



CASE NO: A-19-800267-C
Department 32

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18 **DISTRICT COURT**
19 **CLARK COUNTY, NEVADA**

20
21 FLOR MORENCY; KEYSHA NEWELL;
22 BONNIE YBARRA; AAA SCHOLARSHIP
23 FOUNDATION, INC.; SKLAR WILLIAMS
24 PLLC; ENVIRONMENTAL DESIGN GROUP,
25 LLC,

24 Plaintiffs,

25 vs.

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27 STATE OF NEVADA *ex rel.* the
28 DEPARTMENT OF EDUCATION; JHONE
EBERT, in her official capacity as executive

Case No.
Dept. No.
Docket

1 head of the Department of Education; the
2 DEPARTMENT OF TAXATION; JAMES
3 DEVOLLD, in his official capacity as a member
4 of the Nevada Tax Commission; SHARON
5 RIGBY, in her official capacity as a member of
6 the Nevada Tax Commission; CRAIG WITT, in
7 his official capacity as a member of the Nevada
8 Tax Commission; GEORGE KELESIS, in his
9 official capacity as a member of the Nevada Tax
10 Commission; ANN BERSI, in her official
11 capacity as a member of the Nevada Tax
12 Commission; RANDY BROWN, in his official
13 capacity as a member of the Nevada Tax
14 Commission; FRANCINE LIPMAN, in her
15 official capacity as a member of the Nevada Tax
16 Commission; ANTHONY WREN, in his official
17 capacity as a member of the Nevada Tax
18 Commission; MELANIE YOUNG, in her
19 official capacity as the Executive Director and
20 Chief Administrative Officer of the Department
21 of Taxation,

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Defendants.

COMPLAINT

Arbitration Exemption Claimed
Declaratory and Injunctive Relief Sought

1 **INTRODUCTION**

2 1. This action challenges the constitutionality of A.B. 458, a recently enacted
3 statute that, over the next biennium, results in the loss of over \$2,000,000 of scholarship
4 funding for low-income families. Plaintiffs are the parents of scholarship-recipient students, a
5 scholarship-funding organization, and business donors who all wish to see the scholarship
6 funding restored.

7 2. Nevada incentivizes private donations to fund K-12 scholarships to low-income
8 families through a tax-credit program called the Nevada Educational Choice Scholarship
9 Program (the “Scholarship Program”). The Scholarship Program allows Nevada businesses to
10 donate to registered scholarship organizations and to receive tax credits for those donations.
11 Those donations are then used by the private scholarship organizations to provide scholarships
12 to low-income families.

13 3. A.B. 458 eliminates over \$2,000,000 of tax credits in the next biennium, and
14 many more millions in future biennia, thereby depriving the Scholarship Program of millions in
15 revenue. Without that funding, many scholarships will not be available. Indeed, some families,
16 including some of the Plaintiffs here, have already lost scholarships because of A.B. 458.

17 4. By eliminating tax credits, A.B. 458 increases revenue for Nevada’s general
18 fund. A.B. 458 is therefore a revenue-raising bill that must receive a two-thirds supermajority of
19 votes in each house of the Nevada Legislature.¹ But A.B. 458 did not receive a supermajority of
20 votes in the Nevada Senate. Therefore, A.B. 458 is unconstitutional and unenforceable.

21 **JURISDICTION AND VENUE**

22 5. Plaintiffs bring this lawsuit under Article 4, Section 18(2) of the Constitution of
23 the State of Nevada (supermajority required to raise revenue) and under the Nevada Declaratory
24 Judgments Uniform Act, NRS §§ 30.010 *et seq.* Plaintiffs seek declaratory and injunctive relief
25 against unconstitutional legislation, A.B. 458 (2019), effective July 1, 2019, that impairs

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27 ¹ See Nev. Const. art. 4, § 18(2) (requiring “an affirmative vote of not fewer than two-thirds of the members elected
28 to each house . . . to pass a bill or joint resolution which creates, generates, or increases any public revenue in any
form”).

1 Plaintiffs' rights to receive scholarships, provide scholarships, or donate money to be used for
2 scholarships through Nevada's Educational Choice Scholarship Program.

3 6. The challenged legislation amends, and is codified at, NRS §§ 363A.139 and
4 363B.119.

5 7. This Court has jurisdiction over Defendants under NRS § 41.031 because they
6 are political subdivisions or agents of the State of Nevada.

7 8. This Court has jurisdiction over Defendants under NRS § 14.065 because they
8 reside in Nevada.

