the Petition would be after the  
28                   2012 General Election, most likely during the 2013 Legislature. It is unlikely, therefore, that any  
                      statutes effecting the changes called for by the Petition could take effect until later in 2013 or into  
                      2014.

1 cannot possibly arise for a number of years. In short, it does not provide any of the information a  
2 rational voter might want to know before signing the Petition or supporting the measure in the  
3 general election.

4 Furthermore, all publicity regarding the Petition to date would make most Nevadans think  
5 that gold was the only mineral in Nevada. One would never know, for example, that geothermal  
6 energy producers also fall under the constitutional and statutory provisions regarding mineral  
7 production. N.R.S. 362.010(2). Like other minerals, geothermal energy sources are deep within the  
8 earth; drilling, pumping, and conversion to usable electricity are expensive processes. The  
9 Petition's effect would be to ignore investment in and costs of the processes necessary to utilize  
10 geothermal energy, and would tax producers on the gross proceeds of income from energy sales.  
11 Proponents fail to explain, therefore, that one of the most promising green industries providing  
12 reliable, sustainable, and environmentally-friendly electricity would not only be affected but likely  
13 crippled by the Petition's taxes. Currently, this state is a national leader in implementing direct-use  
14 applications of geothermal energy. Nevada derives revenue from federal geothermal lease rental  
15 fees and production royalties, exports electricity to consumers in neighboring states through green  
16 power purchase programs, and generates employment through geothermal energy research, plant  
17 construction, and operation associated with resource development.<sup>4</sup> The federal government has  
18 provided for tax credits and other incentives for geothermal energy producers in the Energy  
19 Improvement and Extension Act of 2008<sup>5</sup> and the American Recovery and Reinvestment Act of  
20 2009,<sup>6</sup> the value and efficacy of which will be destroyed by the Petition's proposed tax upon the  
21 gross incomes of producers—in direct contradiction to the policy and purposes of the federal  
22 legislation. Perhaps Proponents are unaware of the collateral damage the Petition threatens, but the  
23 description of effect should inform potential petition signers that Nevada's geothermal development  
24 will be affected by the passage of the initiative.

27 <sup>4</sup> United States Department of Energy website, [http://www1.eere.energy.gov/  
28 geothermal/gpw/profile\\_nevada.html](http://www1.eere.energy.gov/geothermal/gpw/profile_nevada.html). (Last accessed February 8, 2010.)

<sup>5</sup> H.R. 1424.

<sup>6</sup> H.R. 1.

1 The Petition does not even make clear that it does not achieve its own stated aims. Instead,  
2 it directs the Legislature to enact statutory provisions consistent with its terms. Even that process is  
3 not faced directly or made plain to petition signers: To enact legislation, Nevada depends upon the  
4 traditional American procedure of bicameralism and presentment. Nev. Const. Art. IV, Sec. 35.  
5 Both houses of the Legislature must approve a measure, and the Governor must sign the bill, before  
6 it becomes law. *Id.* If the Governor does not approve of the measure the Legislature can, with the  
7 approval of a two-thirds majority of both houses, override a gubernatorial veto. *Id.* What happens  
8 here if the proposed initiative passes by vote of the people, the Legislature somehow approves a bill  
9 consistent with its provisions, but the Governor does not sign the bill? What if the Legislature  
10 cannot override the Governor's veto? Is the legislature in violation of the Constitution? Is the  
11 Governor? Is the Petition a command to the state executive to sign a particular bill passed by the  
12 Legislature? If so, the separation-of-powers complications are obvious. Does the Petition  
13 supersede bicameralism and presentment in Nevada and is this not a revision of rather than an  
14 amendment to the state constitution? All these questions arise because Proponents did not consider  
15 these practical questions during the drafting process.

16 The description of effect "need not be the best possible statement of a proposed measure's  
17 intent," but it at least has to represent a good-faith effort to inform the public. *Herbst Gaming*, 122  
18 Nev. at 889. This description is inadequate in all respects, and the Court should rule the Petition  
19 invalid on those grounds.

### 20 **III. THE PETITION IS UNCONSTITUTIONAL**

21 Pre-election review is certainly always appropriate for challenges to the procedural  
22 sufficiency of initiative petitions. *Herbst Gaming*, 122 Nev. at 883. The Nevada Supreme Court  
23 has also recognized that, where circumstances warrant, as in "extreme cases" or "where a plain,  
24 palpable violation of the constitution is threatened," ballot questions may be enjoined as part of pre-  
25 election review by the courts. *Herbst Gaming*, 122 Nev. at 884-885 fn.13, quoting *Hessey v.*  
26 *Burden*, 615 A.2d 562 (D.C. 1992) and *Caine v. Robbins*, 61 Nev. 416, 131 P.2d 516 (1942). And  
27 although the Nevada Supreme Court in *Garvin v. District Court*, 118 Nev. 749, 59 P.3d 1180  
28 (2002) made clear that such substantive review should not be commonplace, it did strike down, pre-

1 election, an initiative that would have imposed term limits upon United States representatives and  
2 senators from Nevada in *Stumpf v. Lau*, 108 Nev. 826, 839 p.2d 120 (1992) for threatening a  
3 palpable violation of the United States Constitution. Here, the Petition threatens violations of the  
4 state and federal constitutions so clear and palpable that pre-election review for constitutional  
5 validity is appropriate.

6 **A. The Tax Required By The Petition Is Inherently Unequal In Violation Of**  
7 **Article 10, Section 1, Subsection 1 Of The Nevada Constitution**

8 Uniformity and equality of taxes is the "fundamental principle of taxation" in Nevada.  
9 *Goldfield Consol. Co. v. State*, 35 Nev. 178, 127 P. 77, 80 (1912). Ignoring this core principle, the  
10 Petition requires the Legislature to provide for a tax on the "gross" proceeds of minerals at a rate  
11 "not less than 5 percent." In doing so, the Petition mandates that the Legislature disproportionately  
12 tax mineral property in excess of its fair market value.

13 Since 1865 the Nevada Constitution has required equal and uniform assessment and taxation  
14 of property, including mineral property. As long as Article 10, Section 1, Subsection 1 remains in  
15 its current form the Petition cannot command the Legislature to tax mineral proceeds in excess of  
16 fair market value while all other property is taxed at or below fair market value. Additionally, since  
17 1936 the Nevada Constitution has required that *ad valorem* taxes not exceed five percent of  
18 assessed value. Nev. Const. Art. 10 §2; see also *G.W. Harris v. City of Reno*, 81 Nev. 256, 260, 401  
19 P.2d 678, 680 (1965). The Petition, in mandating a system under which mineral proceeds are taxed  
20 at "not less than 5 percent" of an assessment that necessarily will be above fair market value (the  
21 "gross" proceeds), forces a system of taxation on mineral property that is inherently discriminatory.  
22 The Petition, therefore, is facially unconstitutional.

23 **1. Under Article 10, Section 1, Subsection 1 the Nevada Constitution the**  
24 **legislature can only enact taxes on property that are uniform and equal**

25 Article 10, Section 1, Subsection 1 of the Nevada Constitution requires an equal rate of  
26 assessment and taxation:

27 1. The Legislature shall provide by law for a uniform and equal rate of  
28 assessment and taxation, and shall prescribe such regulations as shall  
secure a just valuation for taxation of all property, real, personal and  
possessory, except mines and mining claims, which shall be assessed and  
taxed only as provided in Section 5 of this Article.

1 Under this section, taxpayers have a “guaranteed” right to uniform and equal taxation. *State*  
2 *Bd. of Equalization v. Barta*, 124 Nev. 58, 188 P.3d 1092, 1095 (2008). The “Constitution clearly  
3 and unambiguously requires that the methods used for assessing taxes throughout the state be  
4 ‘uniform.’” *Bakst*, 122 Nev. at 1413. Non-uniform methods of taxation are “necessarily unjust and  
5 inequitable.” *Barta*, 188 P.3d at 1095. Further, where a tax puts the taxpayer at a distinct  
6 disadvantage in relation to other taxpayers, the tax is unconstitutional. *Sun City Summerlin*, 113  
7 Nev. at 841 citing *Boyne v. State ex. rel. Dickerson*, 80 Nev. 160, 166-67, 390 P.2d 225, 228-29  
8 (1964).

9 The Nevada Supreme Court has consistently recognized that the purpose of Article 10,  
10 Section 1, Subsection 1 is “to ensure that all types of property were taxed at an equal rate” and on  
11 an equal basis. *Barta*, 188 P.3d at 1100-01 citing *State Bd. of Equalization v. Bakst*, 122 Nev. 1403,  
12 148 P.3d 717 (2006) and *State v. Eastabrook*, 3 Nev. 173 (1867).

13 In *Eastabrook*, the court considered whether a revenue law that taxed mineral proceeds  
14 differently than other property violated Article 10, Section 1, Subsection 1. In finding the law  
15 unconstitutional, the Supreme Court determined that “one species of taxable property should not  
16 pay a higher rate of taxes than other kinds of property.” *Eastabrook* at 177. The court reasoned  
17 that any other interpretation of Article 10, Section 1, Subsection 1 would render the clause  
18 “perfectly meaningless.” *Id.* Applying these principles, the court held that the “legislature could  
19 neither make the tax greater nor less on the *proceeds of mines than on other property.*” *Id.* at 179  
20 (emphasis added). The Nevada Supreme Court later summarized the holding in *Eastabrook*: “a  
21 statute providing for a different tax rate for the products of mines [is] unconstitutional and void.”  
22 *Sun City Summerlin Comm. Ass’n v. State, Dept. of Taxation*, 113 Nev. 835, 841, 944 P.2d 234, 238  
23 (1997).

24 *Eastabrook* is the seminal case regarding equal taxation in Nevada. *Barta*, 188 P.3d at  
25 1100-01; *Bakst*, 122 Nev. at 1413; *List v. T.L. Whistler*, 99 Nev. 133, 138, 660 P.2d 104, 107  
26 (1983) recognizing the citation of *Eastabrook* in: *United States v. State ex rel. Beko*, 88 Nev. 76,  
27 86-87, 493 P.2d 1324 (1972); *Boyne v. State ex rel. Dickerson*, 80 Nev. 160, 166, 390 P.2d 225  
28 (1964); *State of Nevada v. Kruttschnitt*, 4 Nev. 178, 200 (1868).



1 Despite the Supreme Court's repeated reaffirmation of *Eastabrook*, the Petition commands  
2 the Legislature to enact a tax mineral property in excess of fair market value by taxing the "gross"  
3 proceeds of minerals. The Petition, however, cannot circumvent the requirements of Article 10,  
4 Section 1, Subsection 1 simply by changing the word "net" to "gross" because taxing two species of  
5 taxable property differently does not comply with the Nevada Constitution as long as the provisions  
6 of Article 10, Section 1, Subsection 1 exist. *See Eastabrook* at 177. The Petition, therefore, orders  
7 the Legislature to violate the Nevada Constitution—a patently impermissible use of the initiative  
8 process.

9 **2. Article 10, Section 1, Subsection 1 of the Nevada Constitution applies to**  
10 **mineral property**

11 Proponents of the Petition may argue that the final sentence of Article 10, Section 1,  
12 Subsection 1, which states, "except mines and mining claims, which shall be assessed and taxed  
13 only as provided in Section 5 of this Article," somehow makes the requirement of uniform and  
14 unequal taxation inapplicable to mineral proceeds. This is incorrect.

15 Article 10, Section 1, Subsection 1 does not except "proceeds" of "minerals." The reason  
16 there is an exception of "mines" and "mining claims" is to avoid impermissible double taxation on  
17 property. *Goldfield*, 127 P. at 79 (taxation of surface of mine and mineral proceeds will be  
18 unconstitutional double taxation); *See also Sun City Summerlin*, 113 Nev. at 841-42 (double  
19 taxation of property prohibited); *State, Gaming Comm'n v. Southwest Securities*, 108 Nev. 379, 382,  
20 832 P.2d 387, 388 (1992) ("a property tax can be imposed only once during a tax period and is  
21 subject to the constitutional prohibition against double taxation."); *State v. Carson & Colo. Ry. Co.*,  
22 29 Nev. 487, 500, 91 P. 932, 934 (1907); *State v. Carson City Sav. Bank*, 17 Nev. 146, 155, 30 P.  
23 703, 705 (1882) (there can be no double taxation of property); *Forbes v. Gracey*, 94 U.S. 762, 765-  
24 66 (1876) (minerals are part of the property of a mine until detached).

25 When at least \$100 of labor has been performed on the mine or mining claim in the  
26 preceding taxable year no value is attributed to either the minerals underlying the mine or claim or  
27 to the surface area of the mine. Nev. Const. Art. 10 §1(3). In lieu of such attribution of value, the  
28 net proceeds of minerals are taxed at the appropriate *ad valorem* property tax rate. *Goldfield* at 79.

1 In other words, mines and mining claims are "excepted" because minerals proceeds are instead  
2 taxed to reach the appropriate *ad valorem* property tax.

3 Because taxation of minerals proceeds is the means by which mineral property is taxed,  
4 taxation of mineral proceeds must comply with the Article 10, Section 1, Subsection 1. This was  
5 recognized by the Nevada Supreme Court both in *Eastabrook* and *Goldfield*.

6 Applying Article 10, Section 1, Subsection 1 the court in *Eastabrook* held that the  
7 "legislature could neither make the tax greater not less on the products of mines than on other  
8 property." *Eastabrook* at 179. At the time the Supreme Court considered *Eastabrook* Article 10,  
9 Section 1, Subsection 1 provided:

10 The legislature shall provide by law for a uniform and equal rate of  
11 assessment and taxation, and shall prescribe such regulations as shall  
12 secure a just valuation for taxation of all property, real, personal and  
possessory, excepting mines and mining claims, the proceeds of which  
alone shall be taxed...

13 *Eastabrook* at 177 (emphasis added). Interpreting the language "excepting mines and mining  
14 claims," the Supreme Court applied the requirement that there be a uniform and equal rate of  
15 assessment and taxation (the same requirement that continues to this day) to mineral proceeds:

16 The first phrase to which our attention is called is this: "A uniform and  
17 equal rate of assessment and taxation." We have no hesitation in saying  
18 that the constitutional convention, in using the language last quoted, meant  
19 to provide for at least one thing in regard to taxation: that is, that all *ad*  
20 *valorem* taxes should be of a uniform rate or percentage. That one species  
of taxable property should not pay a higher rate of taxes than other kinds  
of property. If the language we have quoted did not express this idea, then  
it was perfectly meaningless. The language used may mean much more  
than this, but it cannot mean less.

