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VS.

Respondent,

Real Parties in Interest.

Case No.: Electronically Filed
Jun 30 2016 04:27 p.m.
Tracie K. Lindeman
Clerk of Supreme Court
Dist. Case No.: A-14-094645-C

EMERGENCY PETITION
FOR WRIT OF
PROHIBITION OR IN THE
ALTERNATIVE
MANDAMUS PURSUANT
TO NRAP 21 AND 27(e)

ACTION REQUIRED:
IMMEDIATELY

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1 obtain hearings despite being statutorily eligible and despite the fact that the
2 State has not opposed petitions for other persons in the exact same situation. In
3 one instance, the State agreed (via stipulation) to stay enforcement pending the
4 hearing but has not done so for other petitioners, without explanation. In
5 addition, there are other registrants who should be removed because they will
6 have registered for the requisite period time (after which the State should not
7 apply to them) prior to July 1.

8 Further, despite repeated efforts by the undersigned, the State has refused
9 and/or failed to address these additional issues raised by the undersigned
10 (through counsel at the Attorney General's Office) regarding:

- 11 • The fact that persons who do not have convictions because their
12 adjudications were "withheld" in Florida and, thus, cannot be
13 considered triggering "convictions" for the purposes of NRS
14 197D.097. *See Clarke v. United States*, 184 So. 3d 1107, 41 Fla. L.
15 Weekly S41 (2016).
- 16 • The fact that the State has attempted to enforce the law against
17 persons whose triggering offenses (*i.e.*, "solicitation to commit the
18 infamous crime against nature" or analogous crimes from other
19 jurisdictions) have since been repealed.
- 20 • The fact that at least one person the State is trying to enforce the
21 law against was not convicted of a triggering (*i.e.*, sexual) offense.
- 22 • The State, in contravention of NRS 179B, is working with a private
23 company that it links on its registry website and uploads and uses
24 the State's data and there is no means to fix errors once that occurs.
- 25 • The State's website is improperly providing information regarding
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1 Tier 1 offenders that should not be on the website (again, in
2 contravention of NRS 179B).

3 Additional problems have also come to light via public records request
4 responses. In February of 2016, shortly after the stay was lifted by this Court,
5 the undersigned sought records regarding the Department's efforts to plan for
6 fair and equal enforcement of AB 579 pursuant to Nevada's Public Records
7 Act. The Department delayed providing responses, and while it has yet to fully
8 respond to the request, some information was eventually provided via an April
9 4, 2016 letter and then just recently via another letter dated June 10, 2016. As
10 detailed below, the information that has been provided reveals:

- 11 • The registrants will be re-categorized as follows:
 - 12 ○ There will be only 1,616 Tier 1 offenders; and
 - 13 ○ The number of Tier 3 registrants will balloon to 3,015
 - 14 and the number in Tier 2 will balloon to 1,790
- 15 • There are no mechanisms to correct errors.
- 16 • The State does not intend to equally apply AB 579 and is only
17 reclassifying registrants (not applying it to other persons who
18 are subject to it).
- 19 • There have been zero efforts to plan for financing the
20 implementation of AB 579 and the State does not even have
21 any idea what the cost is.
- 22 • Likewise, the State has made no efforts to coordinate with
23 local law enforcement.
- 24

25 Thus, the State's new plan for enforcement, to the extent there is one, is uneven
26 and does not provide for equal application nor any mechanism to correct errors.
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1 All of these issues show that the State is not able to implement AB 579's
2 changes legally, fairly, or consistent with the governing statutes. For example,
3 it is not treating similarly situated offenders the same way by not allowing all
4 petitioners who are eligible for termination the opportunity to do so. It is also
5 limiting its enforcement to current adult registrants and is not enforcing it
6 against all persons who the law applies to. In addition, despite the fact that it
7 has made errors in enforcement, it has no mechanism to fix errors and is
8 exceeding its jurisdiction by applying the law to people that the applicable
9 statutes do not apply to.

