

REC'D & FILED

2014 DEC 15 PM 3:17

ALAN GIVER

BY CLERK
DEPUTY

1 JOSEPH F. BECKER
2 Nevada State Bar: 12178
3 NPRI Center for Justice
4 1225 Westfield Ave., Suite 7
5 Reno, NV 89509
6 Tel: 775-636-7703
7 Fax: 775-201-0225
8 Attorney for: Plaintiff

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

11 MICHAEL LITTLE, a citizen and taxpayer of) Case No.: 14 OC 00026 1B
12 Nevada,)
13 Plaintiff,) Dept. No.: 1

14 vs.

15 THE STATE OF NEVADA; THE NEVADA
16 GOVERNOR'S OFFICE OF ECONOMIC
17 DEVELOPMENT; and STEVEN HILL, in his
18 official capacity as Executive Director of the
19 Nevada Governor's Office of Economic
20 Development; and THE LEGISLATURE OF
21 THE STATE OF NEVADA,
22 Defendants.

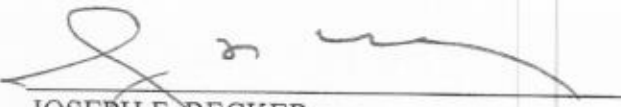
23 **PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

24 Plaintiff, MICHAEL LITTLE, by and through his attorney, NPRI Center for Justice and
25 Constitutional Litigation, moves the above-entitled Court for summary judgment awarding to
26 him the relief prayed for in his Complaint for Declaratory Judgment and Injunctive Relief on the
27 basis that the pleadings and documents on file show that there is no genuine issue as to any
28 material fact and that he is entitled to a judgment as a matter of law.

This motion is made and based upon NRCP 56, the memorandum of points and authorities,
the exhibits attached hereto, the Affidavit of Michael Little, the Affidavit of Joseph F. Becker,

1 and all other papers and pleadings on file herein, and any argument presented at the time of
2 hearing on this matter.

3 Dated this 15th day of December, 2014.

4
5 
6 JOSEPH F. BECKER
7 Nevada State Bar No.: 12178
8 NPRI Center for Justice
9 1225 Westfield Ave., Suite 7
10 Reno, NV 89509
11 Tel: 775-636-7703
12 Attorney for Plaintiff

13 **MEMORANDUM OF POINTS AND AUTHORITIES**

14 **I. INTRODUCTION**

15 Much like similar provisions contained in many western states' constitutions, the "Gift
16 Clause" in Article 8, Section 9 of the Nevada Constitution prohibiting gifts of state taxpayer
17 money to private corporations found its genesis in the historical bankruptcy of eastern states (and
18 liability for their taxpayers) wherein taxpayer money was used to line the pockets of the
19 politically-connected corporatists for largely unneeded and non-demanded private ventures,
20 (lining the pockets of those corporate executives, that is), while leaving the taxpayer holding the
21 government debt when such projects and companies proved unneeded and unwanted, as they
22 almost always did.¹

23
24
25 ¹ "[S]tate subsidies for internal improvements were forbidden by new constitutional
26 amendments in 10 states — Maine, New York, Pennsylvania, Maryland, Minnesota, Iowa,
27 Kentucky, Kansas, California, and Oregon. Wisconsin had constitutionally barred grants and
28 loans to private companies since 1848. Louisiana — which had begun subsidizing railroads as
early as 1833 — had been one of the first states to turn around and forbid state aid for internal
improvements, in 1845. And as the 1860s proceeded, even the new states entering the Union —

1 In 1992, 1996 and 2000, the voters of the State of Nevada resoundingly rejected attempts
2 by the Nevada Legislature to amend the Nevada State Constitution to allow disbursement of state
3 taxpayer money to such private corporations for similar ventures, specifically for the “purpose”
4 of economic development.²

5
6 However, despite its repeated and significant failures to secure voter approval for the
7 constitutional amendments then deemed necessary by Defendants, in 2011, the legislature
8 passed, and Governor Brian Sandoval signed, Assembly Bill 449, an act explicitly establishing a
9 “Catalyst Fund,” from which the state Office of Economic Development — a department created
10 within the Office of the Governor, with its board chaired by the governor — funnels *state* funds,
11 as directed by *state* officials, through political subdivisions which, in turn, remit those same *state*
12 *funds* to private corporations selected by those who staff the Governor’s Office of Economic
13 Development (hereinafter, “GOED.”)