21 *Id.* at 177.

22 In *Goldfield* the Nevada Supreme Court again addressed disparate taxation of mineral  
23 proceeds in light of a requirement that work to be performed on the mine or mine claim to exempt it

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1 from a property tax on the surface area of the mine.<sup>7</sup> The court found that this requirement was not  
2 discriminatory because it endeavored to treat property, including mines and claims (specifically  
3 patented mining claims versus unpatented mines), more rather than less equally. *Goldfield* at 80-81  
4 (“We think the intent of the amendment was to put patented and unpatented mines upon an equality,  
5 in so far as taxation was concerned, to wit, that when \$100 in labor had been expended upon a  
6 patented mine it should, so far as taxes were concerned, be in the same position as an unpatented  
7 mine.”)

8 In reaching this conclusion, the court expressly found that the requirement for uniform and  
9 equal taxation in Article 10, Section 1, Subsection 1 applied to taxation of mineral proceeds. The  
10 court concisely explained the constitutionally permissible system of taxation of mines in Nevada:

11 A basic principle of all property taxation is **that it should be uniform**  
12 **and equal, regardless of the method adopted to arrive at the result.**  
13 This court, in *City of Virginia v. Chollar-Potosi M. Co.*, 2 Nev. 92,  
14 considering the provisions of article 10 of the Constitution, by Beatty, J.,  
15 said: “**The leading feature of this section is that the taxation shall be**  
16 **equal and uniform**, and that the proceeds of the mines only shall be  
17 taxed. In other words, whilst the body of the mine remains untaxed, **the**  
18 **ore taken out (for that is the primary proceeds of the mine) shall be**  
19 **subject to the same ad valorem taxation as other property.**” We do not  
20 think the Legislature in proposing, or the people in adopting, the  
21 amendment to the section of the Constitution under consideration had any  
22 intention of changing “the leading feature of this section.”

23 *Goldfield* at 80 (emphasis added). Under the holding in *Goldfield*, any “exception” to Article 10,  
24 Section 1, Subsection 1 cannot result in a violation of the “leading feature of this section” namely  
25 “uniform and equal” taxation of property, including mineral proceeds. Moreover, the court  
26 included in its reasoning that the mineral proceeds are “subject to the same ad valorem taxation as  
27 other property.” *Goldfield* at 80. Thus, the “fundamental principle of taxation--that of uniformity  
28 and equality” applies to taxation of mineral proceeds.

25 <sup>7</sup> This requirement is similar to the requirements currently in Article 10, Section 5, Subsection  
26 3 of the Nevada Constitution, which states:

27 Each patented mine or mining claim must be assessed and taxed as other real property is  
28 assessed and taxed, except that no value may be attributed to any mineral known or believed  
to underlie it, and no value may be attributed to the surface of a mine or claim if one  
hundred dollars’ worth of labor has been actually performed on the mine or claim during the  
year preceding the assessment.

1 The constitutionally permissible system described in *Goldfield* of taxing mineral proceeds  
2 equally to other property is utterly ignored in the Petition. Rather, the Petition seeks to substitute  
3 the manner in which mineral proceeds have been taxed since 1865 with a tax that, on its face,  
4 discriminates against mineral proceeds by taxing them at more than fair market value. The Petition  
5 is, therefore, unconstitutional.

6 **3. Nevada currently taxes mineral property with an *ad valorem* property**  
7 **tax at fair market value in accordance with the Nevada Constitution**

8 The court in *Goldfield* succinctly described the nature of taxation of mineral property—an  
9 *ad valorem* property tax on the net proceeds of minerals of an active mine or claim. *Goldfield* at 80.  
10 This is a property tax. *Id.*<sup>8</sup>

11 Under *Eastabrook* the Legislature may employ different methods to assess and tax property,  
12 “provided the object is to attain a just valuation.” *Eastabrook* at 179. This principle has been  
13 reaffirmed. *Nevada Tax Commission v. Southwest Gas Corp.*, 88 Nev. 309, 311-12, 497 P.2d 308,  
14 309-10 (1972) (“There exists no absolute mathematical formula to establish market value.”); *State*  
15 *v. Nevada Power Co.*, 80 Nev. 131, 390 P.2d 50 (1964).

16 The current system of taxation required by Article 10, Section 5 of the Nevada Constitution  
17 and carried out by the Legislature pursuant to NRS Chapter 362, provides a method of taxation of  
18 mineral property, “the object [of which] is to attain a just valuation.” This system of *ad valorem*  
19 taxation on mineral proceeds is applied to the “net proceeds of minerals” in order to ensure that  
20 mineral property is taxed in accordance with the “fundamental principle of taxation--that of  
21 uniformity and equality.” *Goldfield* at 80.

22 The net proceeds tax provides a just valuation because it assesses the value of mineral  
23 property uniformly with other property in the state. This is accomplished by considering the costs  
24 of extraction, transportation, refining, depreciation, etc., in calculating the “net proceeds” that will  
25 be taxed on an *ad valorem* basis. See NRS 362.120. The tax calculates the value of the property in  
26 the hands of the miner. While arguably there could be other systems of calculating taxes that

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28 <sup>8</sup> As an *ad valorem* property tax, taxation of mineral proceeds cannot constitutionally exceed  
five percent of assessed value. Nev. Const. Art. 10 §2; see also *Harris*, 81 Nev. at 260 (limitation  
of tax rate to five percent applies to *ad valorem* property taxes.)

1 comply with Article 10, Section 1, Subsection 1's requirement of uniform and equal taxation, the  
2 Petition's proposed tax of not less than five percent of the "gross" proceeds of minerals is a tax on a  
3 value well above fair market value and, therefore, is inconsistent with the constitutional framework  
4 required by Article 10, Section 1, Subsection 1.

5 **4. The Petition requires the Legislature To Violate Article 10, Section 1,**  
6 **Subsection 1 of the Nevada Constitution**

7 **a. A tax on the "gross" proceeds of mineral property violates the**  
8 **Nevada Constitution**

9 The Petition's mandate that the Legislature enact a tax on the "gross" proceeds of minerals  
10 violates Article 10, Section 1, Subsection 1 of the Nevada Constitution.<sup>9</sup> Taxation of the "gross"  
11 proceeds of minerals would, unlike any other property in the state, fail to consider the fair market  
12 value of the mineral property. Specifically, it would not consider the cost of extraction of the  
13 mineral and other costs that must necessarily be incurred to remove minerals from the ground.  
14 Considering the cost of extraction and the other factors listed N.R.S. Chapter 362 in the calculation  
15 of net proceeds is necessary in order to accurately calculate fair market value.

16 Minerals must be removed from the ground, often at great cost to the person performing the  
17 removal. Calculating the value of mineral proceeds by simply looking in this morning's *Wall Street*  
18 *Journal* to determine the market price of gold, silver, geothermal energy, copper, oil, natural gas,  
19 etc., ignores the cost that must be incurred to obtain the mineral proceeds and process them into  
20 sellable commodities. Ignoring these necessary costs in determining the value of mineral proceeds  
21 artificially increases the assessment of the value of all minerals beyond their fair market value. This  
22 is because, in an arm's length transaction, the parties would consider the cost of extraction,  
23 transportation, depreciation, etc..., before determining a fair price for the property. In other words,  
24 no reasonable person would pay \$1,073.60<sup>10</sup> an ounce for gold underlying a piece of land if they  
25 still have to develop the mine, purchase mining equipment, hire labor, extract the mineral, pay  
26 upkeep and incur depreciation of equipment, pay for insurance, purchase employee benefits, plan

27 <sup>9</sup> Any statute enacted by the legislature as a result of the Petition would be "construed in favor  
28 of the taxpayer and most strongly against the government" *State v. Pioneer Citizens Bank of Nevada*, 85 Nev. 395, 456 P.2d 422, 424 (1969).

<sup>10</sup> The market price of gold per ounce on February 9, 2010.

1 and pay for the required reclamation of the land, transport the mineral to be refined, refine the  
2 mineral, and deliver the mineral to the place of sale, all before the gold is resold at a market price.  
3 Only after all of these steps are taken—and this list is not all-inclusive—can any mineral be sold for  
4 a price appearing in the pages of the *Wall Street Journal*. Crowley Affidavit, Ex. 8.

5 Any tax on the “gross” proceeds, by its very terms, would levy a higher rate of taxation on  
6 one species of taxable property (mineral proceeds) than on other kinds of property, because the  
7 calculation of the tax would no longer be related to the actual fair market value of the property.  
8 Moreover, the methodology of taxing “gross” proceeds of minerals while taxing other property at  
9 its fair market value cannot result in uniform taxation. Under Article 10 Section 2 of the  
10 Constitution, taxation of property cannot be more than five percent of assessed value. *Harris*, 81  
11 Nev. at 260. Because all other property is assessed at fair market value and, under the structure  
12 proposed by the Petition, mineral proceeds will be assessed at greater than fair market value, the  
13 proposed taxation of “gross” proceeds would violate the “fundamental principle of taxation—that of  
14 uniformity and equality” contained in Article 10, Section 1, Subsection 1 of the Nevada  
15 Constitution. *Goldfield* at 80.

16 While “[t]here exists no absolute mathematical formula to establish market value” taxing  
17 property beyond its value is not uniform or equal and does not obtain just valuation.<sup>11</sup> Therefore,  
18 the amendment proposed by the Petition is, on its face, unconstitutional as it violates the  
19 “guaranteed” right to uniform and equal taxation. *Barta*, 188 P.3d at 1095.

20 **b. The Petition’s mandate of a rate *not less than* five percent violates**  
21 **Article 10, Section 1, Subsection 1 of the Nevada Constitution**

22 The Nevada Supreme Court has held that the key inquiry in determining if a tax violates  
23 Article 10, Section 1, Subsection 1 is whether the tax “requires one species of taxable property to  
24 pay a higher rate of taxes than other kinds of property.” *List v. T.L. Whisler*, 99 Nev. 133, 138, 660  
25 P.2d 104, 107 (1983). The Petition, by requiring the Legislature to enact a tax “not less than 5  
26 percent” of the “gross” proceeds of minerals, commands the Legislature to tax mineral property at a  
27 higher rate than other kinds of property.

28 <sup>11</sup> *Nevada Tax Commission v. Southwest Gas Corp.*, 88 Nev. at 311-12.

1 Similarly, *Eastabrook* requires that "the legislature [can] neither make the tax greater nor  
2 less on the products of mines than on other property." *Eastabrook* at 179. This is consistent with  
3 "the basic principle of all property taxation" that taxation "should be uniform and equal, regardless  
4 of the method adopted to arrive at the result." *Goldfield* at 80. By obligating the Legislature to set  
5 a rate not less than five percent, while other property is not subject to such a requirement,<sup>12</sup> the  
6 Petition makes it impossible to comply with the leading feature of [Article 10, Section 1, Subsection  
7 1] that the taxation shall be equal and uniform" *Id.* Therefore, the Petition is unconstitutional on its  
8 face.

9 **B. The Petition Requires The Legislature To Violate The Equal Protection Clause**  
10 **Of The Nevada Constitution**

11 Article 4, Section 21 of the Nevada Constitution provides that "all laws shall be general and  
12 of uniform operation throughout the State." A tax violates Article 4, Section 21 of the Nevada  
13 Constitution where the tax is arbitrary or irrational. *Westinghouse Beverage Group, Inc. v. Dept. of*  
14 *Taxation*, 101 Nev. 184, 189, 698 P.2d 866, 869 (1985). A tax is arbitrary and irrational in  
15 violation of equal protection where it discriminates amongst similarly situated taxpayers.  
16 *Metropolitan Water Dist. of So. California v. State*, 99 Nev. 506, 509, 665 P.2d 262, 264 (1983).

17 The Petition requires the Legislature to enact an arbitrary and irrational tax of not less than  
18 five percent of the "gross" proceeds of minerals. Under this tax, mineral property, unlike any other  
19 property in the state, would be taxed in excess of its fair market value. While the Nevada Supreme  
20 Court has allowed taxation at different rates for *excise taxes*, it has consistently held that *property*  
21 *taxes* must be equal. *State Gaming Comm'n v. Southwest Securities*, 108 Nev. 379, 383-84, 832  
22 P.2d 387 389 (1992) (unlike a property tax, a privilege or excise tax is not subject to the  
23 constitutional prohibitions against double taxation). By obligating the Legislature to set a rate not  
24 less than five percent on the taxation of "gross" mineral proceeds, the Petition commands the  
25 Legislature to enact a discriminatory tax. Such discrimination is inevitable because under Article  
26

27 <sup>12</sup> Property cannot be taxed at more than five percent of assessed value. Nev. Const. Art. 10 §  
28 5. Further, property taxed under NRS Chapter 361 (which does not include mineral property), is  
currently taxed at less than five percent of thirty-five percent of its assessed value. See NRS  
361.225.

10, Section 2 of the Nevada Constitution taxes on property cannot exceed five percent of the assessed value of the property:

Sec. 2. **Total tax levy for public purposes limited.** The total tax levy for all public purposes including levies for bonds, within the state, or any subdivision thereof, shall not exceed five cents on one dollar of assessed valuation.

Thus, under the Nevada Constitution, the maximum any other property in the state can be taxed is five percent of the assessed fair market value of the property. *Id*; see also *Harris*, 81 Nev. at 260. The Petition, therefore, discriminates against mineral property by requiring the legislature to set a rate not less than five percent of an assessment that will exceed fair market value (e.g. "gross" proceeds). Taxation of mineral property, which is on an *ad valorem* property tax on mineral proceeds, cannot be taxed at above its value while other property is taxed at or below its fair market value. The Petition is invalid under the Equal Protection Clause of the Nevada Constitution.