9 9. This Court has jurisdiction over this action under Article 6, Section 6 of the
10 Nevada Constitution and the Nevada Declaratory Judgments Uniform Act, NRS § 30.010 *et seq.*

11 10. This Court is the proper venue for this action under NRS §§ 13.020 and 41.031
12 because Defendants Department of Education and Department of Taxation maintain offices in
13 Clark County and the present cause of action arises in Clark County.

14 **PARTIES**

15 11. Plaintiff Flor Morency resides in Las Vegas and is the mother of two children
16 who, until A.B. 458 was enacted and caused a loss of funding, received scholarships under the
17 Scholarship Program. Her children will be attending public school this year if she cannot
18 receive a scholarship.

19 12. Plaintiff Bonnie Ybarra resides in Las Vegas and is the mother of five children
20 who, until A.B. 458 was enacted and caused a loss of funding, received full scholarships under
21 the Scholarship Program. Her children will now receive only partial scholarships.

22 13. Plaintiff Keysha Newell resides in North Las Vegas and is the mother of two
23 children. Until A.B. 458 caused a loss of funding, her oldest child received a full scholarship
24 under the Scholarship Program, but now receives a smaller scholarship. Keysha intends to apply
25 for a scholarship for her youngest child in 2020.

26 14. Plaintiff AAA Scholarship Foundation, Inc. ("AAA") is a scholarship
27 organization registered with the Nevada Department of Education to accept tax-credit-eligible
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1 donations and provide scholarships under the Scholarship Program. AAA maintains a mailing
2 address in Henderson and is incorporated in Georgia.

3 15. Plaintiff Sklar Williams PLLC is a Nevada professional limited liability
4 company located in Las Vegas.

5 16. Plaintiff Environmental Design Group, LLC, is a Nevada limited liability
6 company located in Las Vegas.

7 17. Defendant Nevada Department of Education is a state agency with offices in
8 both Carson City and Las Vegas. The Department of Education is responsible for administering
9 the Scholarship Program by adopting regulations necessary to carry out the Scholarship
10 Program² and by enforcing violations of the relevant statutes and regulations.³

11 18. Defendant Jhone Ebert is sued in her official capacity as the Superintendent of
12 Public Instruction and executive head of the Department of Education.⁴

13 19. Defendant Nevada Department of Taxation is a state agency with offices in
14 Carson City, Reno, Henderson, and Las Vegas. The Department of Taxation is responsible for
15 administering and enforcing the excise tax imposed by NRS § 363B.110.⁵ The Department of
16 Taxation is responsible for approving or denying applications for tax credits for donations to
17 scholarship organizations.⁶ The Department of Taxation may bring an action to collect the
18 nonpayment of taxes that it administers.⁷

19 20. Defendants James Devolld, Sharon Rigby, Craig Witt, George Kelesis, Ann
20 Bersi, Randy Brown, Francine Lipman, and Anthony Wren are sued in their official capacity as
21 members of the Nevada Tax Commission and, on information and belief, all reside in Nevada.
22 The Tax Commission is the head of the Department of Taxation.⁸

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26 ² NRS § 388D.270(7).

27 ³ NAC § 385.607(3).

28 ⁴ NRS § 385.010(3).

⁵ NRS § 363B.060.

⁶ NRS § 363B.119.

⁷ NRS § 360.4193(1).

⁸ NRS § 360.120(2).

1 31. The Scholarship Program caps the annual amount of tax credits available to
2 business donors each year. Credits are approved on a first-come, first-served basis.

3 32. If Defendant Department of Taxation approves a donor’s application for a tax
4 credit, it will issue a receipt reflecting the amount of money to be donated to the registered
5 scholarship organization.

6 33. When it was enacted in 2015, the Scholarship Program provided \$5,000,000 in
7 available tax credits for the 2015-16 fiscal year.¹⁰

8 34. The Scholarship Program also provided that the amount of credits available was
9 to grow by 10 percent each succeeding fiscal year (the “Escalator Provision”).

10 35. For the 2018-19 fiscal year, the cap was \$6,655,000 and, under the Escalator
11 Provision, was set to increase to \$7,320,500 for the 2019-20 fiscal year and to \$8,052,550 for
12 the 2020-21 fiscal year.

13 36. A.B. 458 repealed the Escalator Provision, thereby repealing \$665,500 in tax
14 credits for the 2019-20 fiscal year and \$1,397,550 in tax credits for the 2020-21 fiscal year, for a
15 total of over \$2,000,000 worth of tax credits over the next biennium and many more millions in
16 subsequent biennia.

17 **II. A.B. 458 Passed Without the Required Two-Thirds Supermajority**

18 37. Because A.B. 458 repealed tax credits, A.B. 458 will increase public revenue.