10 On June 30, 2016, the District Court denied Petitioners' application for a
11 temporary restraining order (stay) on the grounds that Petitioners' counsel did
12 not file for relief earlier. As indicated above, however, new issues pertain to the
13 State's current plans for enforcement and new facts have arisen not previously
14 considered by this Court. The undersigned and Petitioners have worked to
15 quickly and diligently address errors and issues in the State's enforcement
16 (despite the State having sent out notice less than a month ago and having only
17 recently provided information). Furthermore, counsel for Plaintiffs have been
18 working diligently to address this matter. Since the State announced its plan to
19 implement AB 579 on June 1, 2016, counsel for Petitioners have fielded
20 hundreds of phone calls from sex offenders who will be affected by the changes
21 to the State's registration and notification system. Petitioners' counsel have also
22 worked to obtain information from the State regarding its plans to implement
23 AB 579. In addition, counsel have represented several individuals who
24 successfully petitioned to terminate their registration. Thus, counsel for
25 Petitioners have been working diligently on these issues, and will continue to
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1 do so.

2 If the website is allowed to go live, it will be too late to provide
3 Petitioners effective relief given that website notification is a bell that cannot
4 be unrung (especially in light of the partnership with private companies).

5 **EMERGENCY PETITION FOR WRIT OF PROHIBITION OR IN**
6 **THE ALTERNATIVE MANDAMUS**

7 In this petition, Petitioners by and through their undersigned
8 attorneys of MCLETCHIE SHELL, respectfully represent:

9 1. Respondent is the District Judge of Eight Judicial District
10 Court of the State of Nevada, in and for the County of Clark.

11 2. Petitioners are currently classified as sex offenders based
12 upon an individualized classification.

13 3. Petitioners recently received letters stating they will be
14 reclassified based upon the new sex offender registration, monitoring, and
15 notification law (AB 579).

16 4. The State has informed Petitioners that it will begin
17 enforcing AB 579 starting on July 1, 2016; the community notification
18 website provisions of AB 579 go into effect July 1, 2016, notifying the
19 public of Tier 2 and Tier 3 – and some Tier 1—registrants.

20 5. Petitioners will be placed on the website. While some have
21 court orders releasing them from registration (and thus notification), the
22 State has failed to adequately confirm that even such persons will not be
23 on the site.

24 6. Petitioners filed suit on January 16, 2014 against Catherine
25 Cortez Masto, Attorney General of the State of Nevada; James Wright,
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1 Director of the Nevada Department of Public Safety, Bernard W. Curtis,
2 Chief of the Parole and Probation Division of the Nevada Department of
3 Public Safety, Julie Butler, Division Administrator of the Records and
4 Technology Division of the Nevada Department of Public Safety, Douglas
5 Gillespie, Sheriff of the Las Vegas Metropolitan Police Department,
6 Patrick E. Moers, Police Chief of the Henderson Police Department,
7 Steven Wolfson, Clark County District Attorney; DOES assert that AB
8 579 violates the following provisions of the Nevada Constitution:

- 9 • Nev. Const., art. 1, § 1 (Equal Protection Clause);
- 10 • Nev. Const., art. 3, § 1 (Separation of Powers);
- 11 • Nev. Const., art. 1, § 15 (Contracts Clause).
- 12 • Nev. Const., art. 1, § 8 (Due Process Clause);
- 13 • Nev. Const., art. 1, § 15 (Ex Post Facto Clause); and
- 14 • Nev. Const., art. 1, § 8 (Double Jeopardy Clause).

15
16 8. Petitioners, some of whom have changed, filed an amended
17 complaint on June 22, 2016, correcting the defendants and adding a new
18 cause of action to prevent the State from exceeding its jurisdiction.

19 9. The district court held a hearing for on June 30, 2016 and
20 denied temporary relief, ruling that Petitioners delayed.

21 10. Petitioners continue to face immediate, irreversible,
22 irreparable harm.