**C. The Petition Requires The Legislature To Violate The Equal Protection Clause Of The Fourteenth Amendment To The United States Constitution**

The United States Constitution Amendment XIV states, in relevant part, "nor shall any State deny to any person within its jurisdiction the equal protection of the laws." The Equal Protection Clause protects persons from state action which selects the person out for discriminatory treatment by subjecting the person in the same class to taxes not imposed upon others in that class. *Allegheny Pittsburgh Coal Co. v. County Comm. of Webster County*, 488 U.S. 336, 345 (1989) citing *Hillsborough v. Cromwell*, 326 U.S. 620, 623 (1946). Taxation that is "unfair and injurious to the [taxpayer] is ...palpably arbitrary and a plain abuse" that violates the Fourteenth Amendment of the United States Constitution. *Board of Dir. of Miller Levee Dist. v. Prairie Pipe Line Co.*, 292 F. 474, 478 (8th Cir. 1923) (finding a property tax at above fair market value violated equal protection).

While states may make legitimate distinctions between classes of taxpayers,<sup>13</sup> the United

<sup>13</sup> Equal protection requires there to be legitimate distinctions between the classes that provide non-arbitrary, reasonable, and just bases for differential treatment. *Leventhal v. City of Philadelphia*, 542 A.2d 1328, 1331 (Pa. 1988).



1 States Supreme Court has held that where a state constitution requires all property in the state to be  
2 taxed equally (as does the Nevada Constitution), the appropriate class for such analyses is all  
3 property owners. *Allegheny Pittsburgh Coal Co.*, 488 U.S. at 345 (where West Virginia law  
4 required all property owners to be taxed equally, the state's taxation of one taxpayer's property  
5 disproportionately to other taxpayers violated the Equal Protection Clause of the Fourteenth  
6 Amendment). Accordingly, in a state where property owners are required to be treated equally  
7 under state law, disparate taxation violates the federal Equal Protection Clause. *Id.* at 345-46.

8 Article 10, Section 1, Subsection 1 requires that taxation of property in Nevada be uniform,  
9 equal, and based on a just valuation. Article 10, Section 2 of the Nevada Constitution requires that  
10 *ad valorem* property taxes not exceed five percent of assessed value. Given these provisions of the  
11 Nevada Constitution, and applying the holding in *Allegheny Pittsburgh Coal Co.*, the appropriate  
12 class to which the Equal Protection Clause applies when considering taxation of property in Nevada  
13 is all owners of property.

14 The Petition, in violation of the Equal Protection Clause, would tax mineral property at least  
15 five percent of an assessment necessarily above fair market value. In stark contrast, all other  
16 property in Nevada is taxed at five percent or less of its fair market value.<sup>14</sup> This is, on its face,  
17 disparate taxation amongst taxpayers in the same class, in violation of the Equal Protection Clause.

18 Further, even assuming *arguendo* that the appropriate classification for purposes of Equal  
19 Protection is mineral proceeds and not all property in the state, the proposed initiative still requires  
20 the Legislature to enact a tax that would necessarily violate the Equal Protection Clause. The  
21 Petition's scheme would tax mineral property at the same dollar amount (for example, five percent  
22 of the sale price of the mineral) regardless of whether the mineral is found on the surface or deep  
23 underground. In other words, the Petition requires the Legislature to tax an ounce of gold found  
24 while mowing the lawn at the exact same dollar amount as an ounce of gold that was obtained only  
25 after engaging in a multi-million dollar excavation effort. Because the amount of the tax would be  
26

27 <sup>14</sup> In fact, under the current law, property taxed under N.R.S .Chapter 361 (excluding mineral  
28 property which is taxed under N.R.S .Chapter 362) is actually taxed at 35% of fair market value.  
See N.R.S. 361.225 ("All property subject to taxation must be assessed at 35 percent of its  
taxable value.")

1 the same, the party excavating a mineral is taxed at a significantly higher rate (the cost of their  
2 investment not being considered in the tax that is paid) than the person that found an ounce of gold  
3 in their yard (who had no investment costs at all). This is disparate taxation in violation of the  
4 Equal Protection Clause.

5 The Petition's proposed violation of the Equal Protection Clause cannot be cured by any  
6 legislative act. Therefore, the Petition should not be permitted on the November 2010 General  
7 Election.

8 **D. The Petition Mandates That The Legislature Enact A Tax On Mineral Property**  
9 **That Is Disproportionate In Violation Of The Due Process Clauses Of The**  
10 **Nevada And Federal Constitutions**

11 Nevada Constitution Article I Section 8(5) states, "No person shall be deprived of life,  
12 liberty, or property, without due process of law." Under this provision, a tax should not apply  
13 where the tax would deprive the taxpayer of due process rights. *Metropolitan Water Dist. of So.*  
14 *California v. State, Dept. of Taxation*, 99 Nev. 506, 509, 665 P.2d 262, 264 (1983). The United  
15 States Constitution, Amendment V, states in relevant part, "No person shall . . . be deprived of life,  
16 liberty, or property, without due process of law." Likewise, the United States Constitution,  
17 Amendment XIV, states in relevant part, "nor shall any State deprive any person of life, liberty, or  
18 property, without due process of law."

19 Taxation is a taking of property; it cannot be accomplished absent due process. *Bratt v. City*  
20 *and County of San Francisco*, 65 Cal.Rptr.3d 716, 721 (Ct.App. 1st Dist. 2007). A tax violates the  
21 Due Process Clause where it is "so arbitrary as to compel the conclusion that does not involve the  
22 exertion of taxing power, but constitutes, in substance and effect, the direct exertion of a different  
23 and forbidden power, as, for example, the confiscation of property." *City of Pittsburgh v. Alco*  
24 *Parking Corp.*, 417 U.S. 369, 374-75, 94 S.Ct. 2291, 2295 (1974). The standard for determining  
25 "whether a tax is violative of the Due Process Clause of the Fourteenth Amendment" is whether the  
26 taxing power exerted by the state bears a fiscal relation to protection, opportunities, and benefits  
27 given by the state." *Bold Corp. v. County of Lancaster*, 801 A.2d 469, 474 (Pa. 2002). Where the  
28 subject of taxation cannot be said to benefit in any meaningful way from a tax its imposition  
violates the Due Process Clause. *McNamara v. Office of Strategic and Long Range Planning*, 628

1 N.W.2d 620, 631-32 (Minn. 2001) citing *Union Refrigerator Transit Co. v. Kentucky*, 199 U.S. 194,  
2 202, 26 S.Ct. 36, 37 (1905); see also *Leventhal v. City of Philadelphia*, 542 A.2d at 1332 (Where  
3 the benefit received and the burden imposed is "palpably disproportionate," the tax violates due  
4 process.)

5 The Petition mandates that the Nevada Legislature tax mineral property in excess of fair  
6 market value. Specifically, the Petition requires that, in assessing the fair market value of mineral  
7 property, the Legislature must ignore the significant costs incurred in extracting minerals from the  
8 earth. This is *arbitrary* taxation.<sup>15</sup> Indeed, the Petition's ignorance of the necessary costs to extract  
9 minerals before they can be sold at in the marketplace renders the scheme it proposes "so arbitrary  
10 as to compel the conclusion that it does not involve the exertion of taxing power, but constitutes, in  
11 substance and effect, the direct exertion of a different and forbidden power, as, for example, the  
12 confiscation of property." *Alco Parking Corp.*, 417 U.S. at 374-75. The Petition, therefore, does  
13 not comply with the Due Process Clauses of either the Nevada or United States Constitutions.

#### 14 CONCLUSION

15 Proponents attack the longstanding constitutional system of taxing mineral property system  
16 by changing a property tax on fair market value ("net proceeds") to a tax on an assessment far above  
17 fair market value ("gross" proceeds). In other words, Proponents want make a property tax into a  
18 gross income tax. At the same time and in the same initiative, Proponents command the Legislature  
19 to tax "gross" mineral proceeds at a rate "not less than 5 percent." By so doing, Proponents want to  
20 prevent the Legislature from determining a uniform, just, and equitable rate for such a tax through  
21 the deliberative process.

22 Proponents' assault on fair taxation cannot be sustained and the Petition cannot be presented  
23 to the people in its current form. The Petition violates the single-subject rule and proposes changes  
24 that violate the Nevada and United States Constitutions. Furthermore, Proponents' description of  
25 effect fails to provide any information regarding the "effect" of the Petition necessary to the  
26 decision-making process of Nevada voters. The Petition fails, therefore, to meet the basic  
27

28 <sup>15</sup> Arbitrary: "Based on or determined by individual preference or convenience rather than by  
necessity or the intrinsic nature of something." *Merriam-Webster Dictionary*, 7th Ed.

JONES VARGAS  
3773 Howard Hughes Parkway - Third Floor South  
Las Vegas, Nevada 89169  
Tel: (702) 862-3300 Fax: (702) 737-7705

1 requirements for a constitutional initiative under Nevada law.

2 WHEREFORE, Plaintiff respectfully requests that this Court grant declaratory and  
3 injunctive relief as requested in the Complaint filed herewith.

4 DATED this 9<sup>th</sup> day of February, 2010

JONES VARGAS

5  
6  
7 By: 

JAMES L. WADHAMS, ESQ.

Nevada Bar No. 1115

MATTHEW T. MILONE, ESQ.

Nevada Bar No. 7448

BRADLEY SCOTT SCHRAGER, ESQ.

Nevada Bar No. 10217

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3773 Howard Hughes Parkway - Third Floor South  
Las Vegas, Nevada 89169  
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**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), the undersigned hereby certifies that on the 9<sup>th</sup> day of February, 2010, a true and correct copy of the foregoing **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S COMPLAINT FOR DECLARATORY RELIEF** was served on the party(ies) by personal service and by mailing a copy thereof, first class mail, postage prepaid, to:

Robert A. Fulkerson  
821 Riverside Drive  
Reno, Nevada 89503

The Progressive Leadership Alliance Of  
Nevada  
821 Riverside Drive  
Reno, Nevada 89503

Pamela Galloway  
821 Riverside Drive  
Reno, Nevada 89503


Nevadans For Fair Mining Taxes  
c/o Michael Ginsburg, Resident Agent  
732 South Sixth Street, Suite 200  
Las Vegas, Nevada 89101

Michael Ginsburg  
732 South Sixth Street, Suite 200  
Las Vegas, Nevada 89101

Ross Miller  
Secretary Of State For The State Of Nevada  
101 North Carson Street, Suite 3  
Carson City, Nevada 89701

Howard Watts III  
732 South Sixth Street, Suite 200  
Las Vegas, Nevada 89101

Attorney General  
Catherine Cortez Masto, Esq.  
100 North Carson Street  
Carson City, Nevada 89701-4717

  
An Employee of JONES VARGAS

JONES VARGAS  
100 West Liberty Street, Twelfth Floor  
P.O. Box 281  
Reno, NV 89504-0281  
Tel: (775) 786-5000 Fax: (775) 786-1177

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

**AFFIRMATION  
Pursuant to NRS 239B.030**

The undersigned does hereby affirm that the preceding document, MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF, in case of Nevada Mining Association, Inc., a Nevada nonprofit corporation v. Robert A. Fulkerson, an individual; Pamela Galloway, an individual; Michael Ginsburg, an individual; Howard Watts III, an individual; The Progressive Leadership Alliance of Nevada, a Nevada nonprofit corporation; Nevadans for Fair Mining Taxes, a Nevada ballot advocacy group; Ross Miller, in his capacity as Secretary of State for the State of Nevada.

☒ Document does not contain the social security number of any person  
-OR-

☐ Document contains the social security number of a person as required by:

☐ A specific state or federal law, to wit:

\_\_\_\_\_  
(State specific state or federal law)

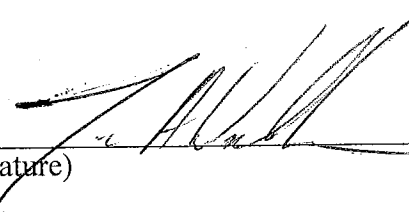
-OR-

☐ For the administration of a public program  
-OR-

☐ For an application for a federal or state grant  
-OR-

☐ Confidential Family Court Information Sheet  
(NRS 125.130, NRS 125.230 and NRS 125B.055)

DATED this 9th day of February, 2010.

  
\_\_\_\_\_  
(Signature)

JESSE A. WADHAMS

\_\_\_\_\_  
(Print Name)

PLAINTIFF

\_\_\_\_\_  
(Attorney for)

Exhibit “1”

Exhibit “1”

# Initiative Petition

# State of Nevada

Explanation: Language in *bold italics* is new; language between brackets [emitted material] is language to be omitted.

## THE PEOPLE OF THE STATE OF NEVADA DO ENACT AS FOLLOWS

Article 10, Section 5 of the Constitution of the State of Nevada is amended to read:

NEVADA SECRETARY OF STATE  
SECURITIES DIVISION  
DATE FILED: 1-19-10 JUC

1. The legislature shall provide by law for a tax upon the *gross [net]* proceeds of all minerals, including oil, gas and other hydrocarbons, extracted in this state, at a rate not *less than [to exceed]* 5 percent of the *gross [net]* proceeds. No other tax may be imposed upon a mineral or its proceeds until the identity of the proceeds as such is lost.

2. The legislature shall appropriate to each county that sum which would be produced by levying a tax upon the entire amount of the *gross [net]* proceeds taxed in each taxing district in the county at the rate levied in that district upon the assessed valuation of real property. The total amount so appropriated to each county must be apportioned among the respective governmental units and districts within it, including the county itself and the school district, in the same proportion as they share in the total taxes collected on property according to value.

## DESCRIPTION OF EFFECT

The Nevada Constitution limits the state's ability to tax mining to the net proceeds of mining production. The purpose of this initiative is to amend the Nevada Constitution to allow for taxation of the gross proceeds rather than net proceeds of mineral production at a rate not less than 5 percent.

County of \_\_\_\_\_

(Only registered voters of this county may sign below)

Petition  
District

1	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY		
	YOUR SIGNATURE	DATE / /	CITY	
2	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY		
	YOUR SIGNATURE	DATE / /	CITY	
3	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY		
	YOUR SIGNATURE	DATE / /	CITY	



# Initiative Petition

# State of Nevada

## DESCRIPTION OF EFFECT

The Nevada Constitution limits the state's ability to tax mining to the net proceeds of mining production. The purpose of this initiative is to amend the Nevada Constitution to allow for taxation of the gross proceeds rather than net proceeds of mineral production at a rate not less than 5 percent.

