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5
6 IN THE SECOND JUDICIAL COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF WASHOE
8

9 TERRY W. TIERNAY

10 Plaintiff,

11 vs.

Case No. CV13 01460

12 RICHARD GAMMICK,

Dept. No. 3

13 BONNIE WEBER,

14 KITTY JUNG, and

15 DAVID HUMKE,

16 Defendants,
17 _____/

18 MOTION TO PROCEED TO HEARING AND RESPONSE TO DEFENDENTS MOTION
19 TO DISMISS

20 The Court should please note that although there is no provision in law (NRS283.440) under this process
21 for the Motion to Dismiss filed by the Defendants and the Motion should be denied as a matter of law and
22 any arguments made in the Motion would be more appropriate during the Hearing mandated under the
23 law. Plaintiff is compelled to respond in part to some of the assertions offered by the Defendant's
24 counsel. County officials Motion to Dismiss (August 1, 2013) should be denied by the court. The Motion
25 mainly relies on the defense of no duty to represent the residents of Washoe County in legislative
26 proceeding of interest to the residents, specifically AB 545. The officials do not deny that AB 545
27 contained over 240 sections specific to Washoe County that were enacted in violation of constitutional

1 provisions. County officials Motion addresses the complaint of malfeasance and malpractice in a
2 superficial manner with little substantive defense.

3 EXAMINATION OF WHAT CONSTITUTES MALFEASANCE AND MALPRACTICE

4 Numerous Nevada Statutes make reference to Malfeasance, Malpractice and Nonfeasance by public
5 officials but offer no definition as to Malfeasance and Malpractice as related to local officials. I also stated
6 that it is therefore the province of the court to make a determination as to what actions constitute
7 Malfeasance (and Malpractice).

8 Searches on the internet produced the following definitions of Malfeasance (and Malpractice).

9 WEBSTER'S ONLINE DICTIONARY

10 Definition: malfeasance

11 **Noun 1.** Wrongful conduct by a public official.

12 **2.** The doing of an act which a person ought not to do; evil conduct; an illegal deed

13 **Malfeasance** in office, or official misconduct, is the commission of an unlawful act, done in an official
14 capacity, which affects the performance of official duties. **Malfeasance** in office is often grounds for a for
15 cause removal of an elected official by statute or recall election.

16 WEBSTER'S EXTENDED DEFINITION: Malfeasance in Office

17 **"Malfeasance in office, or official misconduct,** is the commission of an unlawful act, done in an official
18 capacity, which affects the performance of official duties. Malfeasance in office is often grounds for a for
19 cause removal of an elected official by statute or recall election.

20 An exact definition of malfeasance in office is difficult. Many highly regarded secondary sources compete
21 over the elements. This confusion extends to the courts where no single consensus definition of
22 malfeasance in office has arisen. In part, this can be attributed to the relative paucity of reported cases
23 involving malfeasance in office.

24 The West Virginia Supreme Court of Appeals summarized a number of the definitions of malfeasance in
25 office applied by various appellate courts in the United States.

26 Malfeasance has been defined by appellate courts in other jurisdictions as a wrongful act which the actor
27 has no legal right to do; as any wrongful conduct which affects, interrupts or interferes with the

1 performance of official duty; as an act for which there is no authority or warrant of law; as an act which a
2 person ought not to do; as an act which is wholly wrongful and unlawful; as that which an officer has no
3 authority to do and is positively wrong or unlawful; and as the unjust performance of some act which the
4 party performing it has no right, or has contracted no, to do.

5 ***Daugherty v. Ellis*, 142 W. Va. 340, 357-8, 97 S.E.2d 33, 42-3 (W. Va. 1956) (internal citations**
6 **omitted).** The court then went onto use yet another definition, "malfeasance is the doing of an act which
7 an officer had no legal right to do at all and that when an officer, through ignorance, inattention, or malice,
8 does that which he has no legal right to do at all, or acts without any authority whatsoever, or exceeds,
9 ignores, or abuses his powers, he is guilty of malfeasance.