14
15 Given this well-documented factual, historical backdrop, the case before this Court
16 presents only one legal issue. That is, “whether the gifts of *state funds* directed by *state officers*
17 to private corporations are cloaked in constitutional validity simply because the State uses
18 political subdivisions as intermediaries or conduits for disbursement of those state funds?”
19

20 Defendants, by their relatively recent actions of placing before the Nevada electorate the
21 ballot questions as to whether the Nevada Constitution should be amended to allow the State to
22

23
24 such as Nevada, in 1864 — entered with similar constitutional prohibitions. A clause forbidding
25 state gifts to corporations had become part of the necessary template for state constitutions.”
<http://nevadajournal.com/2014/02/20/actual-history-nevadas-ban-state-gifts-private-companies/>.

26 ² Exhibit 1. Voting Results procured from Defendant Nevada Legislature’s official
27 website. (<http://www.leg.state.nv.us/Division/Research/VoteNV/BallotQuestions/1992.pdf>;
28 <http://www.leg.state.nv.us/Division/Research/VoteNV/BallotQuestions/1996.pdf> ;
<http://www.leg.state.nv.us/Division/Research/VoteNV/BallotQuestions/2000.pdf>).

1 gift money to private corporations in the name of economic development have conceded that
2 such actions are (1) gifts; and (2) would otherwise be unconstitutional (thus requiring the
3 constitutional amendment (to allow the very activity they now try to use intermediaries to
4 accomplish)).

5
6 Even more recently, GOED's Executive Director Steven Hill, when asked under oath if
7 there's "a reason you [GOED] don't just enter an agreement with the recipient directly," testified
8 that, "[w]e [GOED] feel that that's unconstitutional . . ." Exhibit 2, deposition of Steven Hill
9 excerpts, p. 71, ln. 13-15.

10
11 For all the aforementioned reasons, Plaintiff LITTLE believes that Defendants have
12 already conceded by their words and repeated ballot measures that the state revenue GOED
13 approved to be disbursed to SolarCity, Inc., would be an unconstitutional gift under Article 8,
14 Section 9, of the Nevada Constitution if paid directly to the recipient. Thus, the only question
15 this Court need rule upon is whether by "subcontracting" with an intermediary, it may now
16 escape this constitutional constraint by funneling money through said intermediary.

17
18 This scheme, however, runs afoul of the plain language of the Nevada State Constitution,
19 the will of the people of Nevada as evidenced by three consecutive four-year elections, and, if
20 not held unconstitutional, sets a very dangerous precedent whereby the State, when
21 constitutionally prohibited from acting in certain ways, first creates a political subdivision and
22 then subcontracts with that political subdivision to act as an intermediary to do the very thing the
23 Nevada Constitution explicitly prohibits. What's next?! Hiring private security companies to
24 conduct warrantless searches in instances where the state would otherwise be constitutionally
25 prohibited?!

II. PROCEDURAL BACKGROUND

On February 19, 2014 NPRI's Center for Justice, on behalf of Michael Little, an alternative-energy entrepreneur and Nevada taxpayer, filed a Complaint against the Nevada Governor's Office of Economic Development (hereinafter, "GOED") seeking declaratory and injunctive relief — seeking a declaration that payment of \$1.2 million in state taxpayer funding to his solar energy competitor violates the Nevada Constitution's gift prohibition and injunctive relief to prohibit the use of his tax dollars to subsidize his alternative energy competitor.

On or about March 11, 2014, Steven Hill, Executive Director of GOED and the Nevada Attorney General's Office were served with summonses and copies of the Complaint and on March, 25, 2014, the Nevada Legislature filed a motion to intervene in the case, citing NRS 281F.720 as statutory authority to do so.

Plaintiff LITTLE and the State of Nevada/GOED filed non-Oppositions to the Nevada Legislature's motion to intervene on April 2, 2014 and April 7, 2014, respectively, and on April 11, 2014, this Court granted the Nevada Legislature's motion.