4	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY		
	YOUR SIGNATURE _____ DATE _____ / /	CITY _____	COUNTY _____	
5	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY		
	YOUR SIGNATURE _____ DATE _____ / /	CITY _____	COUNTY _____	
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10	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY		
	YOUR SIGNATURE _____ DATE _____ / /	CITY _____	COUNTY _____	

# Initiative Petition

# State of Nevada

## DESCRIPTION OF EFFECT

The Nevada Constitution limits the state's ability to tax mining to the net proceeds of mining production. The purpose of this initiative is to amend the Nevada Constitution to allow for taxation of the gross proceeds rather than net proceeds of mineral production at a rate not less than 5 percent.

11	PRINT YOUR NAME (first name, initial, last name)  YOUR SIGNATURE _____ DATE _____ / /	RESIDENCE ADDRESS ONLY  CITY _____ COUNTY _____	
12	PRINT YOUR NAME (first name, initial, last name)  YOUR SIGNATURE _____ DATE _____ / /	RESIDENCE ADDRESS ONLY  CITY _____ COUNTY _____	
13	PRINT YOUR NAME (first name, initial, last name)  YOUR SIGNATURE _____ DATE _____ / /	RESIDENCE ADDRESS ONLY  CITY _____ COUNTY _____	
14	PRINT YOUR NAME (first name, initial, last name)  YOUR SIGNATURE _____ DATE _____ / /	RESIDENCE ADDRESS ONLY  CITY _____ COUNTY _____	
15	PRINT YOUR NAME (first name, initial, last name)  YOUR SIGNATURE _____ DATE _____ / /	RESIDENCE ADDRESS ONLY  CITY _____ COUNTY _____	
16	PRINT YOUR NAME (first name, initial, last name)  YOUR SIGNATURE _____ DATE _____ / /	RESIDENCE ADDRESS ONLY  CITY _____ COUNTY _____	
17	PRINT YOUR NAME (first name, initial, last name)  YOUR SIGNATURE _____ DATE _____ / /	RESIDENCE ADDRESS ONLY  CITY _____ COUNTY _____	

**DESCRIPTION OF EFFECT**

The Nevada Constitution limits the state's ability to tax mining to the net proceeds of mining production. The purpose of this initiative is to amend the Nevada Constitution to allow for taxation of the gross proceeds rather than net proceeds of mineral production at a rate not less than 5 percent.

18	PRINT YOUR NAME (first name, initial, last name)  YOUR SIGNATURE _____ DATE _____ / /	RESIDENCE ADDRESS ONLY  CITY _____ COUNTY _____	
19	PRINT YOUR NAME (first name, initial, last name)  YOUR SIGNATURE _____ DATE _____ / /	RESIDENCE ADDRESS ONLY  CITY _____ COUNTY _____	
20	PRINT YOUR NAME (first name, initial, last name)  YOUR SIGNATURE _____ DATE _____ / /	RESIDENCE ADDRESS ONLY  CITY _____ COUNTY _____	
21	PRINT YOUR NAME (first name, initial, last name)  YOUR SIGNATURE _____ DATE _____ / /	RESIDENCE ADDRESS ONLY  CITY _____ COUNTY _____	
22	PRINT YOUR NAME (first name, initial, last name)  YOUR SIGNATURE _____ DATE _____ / /	RESIDENCE ADDRESS ONLY  CITY _____ COUNTY _____	
23	PRINT YOUR NAME (first name, initial, last name)  YOUR SIGNATURE _____ DATE _____ / /	RESIDENCE ADDRESS ONLY  CITY _____ COUNTY _____	
24	PRINT YOUR NAME (first name, initial, last name)  YOUR SIGNATURE _____ DATE _____ / /	RESIDENCE ADDRESS ONLY  CITY _____ COUNTY _____	

# Initiative Petition

State of Nevada

## DESCRIPTION OF EFFECT

The Nevada Constitution limits the state's ability to tax mining to the net proceeds of mining production. The purpose of this initiative is to amend the Nevada Constitution to allow for taxation of the gross proceeds rather than net proceeds of mineral production at a rate not less than 5 percent.

## **AFFIDAVIT OF CIRCULATOR**

STATE OF NEVADA       )  
                                  )  
COUNTY OF \_\_\_\_\_ )

I, \_\_\_\_\_, (print name), being first duly sworn under penalty of perjury, depose and say: (1) That I reside at \_\_\_\_\_  
(print street, city and state); (2) that I am 18 years of age or older; (3) that I personally circulated this document; (4) that there are \_\_\_\_ signatures affixed to this document and that all signatures were affixed in my presence; (5) that I believe them to be genuine signatures of the persons whose names they purport to be; (6) that each individual who signed was at the time of signing a registered voter in the county of his or her residence; (7) and that each signer had an opportunity before signing to read the full text of the proposed ordinance.

\_\_\_\_\_  
Signature of Circulator

Subscribed and sworn to or affirmed before me this

\_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by \_\_\_\_\_.

\_\_\_\_\_  
Notary Public or person authorized to administer oath

Prescribed by Secretary of State  
NRS 293.247(1) EL501 (rev. 11.26.07)

Exhibit “2”

Exhibit “2”

## FINANCIAL IMPACT OF THE NEVADANS FOR FAIR MINING TAXES INITIATIVE

FILED

FEB 03 2010

SECRETARY OF STATE  
ELECTIONS DIVISION

### FINANCIAL IMPACT – CANNOT BE DETERMINED

#### OVERVIEW

The Nevadans For Fair Mining Taxes Initiative (Initiative) proposes to amend paragraphs 1 and 2 of Article 10, Section 5 of the *Nevada Constitution*, which require a tax on the proceeds of all minerals, including oil, gas, and other hydrocarbons, extracted in the state, to change the basis for imposing this tax from net proceeds to gross proceeds. The Initiative also revises the rate that must be imposed from a maximum rate of 5 percent to a minimum rate of 5 percent.

### FINANCIAL IMPACT OF THE INITIATIVE

#### Taxation of the Proceeds from Mineral Operations Under Current Law

Article 10, Section 5 of the *Nevada Constitution* currently requires the Nevada Legislature to levy a tax upon the net proceeds of minerals at a rate not to exceed 5 percent of the net proceeds. Net proceeds are determined by calculating the gross proceeds of the mineral operation, and then deducting production-related expenses that are allowed according to *Nevada Revised Statutes* or *Nevada Administrative Code*. A mineral operation's tax liability is then determined by multiplying the net proceeds by the applicable tax rate.

Under current law, net proceeds of minerals are taxed at rates ranging from a minimum of 2 percent (or the rate equal to the property tax rate in the tax district where the mine is located, whichever is higher) to a maximum of 5 percent. The rate for each mineral operation will vary based on its ratio of net proceeds to gross proceeds, as specified in *Nevada Revised Statutes*, except for geothermal operations, which are taxed at the combined property tax rate where they are located, and except for all mines with net proceeds above \$4 million per calendar year, which are taxed at the maximum 5 percent rate, irrespective of the operation's ratio of net proceeds to gross proceeds.

Revenue generated from the portion of the net proceeds tax rate equivalent to the property tax rate in that tax district is distributed to counties, cities, towns, special districts, school districts, and the state in proportion to each entity's share of the combined property tax rate. The portion of the tax revenue from net proceeds attributable to the rate in excess of the combined property tax rate (up to the maximum of 5 percent) is distributed to the State General Fund.

#### Taxation of the Proceeds from Mineral Operations Under the Provisions of the Initiative

The provisions of the Initiative would require that the tax on minerals imposed pursuant to Article 10, Section 5 of the *Nevada Constitution* be based on gross proceeds instead of net proceeds. This change to the *Constitution* would increase the amount of proceeds to which the pertinent tax rate would apply; thus, the amount of revenue generated for the state, counties, cities, towns, school districts, and other entities who currently receive net proceeds of minerals revenue would increase, beginning in Fiscal Year 2012-13 (the first fiscal year for which the provisions of the Initiative could become effective).

The provisions of the Initiative would also require a minimum rate of 5 percent to be imposed on the gross proceeds of minerals, instead of the currently existing maximum rate of 5 percent. For

those mining operations whose current rate is less than the maximum rate of 5 percent, these provisions would increase the tax rate on those mines to a minimum of 5 percent, which would generate additional tax revenue from these operations. However, because current law distributes all revenue above the rate equivalent to the property tax district in which the mining operation is located to the State General Fund, the increase in revenue generated from increasing the tax rate to a minimum of 5 percent would result only in increased revenue for the State General Fund. The provisions of the Initiative increasing the tax rate to a minimum of 5 percent would have no revenue effect upon local governments, including school districts (though, as discussed above, the change from net to gross proceeds would increase the amount of revenue generated for local governments).

Under the provisions of Article 19, Section 2 of the *Nevada Constitution*, the language contained within this Initiative must be approved by the voters at two separate general elections; thus, the provisions contained within this Initiative can become effective no earlier than Fiscal Year 2012-13 for the taxation of actual mining activity occurring during calendar year 2012. Because the Fiscal Analysis Division cannot predict the price of minerals subject to the tax, the number of mining operations that will exist at that time, or the production levels of those operations, the amount of additional revenue that would be generated in future years for the state and local governments, including school districts, and the distribution of those additional revenues among the state and local governments entitled to receive a portion of the tax revenue, cannot be determined with any reasonable degree of certainty.

Based on information obtained from the 2008-09 Net Proceeds of Minerals Based on 2008 Calendar Year Report, as published by the Nevada Department of Taxation, total mineral operations in Nevada for calendar year 2008 (the last full year for which actual information is currently available) resulted in gross proceeds of approximately \$5.7 billion. Had the provisions of the Initiative been effective during calendar year 2008, these gross proceeds would have generated approximately \$284.4 million for the state and local governments at the minimum tax rate of 5 percent, compared to the \$91.8 million that was generated based on the actual net proceeds of minerals and the rates required to be paid under current law for calendar year 2008. The distribution among the state, counties, cities, towns, school districts, and other local governments who currently receive net proceeds of minerals revenue would be dependent on the location of the operations that paid the tax and the property tax rates for each entity located within the district where the operation is located.

The Fiscal Analysis Division will be analyzing the actual gross and net proceeds, as reported by the Department of Taxation for calendar year 2008, by operation, mineral type, and county, to determine the actual distribution of this additional revenue among state and local governments, had the provisions of the Initiative been effective during calendar year 2008. An updated fiscal note will be submitted to the Office of the Secretary of State for placement on its website once this analysis has been completed.

If the Initiative were to become effective, the Department of Taxation would be required to incur costs related to the implementation of these provisions, including, but not limited to, changes to forms and computer programs, development of regulations, and other procedures necessary for the imposition, collection, and distribution of the minerals tax. The specific administrative costs to the Department of Taxation that are necessary to implement the provisions of the Initiative cannot be determined at this time with any reasonable degree of certainty.

Prepared by the Fiscal Analysis Division of the Legislative Counsel Bureau – February 3, 2010

Exhibit “3”

---

Exhibit “3”



# Initiative Petition

SEP 01 2005

State of Nevada

## ANGLE PROPERTY TAX RESTRAINT INITIATIVE

Explanation - Matter in *bolded italics* is new; matter between brackets [omitted material] is material to be omitted

### THE PEOPLE OF THE STATE OF NEVADA DO ENACT AS FOLLOWS:

Section 1. Article 10 of the Constitution of the State of Nevada is hereby amended by adding thereto a new section to be designated section 6, to read as follows:

**Sec. 6. 1. The maximum amount of tax ad valorem that may be levied on real property shall not exceed 1 percent of the base value of the property. This limit does not apply to taxes ad valorem levied to pay the interest and principal of any bonded indebtedness incurred before this section became effective or approved thereafter by two-thirds of the votes cast by voters voting on the question in the taxing district in which it applies.**

**2. Except as otherwise provided in subsections 3, 4 and 5, the base value of real property is the taxable value from which the assessed value for the Fiscal Year 2003-2004 was calculated, but if the property was not appraised or reappraised for that fiscal year, the taxable value determined by appraisal or reappraisal for a subsequent fiscal year may be appropriately adjusted to determine the taxable value as of the Fiscal Year 2003-2004.**

**3. Except as otherwise provided in this subsection and subsection 6, if the ownership of real property is transferred to the extent of one-half or more of the total interest in the property, the base value of the property becomes the full cash value of the property as of the date of transfer of the property. The provisions of this subsection do not apply if the transfer is to the spouse of the transferee, to or from a separate legal entity of which the transferor is the beneficial owner, or to a child or grandchild of the transferor.**

**4. Except as otherwise provided in subsection 6:**

**(a) If new improvements to real property are constructed, except to replace existing improvements destroyed by natural disaster or other casualty, or existing improvements are materially enhanced, the base value of the property must be increased by the full cash value of the new improvement or enhancement.**

**(b) If real property is converted to another use, the base value of the property must be redetermined after the conversion by appraisal at its full cash value in accordance with the new use of the property.**

**5. Except as otherwise provided in subsections 3 and 4, the base value of real property shall not be increased from year to year by any amount greater than the lesser of:**

**(a) The percentage of increase in inflation, if any; or**

**(b) Two percent.**

**The base value of real property must be decreased from year to year by the percentage of inflationary reduction or disinflation, if any, or to reflect substantial damage or destruction, or other causes of a decline in value, including, but not limited to, economic or market conditions. For the purposes of this section, the percentage of increase in inflation and the inflationary reduction or disinflation shall be measured by the Consumer Price Index for All Urban Consumers, or other appropriate inflation indicator as may be determined by the Legislature, as it applies to each county or other taxing jurisdiction.**

**6. Notwithstanding any provision of this section to the contrary:**

**(a) An owner domiciled in this State who has attained the age of 62 years may replace his principal residence with another of comparable value and transfer to the new residence the base value of the old residence for the purpose of limiting the ad valorem tax on the property.**

**(b) A new improvement may be constructed, or an existing improvement materially enhanced, without change in the base value of real property if the construction or enhancement is necessary to protect the safety of the occupants or improve accessibility to the disabled.**

**(c) An owner whose real property is taken by the exercise of eminent domain may replace that property with property of comparable value and transfer to the new property the base value of the old property for the purpose of limiting the ad valorem tax on the property.**