10 In addition, jurisdictions differ greatly over whether intent or knowledge is necessary. As noted above,
11 many courts will find malfeasance in office where there is "ignorance, inattention, or malice", which
12 implies no intent or knowledge is required. Under English law malfeasance in public office is also a tort"

13 Oxford Dictionary

14 Malfeasance *noun law, wrongdoing*, especially (US) by a public official

15 Origin: late 17th century: from Anglo-Norman French *malfeasance*, from *mal*-'evil' + Old French *faisance*
16 'activity'

17 Malpractice *noun improper, illegal or negligent professional behavior careless, wrong or illegal behaviour*
18 while in a professional job

19 Find Law online (drawn from elements of Black's Law)

20 Malfeasance: Evil doing; ill conduct. Doing an act which a person ought not do at all. A
21 wrongful act which the actor has no legal right to do, or any wrongful conduct which affects, interrupts or
22 interferes with performance of official duty, or an act for which there is no
23 authority or warrant of law or which a person ought not to do at all, or the unjust
24 performance of some act, which party performing it has no right, or has contracted not
25 to do.

26 STATEMENT OF FACTS

27 Washoe County asked for what evolved into BDR 548/AB545. This is proven beyond doubt by

1 Mr. Gammick's testimony before the Senate Committee on Government Affairs on May 9, 2011 provided
2 as Exhibit #1 of the complaint: "Washoe County submitted this bill for population thresholds, and we
3 expected it to be a bill on population thresholds." and "Laws unique to Clark County because of its
4 population have been passed since the 1980s; this was the population threshold over 400,000. Washoe
5 County went over 400,000 during the last U.S. Census. Assembly Bill 545 was drafted to increase that
6 threshold from 400,000 to 700,000. The bill is enormous. It is 281 pages, and about 240 laws are affected
7 by this bill. The reason for the bill's size is that there are things unique to Clark County that other counties
8 did not need or want. It is imperative that this bill becomes law." and "I am supportive of A.B. 545." Also
9 supporting this fact is Sheriff Haley's email, Exhibit #5 of complaint.

10 Washoe County asked for a legislative measure that evolved from request for legislation
11 (increasing population thresholds for population based general laws affecting Washoe County) to BDR
12 548/AB 545 and eventual enactment. Once the county exercised its statutory power under (NRS
13 218D.205), the request for legislation carries with it an implied duty to ensure the request complies with
14 statutory and constitutional case law. In addition, a secondary duty to track the progress and provide
15 testimony/input to the legislature when needed.

16 AB545/BDR548 enactment by the legislature, as requested by Washoe County, violates
17 numerous articles and sections of the Nevada Constitution. This fact is support by the case law (County
18 of Clark v. City of Las Vegas, 97 Nev. 260, 628 P.2d 1120 (1981)) which is specifically cited in the
19 Legislative Counsel's Digest section of AB545 and numerous other case law relating to a constitutional
20 requirement for general laws and a prohibition of local and special laws except in emergency or unique
21 situations. CLEAN WATER COALITION v. THE RESORT LLC PH LLC LLC No. 57649. -- May 26, 2011
22 The Nevada constitutional framers' purpose in adopting mandates proscribing local and special legislation
23 was to "**remedy an evil into which it was supposed the territorial legislature had fallen in the**
24 **practice of passing local and special laws for the benefit of individuals instead of enacting laws of**
25 **a general nature for the benefit of the public welfare.**" **Evans v. Job, 8 Nev. 322, 333 (1873).** At
26 their core, local and special law proscriptions "reflect a concern for equal treatment under the law," Robert
27 F. Williams, Equality Guarantees in State Constitutional Law, 63 Tex. L.Rev. 1195, 1209 (1985), and seek