23 11. The circumstances of this matter are urgent because AB 579
24 goes into effect on July 1, 2016 and Petitioners—and their families—face
25 irreparable harm, including the risk of violence and the loss of jobs.

26 12. As set forth in detail in the following memorandum of points
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1 and authorities, the district court manifestly abused its discretion and/or
2 exercised its jurisdiction in an arbitrary or capricious fashion by denying
3 the DOES' request for a temporary restraining order.

4 **ISSUES PRESENTED**

5 1. Whether the Eighth Judicial District Court (the Honorable
6 Douglas E. Smith) manifestly abused its discretion or exercised
7 it arbitrarily or capriciously in denying Petitioners' request for a
8 temporary restraining order to allow the issues raised in their
9 case to be fully litigated, to allow persons with pending petitions
10 to terminate registration to resolve those petitions before
11 enforcement of AB 579, and for errors in the State's sex offender
12 website to be corrected before it goes live.

13 2. Whether the Eighth Judicial District Court (the Honorable
14 Douglas E. Smith) manifestly abused its discretion or exercised
15 it arbitrarily or capriciously in holding that ignoring irreparable
16 harm and finding that if errors are found, "We can take the
17 people off who need to be taken off," and that "It isn't
18 necessarily an emergency."

19 **RELIEF SOUGHT**

20
21 Petitioners pray that this Court grant the instant Emergency Petition for
22 Writ of Prohibition or in the Alternative a Writ of Mandamus pursuant to NRAP
23 21(a)(6) and NRAP. 27(e) as the only option to protect the Petitioners'
24 constitutional rights and to prevent the State from making irreversible errors.
25 Petitioners pray that this Court grant the Temporary Restraining Order to
26 prevent immediate, irreversible, irreparable harm.
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3 **VERIFICATION**
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5 STATE OF NEVADA)
6) ss:
7 COUNTY OF CLARK)

8 Under penalty of perjury, the undersigned declares that she
9 is the attorney for the Petitioners named in the foregoing petition and knows
10 the contents thereof, that the pleading is true of her own knowledge, except
11 as to those matters stated on information and belief, and that as to such
12 matters she believes them to be true. This verification made by the
13 undersigned attorney, pursuant to NRS 15.010, on the ground that the
14 matters stated and relied upon, in the foregoing petition are all contained in
15 the prior pleadings and other records of the Court and district court, true and
16 correct copies of which have been included in the appendix submitted with
17 the petition.

18 Respectfully Submitted,
19

20
21 /s/ Margaret A. McLetchie
22 MARGARET A. MCLETCHIE
23 Nevada State Bar No.: 10931
24 ALINA M. SHELL
25 Nevada State Bar No. 11711
26 MCLETCHIE SHELL LLC
27 701 E. Bridger Avenue, Suite 520
28 Las Vegas, Nevada 89101
Attorneys for Appellants

1 **POINTS AND AUTHORITIES IN SUPPORT OF EMERGENCY**
2 **PETITION FOR WRIT OF PROHIBITION OR IN THE**
3 **ALTERNATIVE WRIT OF MANDAMUS**

4 **I. STATEMENT OF THE CASE**

5 The State has announced that, starting July 1, 2016, it will begin
6 enforcing AB 579—a piece of legislation passed by the Nevada legislature in
7 2007 in response to an unfunded federal mandate—which makes sweeping,
8 drastic, and potentially devastating changes to how Nevada will handle sex
9 offender registration, reporting, monitoring, and notification. It is proceeding
10 with these changes. After almost a decade of not enforcing AB 579, it is now
11 forging ahead despite the fact that: (1) the State has made and continues to make
12 errors in the application of AB 579; (2) it has no mechanism to correct such
13 errors; (3) once its website includes additional names, any errors are
14 irreversible; and (4) it has no plans to equally apply the law but rather just
15 intends to reclassify the offenders it is already aware of. Moreover, the State
16 intends to forge ahead with AB 579 despite fact that there have been changes to
17 the federal guidelines the State aimed to comply with and despite the fact that
18 the Nevada legislature is likely to make changes to the laws next session.
19 Meanwhile, Petitioners risk being subjected to the law and face significant
20 irreparable harm.