Virtually identical Answers to the Complaint were filed by the Legislature and GOED on April 18, 2014 and April 21, 2014, respectively, and an early case conference report was held on June 2, 2014 with a Joint Case Conference Report being filed with the Court on July 15, 2014.

Pursuant to that Joint Case Conference Report, Defendant Legislature's Initial Disclosures were made on June 11, 2014 and Defendants GOED's and Steven Hill's Initial Disclosures were made on July 7, 2014. Plaintiff's Initial Disclosure was completed on July, 9, 2014 and Plaintiff's disclosure of his expert witness was timely made/filed on or about August 7, 2014, and Defendant GOED designated its rebuttal witness on or about September 10, 2014. Plaintiff deposed Steven Hill, Executive Director of GOED on October 9, 2014 and Defendants'

1 Interrogatories, Requests for Admissions, Requests for Production were served on all Defendants
2 on November 6, 2014.

3 By stipulation, all parties agreed that dispositive motions would be due no later than
4 December 15, 2014.
5

6
7 **III. STATEMENT OF UNDISPUTED MATERIAL FACTS**

- 8 A. Michael Little, Plaintiff, is a citizen of the United States, a Nevada resident and
Nevada taxpayer. Exhibit 3, Affidavit of Michael Little, ¶ A.
9
10 B. Michael Little, Plaintiff, has developed a unique technological process by which
he can efficiently convert organic byproducts into alternative forms of energy. *Id.*
11 at ¶ B.
12
13 C. Michael Little, Plaintiff, is earnestly and diligently attempting to utilize the
aforementioned technological process he developed as the cornerstone of a new
business enterprise in southern Nevada. *Id.* at ¶ C.
14
15 D. Michael Little, Plaintiff, is placed at a competitive disadvantage and, thus, harmed
when SolarCity, Inc., an alternative energy competitor, is subsidized with state
16 taxpayer money. *Id.* at ¶ D.
17
18 E. Michael Little, Plaintiff, as a taxpayer, is also harmed by the Defendants GOED
and State of Nevada when state taxpayer funds are disbursed contrary to a clear
prohibition of such disbursement in the Nevada Constitution. *Id.* at ¶ E.
19
20 F. GOED has a contract to pay subsidies in the amount of \$1.2 million to Clark
County for disbursement to SolarCity, Inc. Exhibit 4, Deposition Exhibits 5 and 6.
21
22 G. SolarCity, Inc., is neither an educational nor charitable organization. Exhibit 5,
Deposition Exhibit 2.
23
24 H. The State of Nevada and its citizens receive no net benefit from GOED's subsidy
to SolarCity, Inc. Expert Report of Dr. Randall Holcombe, filed August 7, 2014.³

25 ³ Defendant State of Nevada's rebuttal report, contrary to Dr. Holcombe's Expert report
on this point, was submitted by Jeremy Aguero, a non-economist who holds instead a J.D. and
26 Bachelor's degree in Hotel Administration. Defendants, however, as noted above have already
conceded that such disbursements by the State are gifts, as evidenced by its earlier attempts to
27 amend the Nevada Constitution to legitimize such transfers of state funds.
28

- 1
- 2 I. The citizens of the State of Nevada, resoundingly rejected, in separate elections,
- 3 amending the Nevada Constitution to allow the payment (gifting) of state tax
- 4 money to private corporations such as SolarCity, Inc. Exhibit 1.
- 5
- 6 J. Steven Hill, Defendant, is the Executive Director of GOED, is the only Executive
- 7 Director has ever had, is not an economist, and, despite having a staff of
- 8 approximately 40, employs no economists. Exhibit 2, p. 10, ln. 24 – p. 11, ln. 18;
- 9 p. 23, ln. 10-11; p. 60, ln. 18-25.⁴
- 10
- 11 K. Michael Little, Plaintiff, met with Steven Hill in the year 2011 and was led to
- 12 believe that application for Catalyst Fund money would be futile. Exhibit 3,
- 13 Affidavit of Michael Little, ¶ F.
- 14
- 15 L. The Catalyst Fund (subsidy program) is administered by GOED, a Nevada state
- 16 office. Exhibit 2, p. 25, ln. 25 – p. 26, ln. 6.
- 17
- 18 M. Money disbursed by GOED to Catalyst Fund recipients is state revenue. *Id.* at p.
- 19 77, ln. 17 – p. 78, ln. 4.
- 20
- 21 N. GOED, a State agency, is ultimately responsible for determining which private
- 22 companies receive this state money and determined that SolarCity, Inc., would
- 23 receive the state revenue. *Id.* at p. 45, ln. 15 – p. 47, ln. 16.
- 24
- 25 O. Defendant GOED concedes that state tax money paid directly to GOED chosen
- 26 Catalyst Fund private recipients would be unconstitutional. *Id.* at p. 71, ln. 13-15.
- 27
- 28