1 to fix inequities in the areas of “economics and social welfare.” See Donald Marritz, Making Equality
2 Matter (Again): The Prohibition Against Special Laws in the Pennsylvania Constitution, 3 Widener J.
3 Pub.L. 161, 184–85 (1993) (explaining the origins of Pennsylvania’s constitutional prohibition against
4 special laws). When determining whether a local or special law is permissible because a general law
5 could not be made “applicable” for purposes of Nevada Constitution Article 4, Section 21, we look to
6 whether the challenged law “best subserve[s] the interests of the people of the state, or such class or
7 portion as the particular legislation is intended to affect.” Irwin, 5 Nev. at 122. In upholding local or special
8 legislation in the past, this court has focused on whether “the general legislation existing was insufficient
9 to meet the peculiar needs of a particular situation,” or whether a particular emergency situation existed,
10 requiring more speedy action and relief than could be had by proceeding under the existing general law.
11 *Cauble v. Beemer*, 64 Nev. 77, 96, 177 P.2d 677, 686 (1947). With those precepts in mind, local or
12 special laws have been upheld in situations where an emergency situation existed within a certain county
13 or locality and a general law could not apply to address the situation because only that county or locality
14 was affected. *Id.* (upholding local law that removed the Lyon County seat from Dayton to Yerington after
15 the Lyon County courthouse burned down); see also *Quilici v. Strosnider*, 34 Nev. 9, 115 P. 177 (1911)
16 see also *Goodwin v. City of Sparks*, 93 Nev. 400, 566 P.2d 415 (1977) (concluding that a revitalization
17 and redevelopment law that applied to only two cities was invalid under Article 4, Section 21 because a
18 general law could have been made applicable to all cities, as deterioration of downtown areas and need
19 for improvement was not unique to Reno and Sparks). “a law’s compliance with Article 4, Section 21
20 nevertheless is subject to judicial review. *City of Reno v. County of Washoe*, 94 Nev. 327, 332–33, 580
21 P.2d 460, 463–64 (1978); *State of Nevada v. Irwin*, 5 Nev. 111, 120 (1869) (noting “that the power of
22 determining whether a given law is repugnant to the principles of a constitution with which it is alleged to
23 conflict, belongs to the judiciary,” and the court in that regard is conclusive); *Heckler v. Conter*, 187 N.E.
24 878, 879 (Ind.1933)” For in depth opinion written by Justice Hardesty (Douglas, Cherry, Saitta, Gibbons,
25 Pickering, Parraguirre concurring). see complaint Exhibit #3.

26 Washoe County requested the legislative measure outside the statutory mandated procedures
27 defined in NRS 218D.205 and NRS 218D.050 and is therefore nonfeasance.

1 Washoe County did not follow the procedures required in NRS 241.010 and NRS 241.015, a duty
2 to conduct an open meeting/hearing prior to taking action requesting a legislative measure.

3 Washoe County officials failed in their constitutional and statutory duties under NRS 281.020
4 which imposes a duty of constitutional compliance in general and all duties and actions.

5 All citizens have a duty to abide by the provisions of the constitution and all laws of the state.
6 This includes elected officials without exception. If this claim carries no statutory citation of duty, then
7 according to county officials, a claim of general exception is a viable defense. "The fundamental
8 constitutional principle, inspired by John Locke, holds that the individual can do anything but that which is
9 forbidden by law, and the state may do nothing but that which is authorised by law. (Locke, *The Second*
10 *Treatise, Chapter 9, section 124, Tamanaha, On the Rule of Law*). Administrative law is the chief method
11 for people to hold state bodies to account. People can apply for judicial review of actions or decisions by
12 local councils, public services or government ministries, to ensure that they comply with the law."

13 This statement of facts and other acts of malfeasance, malpractice and neglect of duty are
14 documented below and provide substantial evidence for the requested extraordinary measure for action
15 under NRS 283.440. If anything, this case deserves greater actions and sanctions than those specified in
16 NRS 283.440. However, this specific statute is entirely the prerogative of and constitutional power of the
17 legislature; additional sanctions for those complained of or the complainant are not a power of any court.

18 SPECIFIC INSTANCES OF NEGLIGENCE OF DUTY, MALFEASANCE, MALPRACTICE AND
19 CONSTITUTIONAL VIOLATIONS

20 FAILURE OF DUTY TO EXPAND BoCC TO 7 MEMBERS

21 NRS 0.025 Use of "may," "**must**," "**shall**" and "is entitled"; explanation of flush lines.

22 1. Except as otherwise expressly provided in a particular statute or required by the context:

23 (a) "May" confers a right, privilege or power. The term "is entitled" confers a private right.

24 (b) "May not" or "no * * * may" abridges or removes a right, privilege or power.