19 38. Defendant Department of Taxation, in its fiscal note on A.B. 458, determined
20 that A.B. 458 would raise \$2,063,050 in revenue over the next biennium and \$5,291,391 in
21 future biennia.¹¹

22 39. Defendant Department of Taxation therefore labeled the bill as a “revenue” item.

23 40. A.B. 458 was referred to the “revenue and economic development” committee of
24 the Senate. There, the bill’s original sponsor in the Nevada Assembly testified that, without the
25 planned tax credits, additional money would “otherwise be in the General Fund.” He also
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27 ¹⁰ 2015 Nev. Laws Ch. 22, § 4 (A.B. 165).

28 ¹¹ Dep’t of Tax’n, Fiscal Note on A.B. 458 (Nev. Apr. 4, 2019).

1 testified that each dollar of tax credits “is a dollar we deplete from the General Fund” and that
2 “we still have an obligation to fund our budget responsibly.”¹²

3 41. Article 4, Section 18 of the Nevada Constitution requires that any bill that
4 “increases any public revenue in any form” either (1) be passed by “an affirmative vote of not
5 fewer than two-thirds of the members elected to each house” or, (2) after an affirmative vote by
6 simple majority, be submitted for approval by the voters in a general election referendum.

7 42. A.B. 458 did not receive a two-thirds supermajority affirmative vote in the
8 Nevada Senate, receiving only 13 of 21 votes.

9 43. A.B. 458 was not referred to the people of Nevada for approval at a general
10 election referendum.

11 44. A.B. 458 was therefore not validly enacted and is not the enforceable law of
12 Nevada.

13 **III. Injury to Plaintiffs**

14 **A. Parent Plaintiffs**

15 45. Flor Morency is an immigrant from El Salvador and resides in Las Vegas. She is
16 the mother of two children.

17 46. Morency’s twin children are in fifth grade and participated in the Scholarship
18 Program until July 2019.

19 47. In public school Morency’s son suffered from bullying-induced stress. Other
20 children bullied Morency’s son because he was small compared to other boys in the class.

21 48. Morency’s son often came home from public school with headaches and his
22 grades were getting progressively worse.

23 49. In public school, Morency’s children were in crowded classes of around 36
24 students per classroom.

25 50. Morency applied to receive a scholarship under the Scholarship Program from
26 the Education Fund of Northern Nevada (“EFNN”) and her application was granted.

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28 ¹² Minutes of S. Comm. on Revenue & Econ. Dev. at 4, 80th Leg. (Nev., May 2, 2019).

1 51. After placing her children into a private Catholic school using the scholarship
2 from EFNN, Morency saw a marked improvement in her son’s grades.

3 52. On July 10, 2019, Morency was told by EFNN that her children could no longer
4 receive scholarships because A.B. 458 has made it “statistically impossible” to grant
5 scholarships to all renewing students under the ninth grade.

6 53. A.B. 458 has made it impossible to grant scholarships to all renewing students
7 under the ninth grade because it removes long-term funding from the tax-credit-funded
8 scholarship program.

9 54. But for A.B. 458, EFNN would not have faced the “statistical impossibility” and
10 could have renewed Morency’s children’s scholarships.

11 55. If A.B. 458 were not in force, an additional \$665,500 in funding would be
12 available to fund scholarships for Morency’s children for the 2019-20 school year.

13 56. If A.B. 458 were not in force, an additional \$1,397,550 in funding would be
14 available to fund scholarships for Morency’s children for the 2020-21 school year.

15 57. Plaintiff Bonnie Ybarra resides in Las Vegas.

16 58. Ybarra is the mother of five children. Two of her children are adults and no
17 longer live in her house. The other three children do live at home and are 9, 7, and 4 years old.

18 59. Ybarra’s 9-year-old and 7-year-old children enrolled in their neighborhood
19 public school when they were kindergarteners.

20 60. Ybarra’s 9-year-old, E.Y., did not do well in the public school and received
21 mostly D’s and F’s.

22 61. Ybarra’s 7-year-old, T.Y., was bullied and physically assaulted in the public
23 school. She was also failing her classes and was accused by her teachers of “working at the
24 speed of a snail.”

25 62. Ybarra tried working with the public school’s classroom teachers, the school’s
26 principal, and other members of the school’s administration. Her efforts to identify supports,
27 both inside and outside the classroom, to try and turn her children’s educations in a positive
28 direction were unsuccessful.

1 63. Under the Scholarship Program, Ybarra applied and received a scholarship from
2 EFNN. This enabled her to send her children to a private school, Mountain View Christian
3 School.