IV. LEGAL ARGUMENT

A. Summary Judgment Standard

“Summary judgment is appropriate under NRCP 56 when the pleadings, depositions, answers to interrogatories, admissions, and affidavits, if any, that are properly before the court

⁴ Contrary to GOED Executive Director Steven Hill’s deposition testimony that GOED Research Director Bob Potts, “is an economist” and has a “20 year history running the Center for Business and Economic Research at UNLV,” during virtually all of Mr. Pott’s intermittent employment at UNLV’s Center for Business and Economic Research, the Center was “run” by its late Director, Dr. R. Keith Schwer, Ph.D economist. Upon Dr. Schwer’s unfortunate death in December, 2009, the Center Director replacing Dr. Schwer terminated the position then held by Mr. Potts, who holds an MBA, rather than a graduate degree in economics. Exhibit 6, Affidavit of Joseph Becker, ¶ 5.

1 demonstrate that no genuine issue of material fact exists, and the moving party is entitled to
2 judgment as a matter of law.” *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026, 1031
3 (2005). “The substantive law controls which factual disputes are material and will preclude
4 summary judgment; other factual disputes are irrelevant. A factual dispute is genuine when the
5 evidence is such that a rational trier of fact could return a verdict for the nonmoving party.” *Id.*

7 “While the pleadings and other proof must be construed in a light most favorable to the
8 nonmoving party, that party bears the burden to ‘do more than simply show that there is some
9 metaphysical doubt’ as to the operative facts in order to avoid summary judgment being entered
10 in the moving party’s favor. The nonmoving party ‘must, by affidavit or otherwise, set forth
11 specific facts demonstrating the existence of a genuine issue for trial or have summary judgment
12 entered against him.’ The nonmoving party ‘is not entitled to build a case on the gossamer
13 threads of whimsy, speculation, and conjecture’” *Id.* at 732, 1031 (internal footnotes omitted).

15
16 **B. Article 8, Section 9 of the Nevada Constitution Bars Gifts of State Tax Money**
17 **to Non-Charitable, Non-Educational Corporations.**

18 The Constitution of Nevada reads:

19 Gifts or loans of public money to certain corporations prohibited. The
20 State shall not donate or loan money, or its credit, subscribe to or be, interested
21 in the Stock of any company, association, or corporation, except corporations
formed for educational or charitable purposes.

22 Nev. Const. Art. 8, §9.

23 **C. When the Nevada Governor’s Office of Economic Development Disburses**
24 **Money to a Private Party or Corporation and Does Not Receive Equivalent**
25 **Value in Exchange, the Disbursement Constitutes a Gift.**

26 As noted above, by their words and deeds Defendants have already conceded that the
27 money to be bestowed upon SolarCity, Inc., by Defendants through intermediary Clark County,
28

1 if given directly to SolarCity, Inc. constitutes a gift. If such were not the case, the repeated
2 attempts by Defendant Legislature to amend the state constitution would have been totally
3 unnecessary. Moreover, GOED Executive Director Steven Hill's testimony that providing
4 money directly to the recipient would be "unconstitutional" further concedes that point.
5

6 However, even if, *arguendo*, Defendants had not already conceded this fact, Nevada
7 Supreme Court case law dictates that absent receiving "fair consideration in exchange for the
8 dispensation," the gift clause is violated. *Lawrence v. Clark County*, 254 P.3d 606, 616 (2011).
9 The Nevada Supreme Court looked to Arizona caselaw in *Lawrence* and held that "the approach
10 taken by Arizona deserves concerted attention, as its constitution contains a gift clause nearly
11 identical to Nevada's."
12