25 (c) "**Must**" expresses a requirement when:

26 (1) **The subject is a thing, whether the verb is active or passive.**

27 (2) The subject is a natural person and:

1 (I) The verb is in the passive voice; or

2 (II) Only a condition precedent and not a duty is imposed.

3 **(d) “Shall” imposes a duty to act.**

4 (e) “Shall be deemed” or “shall be considered” creates a legal fiction.

5 (f) “Shall not” imposes a prohibition against acting.

6 NRS 244.016 Number of county commissioners in county whose population is 700,000 or more;
7 commissioners’ districts.

8 1. In each county whose population is 400,000 (now 700,000) or more, the board of county
9 commissioners **consists of seven members**. Each member must be a resident of, and elected by the
10 registered voters of, a county commissioner election district established pursuant to this chapter.

11 **2. The board of county commissioners shall establish seven county commissioner election**
12 **districts** which must be as nearly equal in population as practicable, and each of which must be
13 composed entirely of contiguous territory and be as compact as possible.

14 NRS 244.018 Establishment of additional or changed commissioners’ districts: Manner of electing county
15 commissioners.

16 **1. If new or changed county commissioner election districts must be established** because of
17 changes in population or applicable law, **the board of county commissioners shall establish** those
18 districts by ordinance and provide for the election from specified districts of the proper numbers of county
19 commissioners for 4-year and 2-year terms respectively so that the numbers of county commissioners to
20 be elected at each general election thereafter will be as nearly equal as possible.

21 The question of when this **duty to act must/shall** take place is answered as follows: “The Nevada
22 Supreme Court addressed the issue of apportionment and county commissioner election districts in
23 *County of Clark v. City of Las Vegas*, 92 Nev. 323, 550 P.2d 779 (1976). The issue on appeal was the
24 constitutionality of a plan dividing Clark County into seven commissioner election districts from which 11
25 commissioners would be elected. **The court held “it was constitutionally impermissible to base an**
26 **initial apportionment for the new commissioner districts on admittedly outdated and inaccurate**
27 **population estimates when more recent and accurate estimates were just as readily available.”** *Id.*

1 **at 333.** AGO 98-03 also addresses the issue of redistricting/reapportionment and draws its conclusions
2 from the 1976 ruling. As AGO 98-03 was requested by Mr. Gammick he had certain knowledge of the
3 court's 1976 ruling to include: Indeed, the statutes provide for a method for county commissions to
4 reapportion based on a change in population. NRS 244.018(1) states: If new or changed county
5 commissioner election districts **must be established** because of changes in population or applicable law,
6 the board of county commissioners **shall establish those districts by ordinance** and provide for the
7 election from specified districts of the proper numbers of county commissioners for 4-year and 2-year
8 terms respectively so that the numbers of county commissioners to be elected at each general election
9 thereafter will be as nearly equal as possible. NRS 0.050 provides the following definition of "population":
10 Except as otherwise expressly provided in a particular statute or required by the context, "population"
11 means the number of people in a specified area as determined by the last preceding national decennial
12 census conducted by the Bureau of the Census of the United States Department of Commerce pursuant
13 to section 2 of article I of the Constitution of the United States and reported by the Secretary of
14 Commerce to the governor pursuant to 13 U.S.C. § 141(c). While the statutory definition of "population"
15 clearly means the number of people in an area as determined by the last national decennial census, the
16 definition also allows for an exception if the context of a particular statute so requires. **The context of**
17 **NRS 244.018(1) requires the use of another definition of population if there have been changes in**
18 **population so that "changed county commissioner districts must be established."**

19 Original complaint, Exhibit #7, provides substantial and conclusive proof that the three commissioners
20 also had certain knowledge of their duty and failed to perform. Exhibit #7 also shows that I went to
21 extraordinary effort to compel all four to do their duty as prescribed by statute and case law. Their failure
22 puts them in direct violation of Article 1 section 13 of the Nevada Constitution and potentially federal
23 requirement under "one person – one vote."