4 64. For the past two years, E.Y. and T.Y. have received partial scholarships under
5 the Scholarship Program. These partial scholarships have covered most of the cost of tuition at
6 the children’s private school.

7 65. Since transferring to Mountain View Christian School, E.Y. is doing much
8 better. Her study habits have improved significantly, and she now earns mostly A’s and B’s.
9 She still faces learning challenges, but Ybarra is confident E.Y. will succeed at Mountain View.

10 66. Since transferring to Mountain View Christian School, T.Y. is thriving. She is a
11 straight-A student and has responded positively to the school’s academic rigor.

12 67. Ybarra’s 4-year-old, N.Y., is entering kindergarten for the first time at Mountain
13 View Christian School and never attended a public school.

14 68. In July 2019, Ybarra received notice from EFNN that the partial scholarships
15 they had previously received would not be renewed.

16 69. EFNN’s letter to Ybarra stated that A.B. 458’s elimination of the Escalator
17 Provision “has made it statistically impossible” to grant scholarships to renewing students under
18 the ninth grade.

19 70. Ybarra’s renewing students are entering the third and fifth grade, respectively.
20 Ybarra’s young child is entering kindergarten for the first time.

21 71. All three children were accepted to attend Mountain View Christian School this
22 year.

23 72. All three of Ybarra’s younger children are participating in the Scholarship
24 Program and will receive small, partial scholarships from AAA Scholarship Foundation under
25 the Scholarship Program.

26 73. The partial scholarships from AAA will not come close to covering the full
27 amount of tuition. Indeed, the tuition gap for all three kids is approximately \$16,000.

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1 74. Ybarra does not possess the financial ability to pay \$16,000 for her children to
2 continue attending Mountain View.

3 75. Not expecting to be able to maintain enrollment for her children at Mountain
4 View, Ybarra visited the public school her children are currently zoned to attend, which is not
5 the same public school they previously attended. Ybarra was informed that 96 percent of the
6 students at their zoned public school are not at grade level. Upon learning this information,
7 Ybarra inquired with the school about the possibility of obtaining a boundary exception in order
8 attend a better performing public school. Ybarra was informed no boundary exceptions would
9 be granted.

10 76. This year the administration at Mountain View has offered to enroll all three of
11 Ybarra’s children at a significantly reduced rate and with an agreement that Ybarra volunteer at
12 the school. However, there is no guarantee that the children will be able to remain at the school
13 next year without financial aid.

14 77. Ybarra’s children have received a merciful reprieve this year, but A.B. 458 has
15 jeopardized their ability to continue attending Mountain View.

16 78. The reason A.B. 458 has made it impossible for EFNN to grant scholarships to
17 all renewing students under the ninth grade is because it removes long-term funding from the
18 tax-credit-funded scholarship program.

19 79. But for A.B. 458, EFNN would not have faced the “statistical impossibility” and
20 could have renewed Ybarra’s children’s scholarships.

21 80. But for A.B. 458, an additional \$665,500 in funding would be available to fund
22 scholarships for Ybarra’s children for the 2019-20 school year.

23 81. But for A.B. 458, an additional \$1,397,550 in funding would be available to fund
24 scholarships for Ybarra’s children for the 2020-21 school year.

25 82. Plaintiff Keysha Newell resides in North Las Vegas and is the mother of two
26 children.

27 83. Newell’s oldest, T.N., is currently enrolled in a private school using a
28 scholarship received from AAA Scholarship Foundation.

1 84. While in public school, T.N. struggled to develop her social and interpersonal
2 abilities.

3 85. T.N. has a learning disability for which Newell receives supplemental Social
4 Security income.

5 86. T.N. received special education and related services in preschool but was
6 mainstreamed in kindergarten. T.N. required additional learning assistance but Newell's
7 requests for services went unheeded.

8 87. Now, at a private Montessori school, T.N. has excelled, both academically and
9 socially.

10 88. If the tuition goes up, but scholarship funding stays level, Newell will not be able
11 to keep T.N. in the Montessori setting she has excelled in. Newell cannot afford to spend any
12 additional personal income on T.N.'s tuition.

13 89. A.B. 458 has therefore caused Newell uncertainty regarding whether she can
14 keep T.N. in the Montessori school for the long term.

15 90. Newell plans to enroll her youngest child, who is currently in preschool, in a
16 private school beginning in 2020.

17 91. But for A.B. 458, an additional \$665,500 in funding would be available to fund
18 scholarships for Newell's children for the 2019-20 school year.

19 92. But for A.B. 458, an additional \$1,397,550 in funding would be available to fund
20 scholarships for Newell's children for the 2020-21 school year.