**7. No new or additional tax may be imposed on the sale or other transfer of real property after the date this section becomes effective.**

**8. This section shall take effect for the tax year beginning on July 1 following the passage of this amendment.**

**9. If any section, part, clause or phrase hereof is for any reason held to be invalid or unconstitutional, the remaining sections, parts, clauses and phrases shall not be affected but will remain in full force and effect.**

Section 2. Section 1 of Article 10 of the Nevada Constitution is hereby amended to read as follows:

**Section 1. 1. [The] Except as otherwise provided in Section 6 of this Article, the legislature shall provide by law for a uniform and equal rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, real, personal and possessory, except mines and mining claims, which shall be assessed and taxed only as provided in section 5 of this article.**

**2. Shares of stock, bonds, mortgages, notes, bank deposits, book accounts and credits, and securities and choses in action of like character are deemed to represent interest in property already assessed and taxed, either in Nevada or elsewhere, and shall be exempt.**

**3. The legislature may constitute agricultural and open-space real property having a greater value for another use than that for which it is being used, as a separate class for taxation purposes and may provide a separate uniform plan for appraisal and valuation of such property for assessment purposes. If such plan is provided, the legislature shall also provide for retroactive assessment for a period of not less than 7 years when agricultural and open-space real property is converted to a higher use conforming to the use for which other nearby property is used.**

**4. Personal property which is moving in interstate commerce through or over the territory of the State of Nevada, or which was consigned to a warehouse, public or private, within the State of Nevada from outside the State of Nevada for storage in transit to a final destination outside the State of Nevada, whether specified when transportation begins or afterward, shall be deemed to have acquired no situs in Nevada for purposes of taxation and shall be exempt from taxation. Such property shall not be deprived of such exemption because while in the warehouse the property is assembled, bound, joined, processed, disassembled, divided, cut, broken in bulk, relabeled or repackaged.**

**5. The legislature may exempt motor vehicles from the provisions of the tax required by this section, and in lieu thereof, if such exemption is granted, shall provide for a uniform and equal rate of assessment and taxation of motor vehicles, which rate shall not exceed five cents on one dollar of assessed valuation.**

**6. The legislature shall provide by law for a progressive reduction in the tax upon business inventories by 20 percent in each year following the adoption of this provision, and after the expiration of the 4th year such inventories are exempt from taxation. The legislature may exempt any other personal property, including livestock.**

**7. No inheritance tax shall ever be levied.**

**8. The legislature may exempt by law property used for municipal, educational, literary, scientific or other charitable purposes, or to encourage the conservation of energy or the substitution of other sources for fossil sources of energy.**

# Initiative Petition

# State of Nevada

9. No income tax shall be levied upon the wages or personal income of natural persons. Notwithstanding the foregoing provision, and except as otherwise provided in subsection 1 of this section, taxes may be levied upon the income or revenue of any business in whatever form it may be conducted for profit in the state.

10. The legislature may provide by law for an abatement of the tax upon or an exemption of part of the assessed value of a single-family residence occupied by the owner to the extent necessary to avoid severe economic hardship to the owner of the residence.

## DESCRIPTION OF EFFECT

Property taxes are limited to 1 percent of the base value of a property, plus the amount necessary to pay existing bonded indebtedness and any additional indebtedness approved by a two-thirds vote.

Base value initially equals the taxable value for tax year 2003-04.

Base value increases to full cash value if the property is: (1) transferred, unless the transfer is to an entity owned by the transferor, or to the transferor's spouse, child or grandchild; or (2) converted to another use.

Base value increases by the full cash value of improvements unless the improvements: (1) replace casualty losses; or (2) are made to improve access for the disabled or to protect safety.

Base value may annually increase by the rate of inflation or 2 percent, whichever is less. Base value must decrease each year by the rate of disinflation, if any, and must be decreased to reflect declines in value.

An owner can transfer the base value of his property to a new property when he moves if the owner is at least 62 years old or if his property is taken by eminent domain.

No new taxes on sales of property.

County of \_\_\_\_\_ (Only registered voters of this county may sign below)

		This space for office use only	
1	PRINT YOUR NAME (last name, first name, initial)	RESIDENCE ADDRESS ONLY	
	YOUR SIGNATURE DATE / /	CITY	COUNTY
2	PRINT YOUR NAME (last name, first name, initial)	RESIDENCE ADDRESS ONLY	
	YOUR SIGNATURE DATE / /	CITY	COUNTY
3	PRINT YOUR NAME (last name, first name, initial)	RESIDENCE ADDRESS ONLY	
	YOUR SIGNATURE DATE / /	CITY	COUNTY
4	PRINT YOUR NAME (last name, first name, initial)	RESIDENCE ADDRESS ONLY	
	YOUR SIGNATURE DATE / /	CITY	COUNTY

## AFFIDAVIT OF CIRCULATOR (TO BE SIGNED BY CIRCULATOR)

STATE OF NEVADA )  
COUNTY OF )

\_\_\_\_\_, (print name), being first duly sworn under penalty of perjury, depose and say:

(1) that I reside at \_\_\_\_\_  
(print street, city and state); (2) that I am 18 years of age or older; (3) that I personally circulated this document; (4) that all signatures were affixed in my presence; (5) that I believe them to be genuine signatures; and (6) that each individual who signed was at the time of signing a registered voter in the county of his or her residence.

Subscribed and sworn to or affirmed before me this

day of \_\_\_\_\_, by \_\_\_\_\_

\_\_\_\_\_  
Signature of Circulator

\_\_\_\_\_  
Notary Public or person authorized to administer oath

Exhibit “4”

Exhibit “4”

**Initiative Petition**

**NEVADA PROPERTY OWNERS' BILL OF RIGHTS**

**FILE**  
**State of Nevada**  
**SEP 29 2005**  
**DEAN HELLER**  
**SECRETARY OF STATE**

Explanation - Matter in ***bolded italics*** is new; matter between brackets [~~omitted material~~] is material to be omitted.

**THE PEOPLE OF THE STATE OF NEVADA DO ENACT AS FOLLOWS:**

Section 1. Article 1 of the Constitution of the State of Nevada is hereby amended by adding thereto a new section to be designated section 22, to read as follows:

***Sec. 22. Notwithstanding any other provision of this Constitution to the contrary:***

- 1. All property rights are hereby declared to be fundamental constitutional rights and each and every right provided herein shall be self-executing.***
- 2. Public use shall not include the direct or indirect transfer of any interest in property taken in an eminent domain proceeding from one private party to another private party. In all eminent domain actions, the government shall have the burden to prove public use.***
- 3. Unpublished eminent domain judicial opinions or orders shall be null and void.***
- 4. In all eminent domain actions, prior to the government's occupancy, a property owner shall be given copies of all appraisals by the government and shall be entitled, at the property owner's election, to a separate and distinct determination by a district court jury, as to whether the taking is actually for a public use.***
- 5. If a public use is determined, the taken or damaged property shall be valued at its highest and best use without considering any future dedication requirements imposed by the government. If private property is taken for any proprietary governmental purpose, then the property shall be valued at the use to which the government intends to put the property, if such use results in a higher value for the land taken.***
- 6. In all eminent domain actions, just compensation shall be defined as that sum of money, necessary to place the property owner back in the same position, monetarily, without any governmental offsets, as if the property had never been taken. Just compensation shall include, but is not limited to, compounded interest and all reasonable costs and expenses actually incurred.***
- 7. In all eminent domain actions where fair market value is applied, it shall be defined as the highest price the property would bring on the open market.***
- 8. Government actions which result in substantial economic loss to private property shall require the payment of just compensation. Examples of such substantial economic loss include, but are not limited to, the down zoning of private property, the elimination of any access to private property, and limiting the use of private air space.***
- 9. No Nevada state court judge or justice who has not been elected to a current term of office shall have the authority to issue any ruling in an eminent domain proceeding.***
- 10. In all eminent domain actions, a property owner shall have the right to preempt one judge at the district court level and one justice at each appellate court level. Upon prior notice to all parties, the clerk of that court shall randomly select a currently elected district court judge to replace the judge or justice who was removed by preemption.***
- 11. Property taken in eminent domain shall automatically revert back to the original property owner upon repayment of the original purchase price, if the property is not used within five years for the original purpose stated by the government. The five years shall begin running from the date of the entry of the final order of condemnation.***
- 12. A property owner shall not be liable to the government for attorney fees or costs in any eminent domain action.***
- 13. For all provisions contained in this section, government shall be defined as the State of Nevada, its political subdivisions, agencies, any public or private agent acting on their behalf, and any public or private entity that has the power of eminent domain.***
- 14. Any provision contained in this section shall be deemed a separate and freestanding right and shall remain in full force and effect should any other provision contained in this section be stricken for any reason.***

**DESCRIPTION OF EFFECT**

***The following constitutional provisions shall supersede all conflicting Nevada law regarding eminent domain actions:***

- Property rights are fundamental constitutional rights.***
- Transfer of land from one private party to another private party is not public use.***
- Before the government may occupy property, it must provide appraisals and prove the taking is for public use.***
- Property must be valued at the use which yields the highest value.***
- Government actions causing economic loss to property require the payment of just compensation.***
- Only currently elected judges may issue eminent domain decisions, and such decisions must be published to be valid.***
- In each action, the property owner may disqualify one judge at each judicial level.***
- Just compensation is the sum of money including interest compounded annually necessary to put the owner in the same position without offsets as if the property was not taken.***
- Property taken but not used within five years for the purpose for which it was taken must be returned to the owner.***
- Fair market value is the highest price the property would bring on the open market.***
- Property owners shall not be liable for the government's attorney fees or costs.***

**SIGNATURES BEGIN ON THE NEXT PAGE**

# Initiative Petition

State of Nevada

## DESCRIPTION OF EFFECT

The following constitutional provisions shall supersede all conflicting Nevada law regarding eminent domain actions.

- Property rights are fundamental constitutional rights.
- Transfer of land from one private party to another private party is not public use.
- Before the government may occupy property, it must provide appraisals and prove the taking is for public use.
- Property must be valued at the use which yields the highest value.
- Government actions causing economic loss to property require the payment of just compensation.
- Only currently elected judges may issue eminent domain decisions, and such decisions must be published to be valid.
- In each action, the property owner may disqualify one judge at each judicial level.
- Just compensation is the sum of money including interest compounded annually necessary to put the owner in the same position without offsets as if the property was not taken.
- Property taken but not used within five years for the purpose for which it was taken must be returned to the owner.
- Fair market value is the highest price the property would bring on the open market.
- Property owners shall not be liable for the government's attorney fees or costs.

County of \_\_\_\_\_ (Only registered voters of this county may sign below)

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office use only

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SIGNATURES CONTINUE ON THE NEXT PAGE

# Initiative Petition

State of Nevada

## DESCRIPTION OF EFFECT

The following constitutional provisions shall supersede all conflicting Nevada law regarding eminent domain actions.

- Property rights are fundamental constitutional rights.
- Transfer of land from one private party to another private party is not public use.
- Before the government may occupy property, it must provide appraisal and prove the taking is for public use.
- Property must be valued at the use which yields the highest value.
- Government actions causing economic loss to property require the payment of just compensation.
- Only currently elected judges may issue eminent domain decisions, and such decisions must be published to be valid.
- In each action, the property owner may disqualify one judge at each judicial level.
- Just compensation is the sum of money including interest compounded annually necessary to put the owner in the same position without offsets as if the property was not taken.
- Property taken but not used within five years for the purpose for which it was taken must be returned to the owner.
- Fair market value is the highest price the property would bring on the open market.
- Property owners shall not be liable for the government's attorney fees or costs.

County of \_\_\_\_\_ (Only registered voters of this county may sign below)

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SIGNATURES CONTINUE ON THE NEXT PAGE

**Initiative Petition****State of Nevada****DESCRIPTION OF EFFECT**

The following constitutional provisions shall supersede all conflicting Nevada law regarding eminent domain actions.

- Property rights are fundamental constitutional rights.
- Transfer of land from one private party to another private party is not public use.
- Before the government may occupy property, it must provide appraisals and prove the taking is for public use.
- Property must be valued at the use which yields the highest value.
- Government actions causing economic loss to property require the payment of just compensation.
- Only currently elected judges may issue eminent domain decisions, and such decisions must be published to be valid.
- In each action, the property owner may disqualify one judge at each judicial level.
- Just compensation is the sum of money including interest compounded annually necessary to put the owner in the same position without offsets as if the property was not taken.
- Property taken but not used within five years for the purpose for which it was taken must be returned to the owner.
- Fair market value is the highest price the property would bring on the open market.
- Property owners shall not be liable for the government's attorney fees or costs.

County of \_\_\_\_\_ (Only registered voters of this county may sign below)

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office use only

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**AFFIDAVIT OF CIRCULATOR**  
(TO BE SIGNED BY CIRCULATOR)

STATE OF NEVADA    )

COUNTY OF \_\_\_\_\_ )

I, \_\_\_\_\_, (print name), being first duly sworn under penalty of perjury, depose and say:

(1) that I reside at \_\_\_\_\_  
(print street, city and state); (2) that I am 18 years of age or older; (3) that I personally circulated this document; (4) that all signatures were affixed in my presence; (5) that I believe them to be genuine signatures; and (6) that each individual who signed was at the time of signing a registered voter in the county of his or her residence.

\_\_\_\_\_  
Signature of Circulator

Subscribed and sworn to or affirmed before me this

\_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by \_\_\_\_\_.

\_\_\_\_\_  
Notary Public or person authorized to administer oath

Exhibit “5”

Exhibit “5”



## NEVADA TAXPAYERS PROTECTION ACT

Explanation: Language in *bold italics* is new; language between brackets [omitted material] is language to be omitted.