13 In 2010, sitting *en banc*, the Supreme Court of Arizona provided valuable guidance into
14 the instant case beginning with insights as to why gift clauses were inserted into state
15 constitutions:
16

17 [The Gift Clause] represents the reaction of public opinion to the orgies of
18 extravagant dissipation of public funds by counties, townships, cities, and towns
19 in aid of the construction of railways, canals, and other like undertakings during
20 the half century preceding 1880, and it was designed primarily to prevent the use
of public funds raised by general taxation in aid of enterprises apparently devoted
to quasi public purposes, but actually engaged in private business.

21 *Turken v. Gordon*, 224 P.3d 158, 162 (2010).

22 These insights are, of course, directly applicable to the state action here. The *Turken*
23 Court considered the question of whether public purpose was alone adequate in determining
24 whether a state expenditure satisfied a challenge under the Arizona Gift Clause. After
25
26
27
28

1 significant rumination, that Court established the two prong test later employed by the Nevada
2 Supreme Court in *Lawrence*.⁵

3 Although some states have held that establishing public purpose alone was adequate in
4 evading a gift clause challenge, the *Turken* Court reasoned otherwise. It held that, “reliance on
5 public purpose alone left open the possibility that government payments made under a contract,
6 even if for a public purpose, might so greatly exceed the consideration received in return as to
7 amount to a subsidy to a private entity. For example, a city’s purchase of a garbage truck would
8 undoubtedly serve a public purpose. Purchasing a truck for twenty times its fair value, however,
9 would constitute a subsidy to the seller.” *Turken* at 163. The money to be paid to SolarCity,
10 Inc., in the instant case is a pure subsidy as Nevada and its intermediary, Clark County, receive
11 no direct benefit from the recipient, thus making the payment purely a gift.

12 The Nebraska Supreme Court, when considering whether a state could delegate to
13 political subdivisions that which it was itself constitutionally prohibited, reasoned similarly with
14 respect to whether some indirect public benefit should be adequate to survive gift clause
15 scrutiny:

16 Every new business, manufacturing plant, or industrial plant which may be
17 established in a municipality will be of some benefit to the municipality. A new
18 super market, a new department store, a new meat market, a steel mill, a crate
19 manufacturing plant, a pulp mill, or other establishments which could be named
20 without end, may be of material benefit to the growth, progress, development and
21 prosperity of a municipality. But these considerations do not make the acquisition
22 of land and the erection of buildings, for such purposes, a municipal purpose. Our
23 organic law prohibits the expenditure of public money for a private purpose. It
24 does not matter whether the money is derived by ad valorem taxes, by gift, or
25 otherwise. It is public money and under our organic law public money cannot be
26 appropriated for a private purpose or used for the purpose of acquiring property
27 for the benefit of a private concern. It does not matter what such undertakings

28 ⁵ The *Lawrence* court added a third prong to the analysis where disposition of public trust
land is in question.

1 may be called or how worthwhile they may appear to be at the passing moment.
2 The financing of private enterprises by means of public funds is entirely foreign
3 to a proper concept of our constitutional system. Experience has shown that such
4 encroachments will lead inevitably to the ultimate destruction of the private
5 enterprise system.

6 *State ex rel. Beck v. City of York*, 164 Neb. 223, 228-29, 82 N.W.2d 269, 273 (1957).

7 The *Turken* Court established the two prong test that to survive a gift clause challenge,
8 the government expenditure must (1) serve a public purpose; and (2) result in fair consideration
9 in exchange for the dispensation. *Turken* at 165-66; *see also Lawrence* at 616.