24 Duty of oath

25 NRS 244.035 County commissioners required to take oath of office; effect of failure to take oath.

26 1. On entering upon the discharge of the duties of the office of county commissioner, each county
27 commissioner, whether elected or appointed, **shall take and subscribe to the oath of office as**

1 **prescribed by law.**

2 The preeminent duty of any public official is strict adherence to the constitutional and statutory Oath of
3 Office. All of the four individuals complained of have their oath of office on file with the Washoe County
4 Recorder's Office. NRS 282.020; Form of official oath. I,, do solemnly [solemnly] swear (or
5 affirm) that I will support, protect and defend the constitution and government of the United States, and
6 the constitution and government of the State of Nevada, against all enemies, whether domestic or foreign,
7 and that **I will bear true faith, allegiance and loyalty to the same, any ordinance, resolution or law**
8 **of any state notwithstanding, and that I will well and faithfully perform all the duties of the office of**
9, on which I am about to enter; (if an oath) so help me God; (if an affirmation) under the pains
10 and penalties of perjury.

11 Duty of District Attorney

12 NRS 252.010 Qualifications. No person shall be a candidate for or be eligible to the office of district
13 attorney unless the person is:

14 1. A bona fide resident of the State of Nevada.

15 **2. An attorney duly licensed and admitted to practice law in all the courts of this state.**

16 If the court finds that Mr. Gammick has demonstrated that his actions in the matter of AB 545 was
17 unconstitutional, then qualification under section 2 would dictate a review.

18 NRS 252.170 Attendance at certain meetings of board of county commissioners; duties.

19 2. Additional duties of the district attorney include, without limitation:

20 (a) Reviewing all contracts under consideration by the board of county commissioners;

21 (b) Drafting ordinances and amendments thereto;

22 (c) Providing advice relating to the interpretation or application of county ordinances;

23 **(d) Providing advice relating to the impact of federal or state law on the county;**

24 **(e) Drawing all legal papers on behalf of the board of county commissioners; and**

25 **(f) At all times, giving his or her advice, including written legal opinions, when required, to the**
26 **members of the board of county commissioners upon matters relating to their duties.)**

27 NRS 252.160 Rendition of legal opinions to county, township and district officers.

1 1. Except as otherwise provided in this section, **the district attorney shall**, without fees, **give his or her**
2 **legal opinion to any assessor, collector, auditor or county treasurer, and to all other county,**
3 **township or district officers within his or her county, in any matter relating to the duties of their**
4 **respective offices.**

5 2. The district attorney is not required to give his or her legal opinion on any question regarding which the
6 district attorney requests an opinion from the Attorney General pursuant to NRS 375.0185.

7 It is clear from his testimony, that Mr. Gammick was more interested in representing his own personal
8 agenda (AB 545, Sections 43 and 46) than the interests of his clients (the people and BoCC). His words
9 fly in the face of his quotation (page 25 of minutes) *Senior District Judge Breen said, "The discipline of a*
10 *lawyer does not lend itself to standardization. Lawyers exercise independent, professional judgment*
11 *requiring a high level of ethics and a high level of performance. The lawyer's duty is owed to his or her*
12 *client."*

13 NRS 252.170 Attendance at certain meetings of board of county commissioners; duties.

14 2. Additional duties of the district attorney include, without limitation:

15 (b) Drafting ordinances and amendments thereto;

16 **(d) Providing advice relating to the impact of federal or state law on the county;**

17 (e) Drawing all legal papers on behalf of the board of county commissioners; and

18 **(f) At all times, giving his or her advice, including written legal opinions, when required, to the**
19 **members of the board of county commissioners upon matters relating to their duties.**

20 Duty for Open Meetings

21 NRS 241.010 Legislative Declaration and Intent. In enacting this chapter, the Legislature finds and
22 declares that all public bodies exist to aid in the conduct of the people's business. It is the intent of the law
23 that their actions be taken openly and that their deliberations be conducted openly.

24 There is a duty to abide by legislative declaration and intent.

25 NRS 241.015 Definitions. As used in this chapter, unless the context otherwise requires:

26 1. **Action" means:**

27 **(a) A decision made by a majority of the members present during a meeting of a public body;**

1 **(b) A commitment or promise made by a majority of the members present during a meeting of a**
2 **public body;**

3 (c) If a public body may have a member who is not an elected official, an affirmative vote taken by a
4 majority of the members present during a meeting of the public body; or

5 (d) If all the members of a public body must be elected officials, an affirmative vote taken by a majority of
6 all the members of the public body.