## THE PEOPLE OF THE STATE OF NEVADA DO ENACT AS FOLLOWS

Section 1. Article 19 of the Constitution of the State of Nevada is hereby amended by adding ~~thereto~~ a new section to be designated section 7, to read as follows:

*Sec. 7. Notwithstanding any other provision of this Constitution, when an initiative petition proposes a statute or an amendment to a statute or the repeal of a statute or an amendment to the Constitution, and the initiative if approved would create, generate, or increase any public revenue in any form, including but not limited to taxes, fees, assessments and rates, or increases in the computation bases for taxes, fees, assessments and rates, such petition shall require an affirmative vote of not fewer than two-thirds of voters voting on such question to approve such petition at each election required for such petition. If greater than one-third of the voters voting on such question at any such election votes disapproval of such petition, no further action shall be taken on the petition. Except as otherwise provided in this Section, all other requirements of this Article shall apply to such petitions.*

Sec. 2. Section 2 of Article 19 of the Constitution of the State of Nevada is hereby amended to read as follows:

Sec. 2. 1. Notwithstanding the provisions of Section 1 of Article 4 of this Constitution, but subject to the limitations of Section 6 and Section 7 of this Article, the people reserve to themselves the power to propose, by initiative petition, statutes and amendments to statutes and amendments to this Constitution, and to enact or reject them at the polls.

2. An initiative petition shall be in the form required by Section 3 of this Article and shall be proposed by a number of registered voters equal to 10 percent or more of the number of voters who voted at the last preceding general election in not less than 75 percent of the counties in the State, but the total number of registered voters signing the initiative petition shall be equal to 10 percent or more of the voters who voted in the entire State at the last preceding general election.

3. If the initiative petition proposes a statute or an amendment to a statute, the person who intends to circulate it shall file a copy with the Secretary of State before beginning circulation and not earlier than January 1 of the year preceding the year in which a regular session of the Legislature is held. After its circulation, it shall be filed with the Secretary of State not less than 30 days prior to any regular session of the Legislature. The circulation of the petition shall cease on the day the petition is filed with the Secretary of State or such other date as may be prescribed for the verification of the number of signatures affixed to the petition, whichever is earliest. The Secretary of State shall transmit such petition to the Legislature as soon as the Legislature convenes and organizes. The petition shall take precedence over all other measures except appropriation bills, and the statute or amendment to a statute proposed thereby shall be enacted or rejected by the Legislature without change or amendment within 40 days, *and shall be subject to the provisions set forth in Article 4, Section 18, subsection 2 if the petition creates, generates, or increases any public revenue in any form, including but not limited to taxes, fees, assessments and rates, or increases in the computation bases for taxes, fees, assessments and rates.* If the proposed statute or amendment to a statute is enacted by the Legislature and approved by the Governor in the same manner as other statutes are enacted, such statute or amendment to a statute shall become law, but shall be subject to referendum petition as provided in Section 1 of this Article. If the statute or amendment to a statute is rejected by the Legislature, or if no action is taken thereon within 40 days, the Secretary of State shall submit the question of approval or disapproval of such statute or amendment to a statute to a vote of the voters at the next succeeding general election. *Except as provided in Section 7 of this Article, if [H] a majority of the voters voting on such question at such election votes approval of such statute or amendment to a statute, it shall become law and take effect upon completion of the canvass of votes by the Supreme Court. An initiative measure so approved by the voters shall not be amended, annulled, repealed, set aside or suspended by the Legislature within 3 years from the date it takes effect. If a majority of such voters votes disapproval of such statute or amendment to a statute, no further action shall be taken on such petition. If the Legislature rejects such proposed statute or amendment, the Governor may recommend to the Legislature and the Legislature may propose a different measure on the same subject, in which event, after such different measure has been approved by the Governor, the question of approval or disapproval of each measure shall be submitted by the Secretary of State to a vote of the voters at the next succeeding general election. Except as provided in Section 7 of this Article, if [H] the conflicting provisions submitted to the voters are both approved by a majority of the voters voting on such measures, the measure which receives the largest number of affirmative votes shall thereupon become law. If at the session of the Legislature to which an initiative petition proposing an amendment to a statute is presented which the Legislature rejects or upon which it takes no action, the Legislature amends the statute which the petition proposes to amend in a respect which does not conflict in substance with the proposed amendment, the*

Secretary of State in submitting the statute to the voters for approval or disapproval of the proposed amendment shall include the amendment made by the Legislature.

4. If the initiative petition proposes an amendment to the Constitution, the person who intends to circulate it shall file a copy with the Secretary of State before beginning circulation and not earlier than September 1 of the year before the year in which the election is to be held. After its circulation it shall be filed with the Secretary of State not less than 90 days before any regular general election at which the question of approval or disapproval of such amendment may be voted upon by the voters of the entire State. The circulation of the petition shall cease on the day the petition is filed with the Secretary of State or such other date as may be prescribed for the verification of the number of signatures affixed to the petition, whichever is earliest. The Secretary of State shall cause to be published in a newspaper of general circulation, on three separate occasions, in each county in the State, together with any explanatory matter which shall be placed upon the ballot, the entire text of the proposed amendment. If a majority of the voters voting on such question at such election votes disapproval of such amendment, no further action shall be taken on the petition. *Except as provided in Section 7 of this Article, if [If] a majority of such voters votes approval of such amendment, the Secretary of State shall publish and resubmit the question of approval or disapproval to a vote of the voters at the next succeeding general election in the same manner as such question was originally submitted.* If a majority of such voters votes disapproval of such amendment, no further action shall be taken on such petition. *Except as provided in Section 7 of this Article, if [If] a majority of such voters votes approval of such amendment, it shall, unless precluded by subsection 5 or 6, become a part of this Constitution upon completion of the canvass of votes by the Supreme Court.*

5. If two or more measures which affect the same section of a statute or of the Constitution are finally approved pursuant to this Section *and Section 7 of this Article*, or an amendment to the Constitution is finally so approved and an amendment proposed by the Legislature is ratified which affect the same section, by the voters at the same election:

(a) If all can be given effect without contradiction in substance, each shall be given effect.

(b) If one or more contradict in substance the other or others, the measure which received the largest favorable vote, and any other approved measure compatible with it, shall be given effect. If the one or more measures that contradict in substance the other or others receive the same number of favorable votes, none of the measures that contradict another shall be given effect.

6. If, at the same election as the first approval of a constitutional amendment pursuant to this Section, another amendment is finally approved pursuant to this Section, or an amendment proposed by the Legislature is ratified, which affects the same section of the Constitution but is compatible with the amendment given first approval, the Secretary of State shall publish and resubmit at the next general election the amendment given first approval as a further amendment to the section as amended by the amendment given final approval or ratified. If the amendment finally approved or ratified contradicts in substance the amendment given first approval, the Secretary of State shall not submit the amendment given first approval to the voters again.

Sec. 3. Severability. If any provision of this initiative measure or its application to any person or circumstance is held to be invalid or ineffective, the invalidity or ineffectiveness shall be given the narrowest possible construction and shall not affect any other provision or application of this measure.

DESCRIPTION OF EFFECT

This initiative amends the Nevada Constitution to require that any initiative petition that proposes a statute, amendment to a statute, repeal of a statute or amendment to the Constitution, and which, if passed, would create, generate or increase any public revenue in any form, including taxes, fees, rates or assessments, the petition must be approved by two-thirds or more of the voters voting on such question, at each election at which the question is placed on the ballot, to become law. Article 19, Section 2, Subsection 3 of the Nevada Constitution currently provides that an initiative petition proposing a statute or an amendment to a statute, that is signed by a sufficient number of voters, must be presented to and may be enacted or rejected by the Legislature. This initiative requires that if any such initiative petition that would create, generate or increase any public revenue in any form, including taxes, fees, rates or assessments, is presented to the Legislature, the Legislature's consideration of the petition is subject to the provisions of Article 4, Section 18, Subsection 2 of the Nevada Constitution, which requires approval by a two-thirds vote of the members elected to each House.

County of \_\_\_\_\_

(Only registered voters of this county may sign below)

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office use only

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DESCRIPTION OF EFFECT

This initiative amends the Nevada Constitution to require that any initiative petition that proposes a statute, amendment to a statute, repeal of a statute or amendment to the Constitution, and which, if passed, would create, generate or increase any public revenue in any form, including taxes, fees, rates or assessments, the petition must be approved by two-thirds or more of the voters voting on such question, at each election at which the question is placed on the ballot, to become law. Article 19, Section 2 of the Nevada Constitution currently provides that an initiative petition proposing a statute or an amendment to a statute, that is signed by a sufficient number of voters, must be presented to and may be enacted or rejected by the Legislature. This initiative requires that if any such initiative petition that would create, generate or increase any public revenue in any form, including taxes, fees, rates or assessments, is presented to the Legislature, the Legislature's consideration of the petition is subject to the provisions of Article 4, Section 18, Subsection 2 of the Nevada Constitution, which requires approval by a two-thirds vote of the members elected to each House.

County of \_\_\_\_\_

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**AFFIDAVIT OF CIRCULATOR (To be signed by Circulator)**

STATE OF NEVADA    )

COUNTY OF \_\_\_\_\_)

I, \_\_\_\_\_ (print name), being first duly sworn under penalty of perjury, depose and say: (1) that I reside at \_\_\_\_\_ (print street, city and state); (2) that I am 18 years of age or older; (3) that I personally circulated this document; (4) that all signatures were affixed in my presence; (5) that I believe them to be genuine signatures; and (6) that each individual who signed was at the time of signing a registered voter in the county of his or her residence.

\_\_\_\_\_  
Signature of Circulator

Subscribed and sworn to or affirmed before me this  
\_\_\_\_\_ day of \_\_\_\_\_, by \_\_\_\_\_

\_\_\_\_\_  
Notary Public or person authorized to administer oath

Exhibit "6"

Exhibit "6"

## PROPERTY TAX REFORM INITIATIVE FOR NEVADA

Explanation - Matter in **bolded italics** is new; matter between brackets [omitted material] is material to be omitted.

## THE PEOPLE OF THE STATE OF NEVADA DO ENACT AS FOLLOWS:

Section 1. Article 10 of the Constitution of the State of Nevada is hereby amended by adding thereto a new section to be designated section 6 to read as follows:

**Sec. 6. 1. The maximum amount of tax ad valorem that may be levied on real property shall not exceed ~~3~~ percent of the base value of the property. This limit does not apply to taxes ad valorem levied to pay the interest and principal of any bonded indebtedness incurred before this section became effective or approved thereafter by two-thirds of the votes cast by voters voting on the question in the taxing district in which it applies.**

**2. Except as otherwise provided in subsections 3, 4 and 5, the base value of real property is the taxable value from which the assessed value for the Fiscal Year 2003-2004 was calculated, but if the property was not appraised or reappraised for that fiscal year, what the taxable value for 2003-2004 would have been, had the property been appraised in 2003-2004 must be determined by the county assessor.**

**3. Except as otherwise provided in this subsection and subsection 6, if the ownership of real property is transferred to the extent of one-half or more of the total interest in the property, the base value of the property becomes the full cash value of the property as of the date of transfer of the property. The provisions of this subsection do not apply if the transfer is to the spouse of the transferor, to or from a separate legal entity of which the transferor is the beneficial owner, or to a child or grandchild of the transferor.**

**4. Except as otherwise provided in subsection 6:**

**(a) If new improvements to real property are constructed, except if constructed to replace existing improvements destroyed by natural disaster or other casualty, or if existing improvements are materially enhanced, the base value of the property must be increased by the full cash value of the new improvement or enhancement.**

**(b) If real property is converted to another use, the base value of the property must be redetermined after the conversion by appraisal at its full cash value in accordance with the new use of the property.**

**5. Except as otherwise provided in subsections 3 and 4, the base value of real property shall not be increased from year to year by any amount greater than the lesser of the increase caused by inflation, if any; or two percent. The base value of real property must be decreased from year to year by the decrease caused by disinflation, if any, or to reflect substantial damage, destruction, or other causes of a decline in value, including, but not limited to, economic or market conditions. For the purposes of this section, the inflation or disinflation shall be measured by the Consumer Price Index for All Urban Consumers, or other appropriate inflation indicator as may be determined by the Legislature, as it applies to each county or other taxing jurisdiction.**

**6. Notwithstanding any provision of this section to the contrary:**

**(a) An owner domiciled in this State who has attained the age of 62 years may replace his principal residence with another of comparable value and transfer to the new residence the base value of the old residence for the purpose of limiting the ad valorem tax on the property. Comparable value means either a lower cash value or up to 10% more in cash value. If the cash value of the new residence exceeds the cash value of the old residence by more than 10%, then the base value of the new residence shall equal the base value of the old residence plus the amount by which the cash value of the new residence exceeds the cash value of the old residence.**

**(b) A new improvement may be constructed, or an existing improvement materially enhanced, without change in the base value of real property if the construction or enhancement is necessary to protect the safety of the occupants or improve accessibility to the disabled.**

**(c) An owner whose real property is taken by the exercise of eminent domain may replace that property with property of comparable value and transfer to the new property the base value of the old property for the purpose of limiting the ad valorem tax on the property. Comparable value means either a lower cash value or up to 10% more in cash value. If the cash value of the new real property exceeds the cash value of the real property taken by eminent domain by more than 10%, then the base value of the new real property shall equal the base value of the real property taken by eminent domain plus the amount by which the cash value of the new real property exceeds the cash value of the real property taken by eminent domain.**

**7. This section shall take effect for the tax year beginning on July 1 following the passage of this amendment.**

**8. If any section, part, clause or phrase hereof is for any reason held to be invalid or unconstitutional, the remaining sections, parts, clauses and phrases shall not be affected but will remain in full force and effect.**

Section 2. Section 1 subsection 1 of Article 10 of the Nevada Constitution is hereby amended to read as follows:

**Section 1. 1. ~~[[The]]~~ Except as otherwise provided in Section 6 of this Article, the legislature shall provide by law for a uniform and equal rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, real, personal and possessory, except mines and mining claims, which shall be assessed and taxed only as provided in section 5 of this article.**

**Initiative Petition****State of Nevada****DESCRIPTION OF EFFECT**

- Amends Nevada Constitution to provide that ad valorem real property tax shall not exceed 1 percent of property's "base value," excluding taxes to pay for existing bonded indebtedness and future bonded indebtedness approved by 2/3 of taxing district voters.
- "Base Value" initially equals taxable value for fiscal year 2003-2004. Base value increases to property's full cash value when property is converted to another use or transferred, unless transferred to or from a transferor-owned entity, or to transferor's spouse, child or grandchild.
- Base value is increased by full cash value of improvements unless improvements (1) replace casualty losses, (2) improve access for the disabled, or (3) protect safety.
- Except when property is transferred, converted, or improved, base value may increase annually only by lesser of inflation or 2%, and must decrease annually by disinflation or to reflect decline in value.
- Nevada-domiciled owners aged 62 or older can transfer the base value of their primary residence to a new primary residence of "comparable value," as defined. Owner of property taken by eminent domain can transfer base value to a property of "comparable value."
- Creates exceptions to constitutional requirement of uniform and equal taxation. Replaces existing constitutional limit on property taxation when inconsistent.