10 **1. Public Purpose**

11 When asked under oath what the State receives in exchange for the money disbursed,
12 Steven Hill enumerated no *direct* benefit for the State in exchange for Catalyst Funds expended.
13 Exhibit 2, p. 78, ln. 5-10. And, not only is no direct benefit provided to the State, according to
14 Dr. Holcombe's Expert Report, no indirect benefit (or public benefit) is provided to Nevada or
15 Clark County as a consequence of state money being disbursed to SolarCity, Inc., either.
16 Although not adequately rebutted by Defendants' non-economist rebuttal report, this is at best
17 for Defendants, a factual inquiry not appropriate for Summary Judgment disposition. Even if,
18 *arguendo*, Defendants' rebuttal expert could somehow make the factual case for some indirect
19 benefit to the state, under the *Turken* test, such would still not be sufficient to survive gift clause
20 scrutiny because absent direct benefit, Defendants would still fail the "adequacy of
21 consideration" prong.
22
23
24

25 **2. Adequacy of Consideration.**

26 The *Turken* court acknowledged that, "[u]nder contract law, courts do not ordinarily
27 examine the proportionality of consideration between parties contracting at arm's length, leaving
28

1 such issues to the marketplace.” *Turken* at 165. However, gift clause jurisprudence quite
2 appropriately focuses on adequacy of consideration because paying far too much for something
3 effectively creates a subsidy to the “seller.” *Id.*

4
5 Here, the state receives no consideration nor does it even claim anything other than
6 indirect benefit as a result of bestowing upon SolarCity, Inc., some \$1.2 million. Indirect benefit
7 to the state, however, may satisfy the public purpose prong of the *Turken/Lawrence* test, but it is
8 of no use in satisfying the “consideration” prong. “Although anticipated indirect benefits may
9 well be relevant in evaluating whether spending serves a public purpose, when not bargained for
10 as part of the contracting party’s promised performance, such benefits are not consideration.” *Id.*
11 “Anticipated indirect benefits to government are not consideration under the gift clause.” *Id.*

12
13 In this case, Defendants fail both prongs and thus their Catalyst Fund cannot survive the
14 gift clause prohibition in Article 8, Section 9.

15
16 **D. State Tax Revenues Directed by State Officers is State Action Even When**
17 **State Officers Utilize a “Disbursement Subcontractor” to Circumvent**
18 **Nevada Constitutional Prohibitions.**

19 By using an intermediary, Defendants hope to circumvent the Nevada constitution and
20 the will of the electorate who three times recently refused to sanctify what Defendants now
21 attempt. Moreover, Defendants hope to defy the economic reality of cronyism, its necessarily
22 negative consequences, and the lessons of history which were the impetus for gift prohibition
23 clauses being inserted in state constitutions, in the first place. While the Nevada electorate does
24 seemingly remember keenly that those who fail to learn the lessons of history are doomed to
25 repeat them, such memory apparently does not serve the high-time-preference legislators, short
26 term interests of the GOED staff, the current political regime, and the rent-seeking corporations
27
28

1 who are unwilling (and likely unable) to succeed in the marketplace on their own consumer-
2 pleasing merit.

3 Using an intermediary to deliver the actual payment to SolarCity, Inc., however does not
4 allow Defendants' to make an end-run around Article 8, Section 9.

5
6 First, by GOED's own testimony, it is state revenue being disbursed. Second, by
7 GOED's own testimony, the State officials at GOED ultimately decide, exercising their own
8 discretion, who receives these state revenues. Third, in a Dillon's Rule state, the state may not
9 empower political subdivisions to undertake actions from which the state itself is constitutionally
10 barred. Lastly, a state may not contract for the services to do the very thing prohibited to it by
11 the constitution. Such would be an attempt to delegate authority never held.
12

13 14 **1. State (not local) Revenue**

15 Funding for the Catalyst Fund is state revenue. As readily testified to by GOED Director,
16 Steven Hill:

17 Q: "Can you explain to me how the Catalyst Fund grants are paid ultimately to the
18 recipients?"

19 A: Steven Hill: "The short answer is that, once the local government shows us evidence
20 of the amount that has been earned by the company, we'll submit a request, however that
21 works through the State, to cut a check or wire money, probably, to the local government
for that amount and then, the local government will pay the business."