21 **B. The Scholarship Organization Plaintiff**

22 93. Plaintiff AAA Scholarship Foundation, Inc. ("AAA") is a Scholarship
23 Organization registered with the Nevada Department of Education to accept tax-credit-eligible
24 donations and distribute scholarships under the Scholarship Program.

25 94. AAA filed its mid-year report with the Department of Education for the 2018-
26 2019 school year on December 31, 2018.

27 95. As of December 31, 2018, AAA had received \$1,609,076.71 in total donations,
28 gifts, and grants.

- 1 96. As of December 31, 2018, AAA had awarded scholarships to 910 students.
- 2 97. As of December 31, 2018, AAA had paid out scholarships on behalf of 888
- 3 students.
- 4 98. As of December 31, 2018, AAA had awarded scholarships in the total amount of
- 5 \$6,086,250.
- 6 99. As of December 31, 2018, AAA had paid out \$2,420,784.66 in scholarships.
- 7 100. As of December 31, 2018, AAA had paid scholarships on behalf of students
- 8 attending 61 different private schools.
- 9 101. Of the families served by AAA last year, a majority were ethnic or racial
- 10 minorities.
- 11 102. Of the families served by AAA last year, approximately 75 percent were at or
- 12 below 185 percent of the federal poverty line, meaning they would qualify for the National
- 13 School Lunch Program.
- 14 103. Most of AAA’s donors in Nevada would not donate to AAA if the donors would
- 15 not qualify for a tax credit.
- 16 104. On information and belief, each year since the Scholarship Program’s enactment,
- 17 all the allocated tax credits have been claimed by business donors.
- 18 105. But for A.B. 458, an additional \$665,500 in tax credits would be available to
- 19 business donors and AAA would be legally permitted to receive additional tax-credit-eligible
- 20 donations to fund scholarships for the 2019-20 school year.
- 21 106. But for A.B. 458, an additional \$1,397,550 in tax credits would be available to
- 22 business donors and AAA would be legally permitted to receive additional tax-credit-eligible
- 23 donations to fund scholarships for the 2020-21 school year.
- 24 107. Without additional tax-credit-eligible donations, AAA will be forced to cut
- 25 families from the scholarship program because full-tuition scholarships increase each year with
- 26 inflation and rising education costs.
- 27 108. But for A.B. 458, AAA could in the future provide millions of dollars in
- 28 additional scholarships to families in need.

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C. The Business Donor Plaintiffs

109. Plaintiff Sklar Williams PLLC qualifies as an “employer” under NRS § 363B.030 and must pay the excise tax imposed by NRS § 363B.110.

110. Sklar Williams has in the past donated to scholarship organizations participating in the Scholarship Program and has received tax credits for such donations under NRS § 363.119. Its most recent donation was for \$18,000.

111. If A.B. 458 were not in force, an additional \$665,500 in tax credits would be available for fiscal year 2019-20 and Sklar Williams would donate additional money in order to receive those tax credits.

112. Sklar Williams wishes to donate more to scholarship organizations in 2020 and it wishes to receive fiscal year 2020-21 tax credits for those donations.

113. If A.B. 458 were not in force, an additional \$1,397,550 in tax credits would be available for fiscal year 2020-21, thereby increasing the chances that Sklar Williams would qualify for a tax credit under the first-come, first-served distribution of tax credits.

114. If Sklar Williams were to donate to a scholarship organization under the Scholarship Program without being granted a tax credit, Sklar Williams would be forced to remit additional taxes to Defendant Department of Taxation.

115. Plaintiff Environmental Design Group qualifies as an “employer” under NRS § 363B.030 and must pay the excise tax imposed by NRS § 363B.110.

116. Environmental Design Group has in the past donated to scholarship organizations participating in the Scholarship Program and has received tax credits for such donations under NRS § 363.119. Its most recent donation was for \$10,000.

117. If A.B. 458 were not in force, an additional \$665,500 in tax credits would be available for fiscal year 2019-20 and Environmental Design Group would donate additional money in order to receive those tax credits.

118. Environmental Design Group wishes to donate more to scholarship organizations in 2020 and it wishes to receive fiscal year 2020-21 tax credits for those donations.

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1. Declare that A.B. 458 is unconstitutional and unenforceable because it did not receive the requisite number of votes for passage;
2. Enjoin any future enforcement of A.B. 458;
3. Award Plaintiffs their reasonable attorneys' fees and costs; and
4. Order any other relief as this Court may deem just and proper.

AFFIRMATION

The undersigned hereby affirm that the foregoing document submitted for filing does not contain the social security number of any person.

/s/ Joshua A. House
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