County of \_\_\_\_\_

(Only registered voters of this county may sign below)

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office use only

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**AFFIDAVIT OF CIRCULATOR**STATE OF NEVADA )  
COUNTY OF \_\_\_\_\_)

I, \_\_\_\_\_, (print name), being first duly sworn under penalty of perjury, depose and say: (1) that I reside at

(print street, city and state); (2) that I am 18 years of age or older; (3) that I personally circulated this document; (4) that all signatures were affixed in my presence; (5) that I believe them to be genuine signatures; and (6) that each individual who signed was at the time of signing a registered voter in the county of his or her residence (7) that the number for signatures thereon is \_\_\_\_; (8) that each signer had an opportunity before signing to read the full text of the act or resolution on which the initiative is demanded.

\_\_\_\_\_  
Signature of Circulator

Subscribed and sworn to or affirmed before me this

\_\_\_\_\_  
day of \_\_\_\_\_, \_\_\_\_\_, by \_\_\_\_\_  
Notary Public or person authorized to administer oath

Exhibit "7"

Exhibit "7"



## TASC for Nevada

Explanation - Matter in *italics* is new; matter between brackets [emitted-material] is material to be omitted.

## THE PEOPLE OF THE STATE OF NEVADA DO ENACT AS FOLLOWS:

A new article, designated Article 10A and entitled Tax and Spending Control for Nevada, shall be added to the Nevada Constitution to read as follows:

**ARTICLE 10A. Tax and Spending Control for Nevada.****Sec. 1. General.**

WHEREAS, A Nevada Supreme Court decision, *Guinn v. Legislature*, 119 Nev. 277 (2003), held that the amendment twice passed by the voters of Nevada and incorporated in Section 18 of Article 4 of the Nevada Constitution requiring Legislative supermajorities for the passage of bills or resolutions increasing public taxes was a mere "procedural" requirement, to be effectively negated by a purportedly "substantive" provision of the Constitution; and WHEREAS, The supermajority requirement was intended by the sovereign People of Nevada to be a fundamental governing principle of this State; and WHEREAS, Limitation on the growth of Government remains the intent of the sovereign People of Nevada; and WHEREAS, Limitation on the amounts that may be appropriated or authorized for expenditure will restrain the growth of Government; now, therefore BE IT RESOLVED BY THE PEOPLE OF NEVADA that this new article, entitled Tax and Spending Control for Nevada, be added to the Nevada Constitution, reading as follows:

**Sec. 2. The People's Right to Vote.**

1. For any fiscal year that commences on or after January 1, 2009, state and local governments, excluding government enterprises and improvement districts, must receive voter approval for any new tax or rate increase above that of the prior year, or extension of an expiring tax, or a tax policy change directly causing a tax revenue gain to any such government. Voter approval is also required for the creation of any multi-fiscal year direct or indirect debt or other financial obligation after January 1, 2009 in order for the debt service payments of such debt or obligation to be exempted from Biennial Spending under Section 3(4) of this Article. Notwithstanding, debts or obligations with adequate present cash reserves, pledged irrevocably and held for payments in all future years, refinancing government bonded debt at a lower interest rate and adding new employees to existing pension plans shall not require a public vote under this Section.

2. Any election held to seek voter approval under subsection 1, must occur at an election conducted on the first Tuesday after the first Monday in November and must have been referred by at least a two-thirds affirmative vote of the members elected to each house for a state referral and two-thirds of the governing board of a referring local government for a local referral. Passage of any such ballot question shall require the affirmative vote of a majority of the eligible voters casting a ballot at that election.

3. Every ballot question to determine voter approval under Section 2, subsection 1 of this Article shall offer voters the options of "YES" or "NO" and shall include, in addition to normal descriptive language, the following statements in bolded capital letters:

(a) For any revenue approval question proposed to increase the amount of the State Spending Limit under Section 4 of this Article, the maximum dollar amount of the proposed increase in the State Spending Limit must be predetermined legislatively and the ballot and sample ballot must state in bold type immediately below the measure's title: "A 'YES' VOTE ON THIS MEASURE WILL AUTHORIZE THE STATE TO RAISE TAXES AND EXCEED STATE CONSTITUTIONAL LIMITS ON GOVERNMENT SPENDING BY [insert proposed spending limit increase]."

(b) For any revenue approval question proposed to increase the amount of the Local Government Spending Limit under Section 8 of this Article, the maximum dollar amount of the Local Government Spending Limit must be predetermined and the ballot and sample ballot must state in bold type immediately below the measure's title: "A 'YES' VOTE ON THIS MEASURE WILL AUTHORIZE [insert appropriate local government] TO RAISE TAXES AND INCREASE LOCAL GOVERNMENT SPENDING BY [insert maximum projected revenue increase]."

(c) For all multi-fiscal year debt approval questions required by this section, the maximum dollar amount of the amount borrowed and the cost of debt service must be predetermined and the ballot and sample ballot must state in bold type immediately below the measure's title: "A 'YES' VOTE ON THIS MEASURE WILL AUTHORIZE [insert 'THE STATE' or name of the appropriate local government] TO BORROW UP TO [insert maximum dollar amount financed under the measure] AT A TOTAL REPAYMENT COST OF [insert anticipated maximum total dollar amount of completed debt service]."

**Sec. 3. Definitions.**

1. "Inflation" means the change expressed as a percentage in the consumer price index for the Western States, U.S. city average, all goods, all urban consumers, as calculated by the Bureau of Labor Statistics of the United States Department of Labor, or its successor index, or a similar federal index more specific to Nevada, when established.

2. "Population" means the number of people residing in the state as determined by the annual estimates as calculated according to the procedures established as of fiscal year July 1, 2005 or substantially similar successor procedures and such number shall be adjusted to match the Federal Decennial Census. If a court of competent jurisdiction in a final order shall adjudge successor procedures to not be substantially similar, "Population" shall mean the number of people residing in the state as determined by the annual Federal Census estimates.

3. "Biennial budget cycle" means the two year period of consecutive state fiscal years commencing upon the first day of July during a year in which a regular session of the legislature is held.

4. "Biennial spending" means the total amount of moneys to be spent during a biennial budget cycle, whether by appropriation, authorization or other means, except:

- (a) Moneys received from the federal government, or from any person or entity in the form of a gift or grant;
- (b) Appropriations funded by multi-fiscal year indebtedness, or payment and interest on multi-fiscal year indebtedness if created before January 1, 2009 or otherwise established pursuant to Section 2(1) of this Article;
- (c) Appropriations funded by unemployment and disability insurance funds, permanent endowment funds, trust funds including the highway trust fund of Article 9, Section 5, and the public education trust fund of Article 11, Section 3, or pension funds;
- (d) Appropriations funded from proceeds from the sale of government property to non-governmental entities at full cash value;

FILED

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SECRETARY OF STATE

## **Initiative Petition**

## **State of Nevada**

(e) Moneys appropriated for declared emergencies pursuant to Section 5 of this Article, moneys appropriated for refunds to taxpayers pursuant to Section 6 of this Article, and appropriations funded by the voter-approved release of a Refundable Surplus pursuant to Section 6, subsection 3 of this Article; or,

(f) Moneys expended by government enterprises to provide goods or services to the public where the purchase of such good or service is discretionary.

5. "Local government spending" means the total amount of moneys appropriated by a local government to be spent during a fiscal year, except:

(a) Moneys or appropriations described in this Section by subsection 4, paragraphs (a) through (f); or

(b) Moneys appropriated for refunds or credits to taxpayers pursuant to Section 8 of this Article, and appropriations funded by the voter-approved spending of a Refundable Local Tax Surplus pursuant to Section 8, subsection 4 of this Article.

6. "State" means the state government including all branches, state offices, authorities, agencies, boards, commissions, institutions, instrumentalities and any division or unit of state government which are directly supported, in whole or in part, with tax funds.

7. "Multi-year indebtedness" means any evidence of indebtedness that is entered into or establishes a debt obligation of the State or a local government for longer than one fiscal year, and includes, but is not limited to, bonds, notes, certificates, and lease-purchase agreements.

8. "Emergency" means an extraordinary event or occurrence that could not have been reasonably foreseen or prevented and that requires immediate expenditure to preserve the health and safety of the people.

9. "Total state revenue" means all moneys received by the state from any source except any of the following:

(a) Moneys received from the federal government; or from any person or entity in the form of a gift or grant;

(b) Moneys received from multi-year indebtedness;

(c) Moneys which are income earned on moneys in permanent endowment funds or segregated trust funds under Article 9, Section 2(2) of this constitution, or moneys from sources designated for public highways trust fund pursuant to Article 9, Section 5 or the public education trust fund pursuant to Article 11, Section 3 of this constitution;

(d) Proceeds from the sale of government property to non-governmental entities at full cash value;

(e) Moneys appropriated for declared emergencies pursuant to Section 5 of this Article, moneys appropriated for refunds to taxpayers pursuant to Section 6 of this Article, and appropriations funded by the voter-approved release of a Refundable Surplus pursuant to Section 6, subsection 3 of this Article; and,

(f) Moneys received by government enterprises.

10. "Local Tax Revenue" as used in Section 8 of this Article, means all moneys received by a local government excluding those categories described in this Section by subsection 9, paragraphs (a) through (f), and in Section 8, subsections 3 and 4.

11. "State Spending Limit" means the State Spending Limit specified pursuant to Section 4 of this Article.

12. "Local Government Spending Limit" means the Local Government Spending Limits specified pursuant to Section 8 of this Article.

13. "Local government population" means the number of people residing within a local jurisdiction as determined by a substantially accurate system of population measurement for local governments that is uniformly administered by the state and designated for that purpose. Should no such qualifying measurement system be established, the measure of state population pursuant to subsection 2 of this Section shall be employed to determine the Local Government Spending Limit in Section 8 of this Article.

14. "Government enterprise" is a government-owned business, government board or commission that lacks authority to tax and receives less than 10 percent of its annual revenue in the form of grants, transfers or appropriations from all Nevada state and local government entities combined.

15. "Tax policy change" means any policy change directly altering the formula, method of calculation, qualifications, exemptions, terms or scope of an assessed tax.

16. "Improvement district" pursuant to Section 2, subsection 1 of this Article does not include county commissioners sitting as the ex officio board of a General Improvement District under Chapter 318 of the Nevada Revised Statutes.

### **Sec. 4. State Spending Limits.**

1. For any state biennial budget cycle that commences on or after January 1, 2009, increases in biennial spending shall be subject to a State Spending Limit calculated as follows: (i) the total amount of biennial spending in the preceding biennial budget cycle increased or decreased by the percentage change in the consumer price index pursuant to Section 3, subsection 1, for the two preceding calendar years ending during the preceding state biennial budget cycle, plus the percentage change in state population during the two preceding calendar years ending during the preceding state biennial budget cycle, OR, (ii) the State Spending Limit for the previous biennial budget cycle; whichever amount is greater.

2. Notwithstanding subsection 1 of this Section, the State Spending Limit may be adjusted to incorporate revenue changes approved by voters pursuant to Section 2 of this Article.

3. The proposed biennial budget prepared by the executive department of the state government shall not exceed the State Spending Limit.

4. For the initial state biennial budget cycle of 2009-2011, the base biennium for the calculation of the State Spending Limit under subsection 1 shall be the 2005-2007 biennium adjusted for cumulative changes in population and inflation occurring between January 1, 2007 and January 1, 2009.

### **Sec. 5. Emergency Reserve Fund.**

1. For any state biennial budget cycle that commences after January 1, 2009 and in which total state revenue exceeds the State Spending Limit determined pursuant to Section 4 of this Article, and before making any transfers to the Budget Stabilization Fund or any refunds or credits as required by Section 6 of this Article, the state Controller shall, prior to the end of the state biennial budget cycle, transfer total state revenue collected in excess of the State Spending Limit to the Emergency Reserve Fund, which fund is hereby created in the state treasury, to the extent necessary to ensure that the balance of the fund at the end of the biennial budget cycle is an amount equal to 3 percent of the total State Spending Limit for the ensuing state biennial budget cycle. The state shall not be required to transfer to the Fund any moneys other than revenue in excess of the total State Spending Limit. Unused revenues remaining in the Emergency Reserve Fund apply to the Fund for the ensuing biennium. The Fund shall be in addition to, and shall not be used to meet, any other reserve requirement of this Constitution or of law.

2. Moneys in the Emergency Reserve Fund may be expended only for an emergency declared by law that meets the definition within this Article.

"Emergency" does not mean a revenue shortfall or budget shortfall. Appropriation from the fund may occur only upon a three-fourths approval vote of all elected members of each house of the legislature. Interest or other income earned on the Emergency Reserve Fund shall accrue to the fund. If any transfers from the Emergency Reserve Fund are determined in a legal proceeding to have been illegal, such transfers must be replaced, with interest, from total state revenue in the ensuing fiscal year and shall be included in the calculation of biennial spending under Section 3(4) of this Article.

## **Initiative Petition**

## **State of Nevada**

### **Sec. 6. Budget Stabilization Fund.**

1. For any state biennial budget cycle that commences on or after January 1, 2009, if total state revenue as defined in Section 3 of this Article exceeds the State Spending Limit for that biennial budget cycle the excess shall be reserved or refunded as follows:

(a) The Legislature shall provide by law for the creation, as a special revenue fund, of a fund to stabilize the operation of the state government and to be known as the Budget Stabilization Fund. After any amount required to be transferred to the Emergency Reserve Fund of the state pursuant to Section 5 of this Article has been transferred, an amount of any remaining excess amount of total state revenue shall be transferred in the manner prescribed by the legislature by law to the Budget Stabilization Fund.