7 **2. "Meeting":**

8 (a) Except as otherwise provided in paragraph (b), means:

9 **(1) The gathering of members of a public body at which a quorum is present to deliberate toward a**
10 **decision or to take action on any matter over which the public body has supervision, control,**
11 **jurisdiction or advisory power.**

12 **(2) Any series of gatherings of members of a public body at which:**

13 (I) Less than a quorum is present at any individual gathering;

14 (II) The members of the public body attending one or more of the gatherings collectively constitute a
15 quorum; and

16 **(III) The series of gatherings was held with the specific intent to avoid the provisions of this**
17 **chapter.**

18 (b) Does not include a gathering or series of gatherings of members of a public body, as described in
19 paragraph (a), at which a quorum is actually or collectively present:

20 (1) Which occurs at a social function if the members do not deliberate toward a decision or take action on
21 any matter over which the public body has supervision, control, jurisdiction or advisory power.

22 (2) To receive information from the attorney employed or retained by the public body regarding potential
23 or existing litigation involving a matter over which the public body has supervision, control, jurisdiction or
24 advisory power and to deliberate toward a decision on the matter, or both.

25 This Court most certainly has before it the accusation of an illegal meeting and has the full authority under
26 the law to make a determination upon the presentation of the evidence as to whether there has been a
27 "violation" of NRS 241.040 and if so determined by this Court, vacation of office would be automatically

1 mandated under the law. The evidence has clearly shown that an illegal meeting occurred and there was
2 a violation of NRS 241.040.

3 NRS 241.040 Criminal and civil penalties; members attending meeting in violation of chapter not
4 accomplices.

5 **1. Each member of a public body who attends a meeting of that public body where action is taken**
6 **in violation of any provision of this chapter, with knowledge of the fact that the meeting is in**
7 **violation thereof, is guilty of a misdemeanor.**

8 2. Wrongful exclusion of any person or persons from a meeting is a misdemeanor.

9 3. A member of a public body who attends a meeting of that public body at which action is taken in
10 violation of this chapter is not the accomplice of any other member so attending.

11 **4. In addition to any criminal penalty imposed pursuant to this section, each member of a public**
12 **body who attends a meeting of that public body where action is taken in violation of any provision**
13 **of this chapter, and who participates in such action with knowledge of the violation, is subject to a**
14 **civil penalty in an amount not to exceed \$500. ...**

15 Procedures for Requesting Legislative Measure

16 NRS 218D.205 Requests from counties, school districts and cities.

17 **1. For a regular session, each board of county commissioners, board of trustees of a school district and**
18 **city council may request the drafting of not more than the numbers of legislative measures set**
19 **forth in this section if the requests are:**

20 **(a) Approved by the governing body of the county, school district or city at a public hearing before**
21 **their submission to the Legislative Counsel; and**

22 (b) Submitted to the Legislative Counsel on or before September 1 preceding the regular session.

23 2. The Legislative Counsel shall notify the requesting county, school district or city if its request
24 substantially duplicates a request previously submitted by another county, school district or city.

25 3. The board of county commissioners of a county whose population:

26 (a) Is 700,000 or more may request the drafting of not more than 4 legislative measures for a regular
27 session.

1 **6. Each request made pursuant to this section must be on a form prescribed by the Legislative**
2 **Counsel..**

3 NRS 218d.205 is the only statutory means to request legislation. A meeting as required in section 1 (a)
4 was apparently never held and was also required under NRS 241.015. If such meeting was held, BoCC
5 and DA should have no problem producing the form required in section 6 (a). Exhibit #5 of complaint
6 Indicates that a least one meeting was conducted in violation of NRS 241.015 section 2 (iii).