22 Q: "Okay. But these are State moneys that are being wired to the local government,
23 correct?"

24 A: Steven Hill: "That's right."

25 **2. State Officials Determine the Recipient**

26 Recipients of the aforementioned State Funding are selected by State Officials. As
27 testified to by GOED Director, Steven Hill:
28

1 Q: "There is a formal application process for the Catalyst Fund moneys?"

2 A: Steven Hill: "Right . . . there is."

3 Q: "Can you explain to me what that process is?"

4
5 A: Steven Hill: "The business has to file an application with the local government that
6 has jurisdiction . . . that local government, then files an application with GOED . . . at the
7 point that we [GOED] receive that application from the local government, we take that to
8 our board [GOED] for their consideration and approval."

9 Q: "So, it's ultimately GOED that approves?"

10 A: Steven Hill: "Yeah, it . . . they have all been approved by the GOED board and [the]
11 statute allows me to approve contracts for less than \$100,000, but there has [sic] not been
12 circumstances that relates to the Catalyst Fund.

13 Q: "So either the GOED Board or you, individually, approve these Catalyst Fund
14 applications?"

15 A: Steven Hill: "Yeah. I have the authority to approve if the application is for a total of
16 less than \$100,000. That has not happened at this point.

17 **3. Dillon's Rule States May Not Employ Political Subdivisions to Take Actions**
18 **Constitutionally Prohibited to Those States, Themselves.**

19 Nevada is a Dillon's Rule State:

20 The legislature shall provide for the organization of cities and towns by general
21 laws and shall restrict their power of taxation, assessment, borrowing money,
22 contracting debts and loaning their credit, except for procuring supplies of water;
23 *provided, however*, that the legislature may, by general laws, in the manner and to
24 the extent therein provided, permit and authorize the electors of any city or town
25 to frame, adopt and amend a charter for its own government, or to amend any
26 existing charter of such city or town

27 Nev. Const. art. VIII, § 8

28 Like Nevada, Nebraska is a Dillon's Rule State.⁶ And, in *State ex rel. Beck v. City of*
York, 164 Neb. 223, 82 N.W.2d 269 (1957), the Nebraska Supreme Court considered whether a

⁶ "Because Nebraska townships do not operate under home rule authority and because
their power is derived from the state, their grants of authority often are construed under a

1 constitutional prohibition of state funding of private business applying explicitly to a state and
2 not its political subdivisions could be circumvented if legislatively delegated to those political
3 subdivisions.
4

5 The *Beck* court held that such a delegation was unconstitutional, reasoning, “[p]olitical
6 subdivisions of the State exist at the will of the State exercised through the Legislature. For [the
7 court] to say that the State may not loan its credit to an individual, association, or corporation,
8 but that it might create a political subdivision and authorize it to do that which the State itself is
9 prohibited from doing would be, to say the least, a very anomalous situation. It would permit the
10 State to do by indirection the very thing it could not directly do, a theory which has been
11 consistently condemned by this court.” *Id.* at 224-25, 271. The *Beck* court further held:
12
13

14 It is clear that the framers of our Constitution had in mind a prohibition against
15 giving or loaning the credit of the State or any subdivision thereof for a purely
16 private purpose. This supports the fundamental principle that public moneys may
17 not be used for private purposes. To impose such a prohibition as a matter of
18 constitutional policy on the State, only to have its beneficent purpose thwarted by
19 a refinement of definition not contemplated by its framers, would be to avoid the
20 very purpose for which it was intended.

21 *Id.*

22 **E. The Nevada Governor’s Office of Economic Development is Under Contract**
23 **to Make Such a Gift to a Non-Charitable, Non-Educational Corporation.**

24 According to the terms of a contract (and subcontractor Clark County, subcontract),
25 GOED is obligated to make payments of \$1.2 million dollars of state revenue to a private, non-
26 educational, non-charitable corporation over the next five years. Because the State receives no
27

28 doctrine known as Dillon’s Rule.” Jennifer S. Dannehl, *Township Makes “Moo” Ves Against Dairy*, 93 Neb. L. Rev. 196, 202 (2014).

benefit (or, at most, something less than fair value in exchange) for this subsidy to a private corporation, it is a clear violation of Article 8, Section 9, of the Nevada Constitution.