(b) The amount transferred to the Budget Stabilization Fund in accordance with this subsection shall be equal to the lesser of (i) an amount equal to 50 percent of any such remaining excess amount of total state revenue, or (ii) the amount necessary to ensure that the balance in the Fund at the end of the biennium is an amount equal to 5 percent of the total State Spending Limit for the ensuing biennial budget. Interest or other income earned on moneys in the Fund shall accrue to the Fund.

(c) In no case shall additional moneys be transferred into the Fund if the balance in the fund is equal to or more than 5 percent of the total State Spending Limit for the ensuing biennial budget cycle.

(d) This fund shall constitute constitutional protection for the State of Nevada's current Fund to Stabilize Operation of State Government and for its purpose, and shall receive any moneys currently therein, with the exception of funds in the disaster relief account, which shall be placed within the Emergency Reserve Fund.

2. The State Controller shall transfer money from the Budget Stabilization Fund to the general fund in the minimum amount necessary to offset a shortfall in total state revenue below the State Spending Limit. Under no other circumstances shall the State Controller transfer moneys from the Budget Stabilization Fund.

3. After transfers are made to the Emergency Reserve and Budget Stabilization funds pursuant to Section 5 or Section 6 of this Article, an excess amount of total state tax revenue for a biennial budget cycle may remain. In such an event:

(a) Should the excess tax revenue be a sum equal to or greater than 0.5 percent of the State Spending Limit, it shall be deemed "Refundable Tax Surplus." By a two-thirds vote of each chamber, the Legislature may ask voters for approval, pursuant to Section 2, subsection 2 of this Article, to spend all or part of a Refundable Tax Surplus. Absent approval of the voters to spend the Refundable Tax Surplus, half of that Surplus shall be refunded or credited to taxpayers during the next ensuing fiscal year in proportionate relief of all state motor vehicle taxes and fees paid during the previous biennium, and the remaining half of that Surplus shall be refunded or credited to taxpayers during the next ensuing fiscal year in proportionate relief of state excise taxes paid by employers upon employees' wages during the previous biennium. If any portion of the Surplus remains after fully satisfying either tax rebate category, that portion shall be refunded or credited proportionately to taxpayers against taxes paid in a manner determined by majority action of the Legislature.

(b) Should the excess tax revenue be a sum less than 0.5 percent of the State Spending Limit, it shall be deemed a "Saved State Tax Surplus" and shall constitute an obligation of the state government to be repaid to state taxpayers at such time as a subsequent Refundable Tax Surplus, in combination with that Saved Tax Surplus, exceeds 0.5 percent of the State Spending Limit.

### **Sec. 7. Mandated and Shifted Costs.**

1. The Nevada Legislature shall not, directly or indirectly, enact laws or authorize the adoption of regulations, requiring the counties and cities of the State to provide new services, expand existing services or conduct new or additional governmental function without appropriating or designating state funding sources to fully support said new services, expansion of existing services and new or additional governmental functions.

2. The proportion of state revenue paid to all local units of government, taken as a group, shall not be reduced below that proportion in effect at the adoption of this Article unless the state has relieved local governments of an obligation or expense. Where state laws or regulations directly or indirectly reduce the expenses of local governments, the proportion of state revenue paid to all local units of government may be reduced by up to the amount of the reduced expenses. Where costs are transferred from one unit of government to another unit of government, either by law, court order or agreement, the limitation imposed by Sections 4 and 8 of this Article shall be adjusted and transferred accordingly so that total costs of the transferred services are not increased as a result of such transfer.

### **Sec. 8. Local Government Spending Limits.**

1. All local government spending by cities and counties chartered by the state for three or more years shall be subject to a Local Government Spending Limit. This limit shall apply to the first fiscal year for each city and county that commences on or after January 1, 2009, and shall limit city or county fiscal-year spending to the greater of:

(a) the total amount of local government spending in the preceding fiscal year increased by a percentage amount equal to the result obtained by adding the rate of inflation for the preceding calendar year, plus the percentage change in local government population during the preceding calendar year; OR,

(b) the Local Government Spending Limit for the previous fiscal year.

2. Notwithstanding subsection 1, the Local Government Spending Limit may be adjusted to incorporate revenue changes approved by voters pursuant to Section 2 of this Article.

3. When local tax revenue exceeds the Local Government Spending Limit, counties and cities may retain up to half of the budget surplus in any fiscal year for a Budget Reserve Fund. The purpose of the Fund shall be limited to offsetting a shortfall of revenue below the Local Government Spending Limit or addressing declared emergencies. The Budget Reserve Fund is limited to 5 percent of the Local Government Spending Limit.

4. After transfers are made to a county or city Budget Reserve Fund pursuant to subsection 3 of this section, an excess amount of local tax revenue for a fiscal year may remain. In that event:

(a) Should the excess tax revenue be equal to or greater than 1 percent of the Local Government Spending Limit, it shall be deemed "Refundable Local Tax Surplus." By a two-thirds vote of the local governing body, the local government may ask voters for approval, pursuant to Section 2, subsection 2 of this Article, to spend all or part of a Refundable Local Tax Surplus. Absent approval of the voters to spend the Refundable Local Tax Surplus, that Surplus shall be held and credited to the next year's property tax bill for each private parcel in the jurisdiction of the local government, in proportion to each parcel's contribution to total property tax proceeds. If any portion of the Surplus remains thereafter, that portion shall be refunded or credited proportionately to taxpayers against taxes paid in a manner determined by majority action of the local government's governing board.

Should the excess tax revenue be less than 1 percent of the Local Government Spending Limit, it shall be deemed a "Saved Local Tax Surplus," and shall constitute an obligation of the local government to be repaid to local government taxpayers at such time as a subsequent Refundable Local Tax Surplus, in combination with that Saved Local Tax Surplus, exceeds 1 percent of the Local Government Spending Limit.

## Initiative Petition

## State of Nevada

### Sec. 9. Amendment.

Any proposed amendment to this Constitution mandating specific state appropriations for projects or services, or establishing a minimum formula for state appropriations, for any purpose, that does not also establish a specific source of additional state revenue dedicated to fully funding those appropriations, must include the following voter advisory displayed in bolded capital letters above the ballot question on the ballot and the sample ballot:

**"NOTICE TO VOTERS: THIS MEASURE REQUIRES ADDITIONAL STATE EXPENSES WITHOUT CREATING A MEANS TO PAY FOR THEM. PASSAGE MAY REDUCE FUNDING FOR OTHER IMPORTANT GOVERNMENT FUNCTIONS."**

### Sec. 10. Implementation

All provisions of this Article are self-executing and severable and supersede conflicting state constitutional, state statutory, charter, or other state or local provisions. The legislature may enact such legislation as may be necessary to implement and enforce the provisions of this Article and repeal or amend all laws inconsistent with the provisions of this Article to conform to the provisions of this Article. In any circumstances where two or more reasonable interpretations of a provision of this Article exist, the correct interpretation shall be that which better restrains growth in government spending. In any circumstances where another provision of this Constitution is deemed to conflict with this Article, such other provision shall be superseded by this Article. If a court of competent jurisdiction in a final order shall adjudge any expenditure category, or revenue source, exempt from this section, the process of computing the State Spending Limit shall be adjusted accordingly and remaining provisions shall be in full force and effect.

### Sec. 11. Enforcement.

Any Nevada taxpayer or class of Nevada taxpayers shall have standing to commence an action to enforce this Article. A court of record shall award successful plaintiffs costs and reasonable attorney fees in the suit. Should the Court determine an action was frivolous, the Court may award reasonable expenses to the prevailing party.

### Sec. 12. Effective Date.

This Article shall become effective January 1, 2009.

### Description of Effect

If enacted, TASC for Nevada will add a new article to the Nevada Constitution:

- Preventing state and local tax increases and new multi-year indebtedness except when referred to voters by 2/3 of the Nevada Legislature or of the local governing board, and passed by a majority of voters casting ballots at a general election (§ 2);
- Limiting spending increases by the state, and by cities and counties chartered by the state, to inflation plus percentage change in population; allowing increases of these limits by the amount of voter-approved tax increases (§§ 4, 8);
- If state or city revenues exceed spending limits, requiring the deposit of part of these revenues into a state Emergency Reserve Fund and Budget Stabilization ("Rainy Day") Fund, or a local Budget Reserve Fund;
- Rebating any additional excess revenues to certain taxpayers;
- Changing rules on the use of money in the existing state Rainy Day Fund, including requiring that 1/4 of the Legislature, rather than the Governor, declare any emergency (§§ 5, 6, 8);
- Barring the state from imposing "unfunded mandates" on cities and counties or "shifting" costs to local governments (§ 7);
- Providing for certain other important substantive changes to the Constitution (§§ 1, 9, 10);
- Allowing suit for enforcement (§ 11).

County of \_\_\_\_\_ (Only a registered voter of this county may sign below)

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**SIGNATURES CONTINUE ON THE NEXT PAGE**

**Initiative Petition****State of Nevada****Description of Effect**

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- Barring the state from imposing "unfunded mandates" on cities and counties or "shifting" costs to local governments (§ 7);
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- Allowing suit for enforcement (§ 1).

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**Initiative Petition****State of Nevada****Description of Effect**

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- Limiting spending increases by the state, and by cities and counties chartered by the state, to inflation plus percentage change in population; allowing increases of these limits by the amount of voter-approved tax increases (§§ 4, 8);
- If state or city revenues exceed spending limits, requiring the deposit of part of these revenues into a state Emergency Reserve Fund and Budget Stabilization ("Rainy Day") Fund, or a local Budget Reserve Fund;
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**AFFIDAVIT OF CIRCULATOR**  
(TO BE SIGNED BY CIRCULATOR)

STATE OF NEVADA )  
COUNTY OF \_\_\_\_\_ )

I, \_\_\_\_\_, (print name), being first duly sworn under penalty of perjury, depose and say:

(1) that I reside at \_\_\_\_\_ (print street, city and state); (2) that I am 18 years of age or older; (3) that I personally circulated this document; (4) that all signatures were affixed in my presence; (5) that I believe them to be genuine signatures; and (6) that each individual who signed was at the time of signing a registered voter in the county of his or her residence.

Subscribed and sworn to or affirmed before me this

\_\_\_\_\_  
Signature of Circulator

\_\_\_\_\_ day of \_\_\_\_\_, by \_\_\_\_\_

\_\_\_\_\_  
Notary Public or person authorized to administer oath

Exhibit “8”

Exhibit “8”

1 CASE NO.:

2 DEPT. NO.:

3  
4 **IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
5 **IN AND FOR CARSON CITY**

6  
7 THE NEVADA MINING ASSOCIATION, INC,  
8 a Nevada nonprofit corporation,

9 Plaintiff,

10 v.

11 ROBERT A. FULKERSON, an individual; PAMELA  
12 GALLOWAY, an individual; MICHAEL GINSBURG,  
13 an individual; HOWARD WATTS III, an individual;  
14 THE PROGRESSIVE LEADERSHIP ALLIANCE  
15 OF NEVADA, a Nevada nonprofit corporation;  
16 NEVADANS FOR FAIR MINING TAXES, a Nevada  
17 ballot advocacy group; ROSS MILLER, in his capacity  
18 as Secretary of State for the State of Nevada; and DOES  
19 I-XX, inclusive,

20 Defendants.

21 **AFFIDAVIT OF TIM CROWLEY IN SUPPORT OF MEMORANDUM OF POINTS AND**  
22 **AUTHORITIES IN SUPPORT OF PLAINTIFF'S COMPLAINT FOR DECLARATORY**  
23 **RELIEF**

24 STATE OF NEVADA )

25 )ss:

26 COUNTY OF WASHOE )

27 I, Tim Crowley, do hereby swear under penalty of perjury, that the following assertions are  
28 true to the best of my knowledge and belief:

1. I am the President of Plaintiff, the Nevada Mining Association ("NVMA") and a  
resident of the State of Nevada.

2. The NVMA serves to bring the industry together to speak with one voice and utilize  
best practices in the areas of regulatory affairs, policy, education, safety, environmental, human  
resources and public outreach. The association has approximately 250 members including precious



1 metal and industrial mineral mining companies, exploration and development companies, and  
2 suppliers of goods and services, to the industry. The current association was established in 1952,  
3 but the roots of the NVMA go back to the Nevada Mine Operators Association founded in 1912.

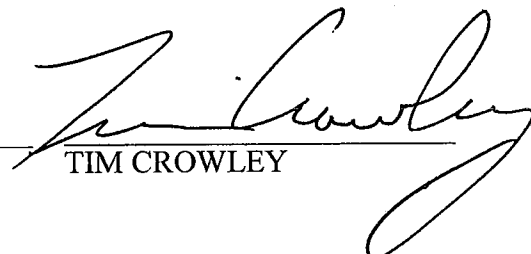
4 3. NVMA members include entities engaging in production of gold, silver, copper,  
5 limestone, barite, gypsum and geothermal resources.

6 4. In 2008, the mining industry paid approximately \$132,000,000 in taxes over and  
7 above the net proceeds tax calculated and paid pursuant to N.R.S. 362.120. This includes  
8 \$96,000,000 in sales and use taxes, \$32,000,000 in property taxes and \$4,000,000 in payroll taxes.

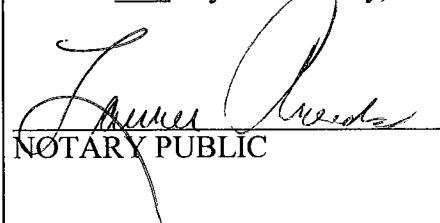
9 5. Minerals must be removed from the ground, often at great cost to the person  
10 performing the removal. These costs include, but are not limited to, development of the mine,  
11 extraction of the mineral (including purchase of mining equipment, hiring of labor, etc.), upkeep and  
12 depreciation of equipment, insurance, employee benefits, reclamation of the land, transportation of  
13 the mineral to be refined, refining the mineral and delivery the mineral to the place of sale. It is not  
14 until these steps are taken and costs are incurred can the mineral be sold at the market price that  
15 appears on the financial pages

16 FURTHER YOUR AFFIANT SAYETH NAUGHT.

17 Dated this 8 day of February, 2010.

18  
19  
20  
21  
22  
  
TIM CROWLEY

23 Subscribed and sworn to before  
24 me this 8<sup>th</sup> day of February, 2010.

25  
26  
27  
28  
  
NOTARY PUBLIC