7 OTHER ARGUMENTS IN SUPPORTING REMOVAL FROM OFFICE

8 NRS 197.120 False impersonation of public officer; intrusion into and refusal to surrender public office.

9 Every person who shall falsely personate or **represent any public officer, or who shall willfully**
10 **intrude into a public office to which the person has not been duly elected or appointed, or who**
11 **shall willfully exercise any of the functions or perform any of the duties of such officer**, without
12 having duly qualified therefor, as required by law, or who, having been an executive or administrative
13 officer, shall willfully exercise any of the functions of office after his or her right to do so has ceased, or
14 wrongfully refuse to surrender the official seal or any books or papers appertaining to such office, upon
15 the demand of his or her lawful successor, **shall be guilty of a gross misdemeanor.**

16 Washoe County BoCC and District Attorney having requested a legislative measure that when actualized
17 contains matters the province of other Washoe County officials have by their actions provided façade of
18 false representation. Washoe County School District had no knowledge of the provisions of AB 545
19 which affected their office. Only after I had notified WCSD Trustees of the detrimental provisions of AB
20 545 did they seek advice from the LCB. Exhibit #6 provides substantial evidence of lack of knowledge of
21 the BoCC and DA acting contrary to WCSD interests.

22 NRS 197.130 False report by public officer. Every public officer who shall knowingly make any false or
23 misleading statement in any official report or statement, under circumstances not otherwise prohibited by
24 law, shall be guilty of a gross misdemeanor.

25 See Mr. Gammick's statements on May 9, 2011 urging approval of AB 545 in violation of Article 4
26 requirement regarding general laws. Also May 9, 2011 Exhibit I, (letter from Mr. Gammick dated May 2,
27 2011 offering "options" in violation of Article 4 provisions on general laws) displayed in said meeting.

1 POINTS OF CLARIFICATION

2 The complained of parties contend that I am on a personal mission to embarrass and harass
3 them. By the nature of the elements of cause for removal; malfeasance, malpractice and neglect of duty,
4 more than one individual must be affected by any one of those three elements.

5 The complained of parties contend that I am assuming the duty of representing the residents of
6 Washoe County. Again, the nature of the elements dictate that any complaint filed by any individual is
7 inseparable from the collect body of residents.

8 Mr. Lipparelli claims to be counsel for all four county parties complained of; however, the
9 signature block of the motion to dismiss (August 1, 2013) is that of Mr. Gammick. Who is counsel for the
10 four county parties complained of, Mr. Gammick or Mr. Lipparelli?

11 CONCLUSIONS

12 Any one of the elements of malfeasance, malpractice or neglect of duty proven by
13 substantial evidence or fact in the complaint and/or motions require removal from office (and other
14 penalties delineated in NRS 283.440) of the four county officials complained of.
15 County officials Oath of Office proves false the assertion of no duty to oppose AB 545, especially in light
16 of their request for the bill's construction. Once the bill was drafted, it was the duty of those officials to
17 track its journey through the legislative process. Other duties associated with AB 545 was to read the
18 bill's sections that applied to Washoe County as well as the cited case law.

19 Officers of the district courts have voluntarily subscribed to the Oath of Office in the form of NRS
20 282.020. This oath now requires that the presiding court official exercise his duty to correct the
21 unconstitutional elements (proscribed local legislation) contained in AB 545, sections 1 through 313.
22 Although outside the provisions of NRS 283.440, this request for action is mandated by Article 1
23 Declaration of Rights and statutory under NRS 282.020.

24 When elected officials fail in their duty to represent their constituents/clients, an individual has the
25 duty and right to seek redress. The right is inherent in an individual's duty to abide by the constitution and
26 laws of the federal and state governments. This duty is required even when there is no specific statute
27 stating that the people have such duty.

1 Representing Washoe County School District in proposing legislative measure to increase
2 population threshold increases in several sections of AB545. Actions without authority of law has denied
3 WCSD millions of dollars and powers granted in those sections (statutes).

4 Noting the number of legal professionals present at the Senate hearings of May 9, 2011 (and
5 other gatherings of the legislative bodies), AB 545 should have been dead on arrival. With those
6 professionals present, legislative members present probably assumed that their actions were lawful.

7 The complaint should proceed to a hearing and as all parties have provided several motions
8 supporting the complaint and defendants have provided contrary evidence to the complaint, summary
9 judgment should be rendered.

10 /

11 /

12 **AFFIRMATION PURSUANT TO NRS 239B.030**

13 The preceding document does not contain the social security number of any person.

14 Dated this 12th day of August, 2013.

15 _____
16 Terry W. Tiernay, Plaintiff
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