F. Even if, *Arguendo*, (1) this Court were to Determine That *State Funds, Directed by State Officials and Disbursed Through Intermediaries For Which The State Receives No Direct Benefit* is Not Prohibited by Article 8, Section 9; and that (2) Contrary to *Beck*, the State May Somehow Create and Empower Political Subdivisions to Take the Very Actions Constitutionally Prohibited to the State Itself, the Actions Complained of are Nevertheless Unconstitutional Because the Political Subdivision, by Participating in the State's Disbursement Scheme, Violate Article 8, Section 10, by Issuing *De Facto* Loans to Private Corporations.

Alternatively, even under Defendants' notion that a *state* financed, *state* administered gift to a political subdivision contractually bound to disburse it to a *state* chosen private recipient is somehow constitutional, the political subdivision is nevertheless constitutionally prohibited from participating in the circumvention scheme because the political subdivision is making a *de facto* loan to a private entity. While the recipient is not the entity repaying said loan (that being the State), because the political subdivision is disbursing money to a private corporation for which it expects to be paid back, it is, in fact, a loan prohibited by Article 8, Sec. 10 of the Nevada Constitution, which reads:

Loans of Public Money to or Ownership of Stock in Certain Corporations by County or Municipal Corporation Prohibited. No county, city, town, or other municipal corporation shall become a stockholder in any joint stock company, corporation or association whatever, or loan its credit in aid of any such company, corporation or association, except, rail-road corporations[,] companies or associations.

Nev. Const. Art. 8, §10.

The political subdivision (Clark County, in this instance) is disbursing money for which it later expects (and has even contracted) to be repaid. This, of course, means that the political subdivision is issuing a loan — making the loan violative of Article 8, Section 10 for Clark

1 County to issue, and, thus, making the payoff of that loan by GOED (the State), a gift by the
2 State to SolarCity, Inc., violative of Article 8, Section 9.

3 **V. CONCLUSION**

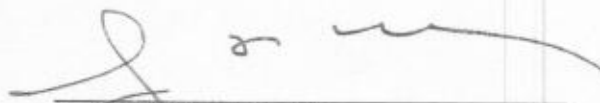
4
5 "It is an illusion—one that seems to have the persistence of original sin—that prosperity
6 can be attained by taking money from taxpayers and handing it to favored businesses. *Bordeleau*
7 *v. State*, 18 N.Y.3d 305, 322, 960 N.E.2d 917, 926 (2011)(*J. Smith dissenting*):

8
9 The idea of government intervention to influence the composition of a country's
10 output has long been derided by economists for breeding inefficiency, reducing
11 competition, encouraging lobbying and saddling countries with factories
12 producing products nobody wants." (*Tinker, tailor*, Economist, Oct. 1, 2011,
13 available at [http:// www.economist.com/node/21530958](http://www.economist.com/node/21530958)). *Id.*

14 Defendants' actions at issue in this case are ill-conceived, economically unsound,
15 contrary to the will of the Nevada electorate, and, for each of the aforementioned reasons,
16 patently unconstitutional.

17 Because Defendants GOED and the State of Nevada are gifting \$1.2 million to a private,
18 non-charitable, non-educational corporation, albeit through an intermediary, Plaintiff LITTLE is
19 entitled to Summary Judgment in this matter and, thus, the Declaratory Judgment and Injunctive
20 Relief sought.

21 Dated this 15th day of December, 2014.

22
23 


24 JOSEPH F. BECKER
25 Nevada Bar No.: 12178
26 NPRI Center for Justice
27 Attorney for Plaintiff
28

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on the 15th day of December, 2014, I mailed a copy of the **Plaintiff's**
3 **Motion for Summary Judgment** to the following at the last known address, by depositing the
4 same in the United States mail in Reno, Nevada, first class postage prepaid and addressed as
5 follows:
6

7 Legislative Counsel Bureau
8 BRENDA J. ERDOES
9 KEVIN C. POWERS
401 S. Carson Street
Carson City, NV 89701

Nevada Attorney General's Office
BLAKE A. DOERR
ANN C. PONGRACZ
555 E. Washington Ave., Ste. 3900
Las Vegas, NV 89101

11 By: 
12 ANNA M. BUCHNER, Paralegal
13 An Employee of NPRI Center for Justice
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28