21 Emergency relief should be granted. While this Court previously denied
22 a writ filed in this matter, it explicitly noted that

23 **...because the district court order at issue is the denial of**
24 **an application for a temporary restraining order, the**
25 **record below is not sufficiently developed for judicial**
26 **review.**

27 (See Nevada Supreme Court Case No. 64890 at Doc. 16-02294 (emphasis
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1 added).) Since this Court denied Petitioners’ writ, further information has come
2 to light reflecting that the State’s **current** plans for enforcement of AB 579 are
3 unconstitutional, as detailed below. For example, as detailed below, the State’s
4 response to a Public Records Act request reveal that while the law applies to
5 any offenders convicted of any crime with a sexual element since July 1, 1956,
6 the State does not intend to apply AB 579 all persons who are legally subject to
7 the law. Instead, it only intends to apply it people currently on its radar. Namely,
8 it intends to reclassify those persons it has already evaluated for dangerousness
9 and, often, has determined are not dangerous. This violates the Equal Protection
10 clause of the Nevada Constitution. The State’s approach also decreases public
11 safety: it leads to the absurd result that offenders that were previously
12 considered high risk can come off the registry while persons such as plaintiffs
13 who were determined to be lower risk will now be reclassified and subject to
14 community notification.

15 Another issue that has come to light is the fact that the State has made
16 errors in applying the law. For example, it has changed its own interpretation
17 of AB 579’s application to some offenders, without explanation. This reflects
18 that the State does not even understand the law and that it is necessarily too
19 vague to expect persons who may be subject to the law to comply. In addition,
20 the response to the Public Records Act request confirms that the State has no
21 mechanisms to correct errors whatsoever and misapplications. This not only
22 violates the Due Process rights of Petitioners, it also means that the State’s plans
23 for enforcement of AB 579 exceeds its statutory jurisdiction because it has
24 attempted to proceed to enforce the law against, *inter alia*, persons who have
25 received court orders relieving them from registration, persons who do not have
26 “convictions” under the law, and persons who offenses have since been repealed
27 (because they are unconstitutional). Similarly, the State’s website improperly
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1 reveals Tier 1 offenders, as detailed below, which is impermissible.

2 Furthermore, the additional facts that have come to light about the State's
3 efforts to enforce AB579 and plans for doing so shows just how punitive the
4 law is, especially in light of its irreversible nature. Once an offender's name is
5 posted, errors are irreversible and negatively impact not only the persons listed,
6 but their employers and their families as well.

7 While Petitioners have not yet won their claims with this Court, the writ
8 previously considered was filed at a very preliminary stage of litigation. None
9 of the recent information that was presented to the district court as the bases for
10 a stay was known at the time of those proceedings, and has only come to light
11 very recently as it pertains to the State's actual plans for implementation. As
12 the Court indicated, there is a need to conduct discovery in this matter.
13 Furthermore, the Amended Complaint now on file with the district court in this
14 action reflects that this case now involves some different plaintiffs, a new claim
15 pertaining to the State's actions that exceed its statutory jurisdiction, and new
16 facts. Petitioners thus respectfully request this Court enter an order staying the
17 State from enforcing the law for a reasonable period of time while the important
18 factual and legal problems regarding AB 579 get resolved. Emergency relief is
19 appropriate in light of the fact that, while Petitioners may not yet have proven
20 their claims, it is incontrovertible that they face irreparable harm. While AB
21 579's effects cannot be undone, the State faces no hardship in a continuing stay
22 of enforcement.

23 The State faces no hardship—and in fact stands to benefit from a stay—
24 for a number of reasons. First, the State has a workable sex offender system in
25 place now. Indeed, it was not improving public safety that motivated the
26 passage of AB 579. AB 579 will erode public safety. Second, while the State
27 mistakenly believed it would lose money if it failed to enact AB 579, in fact it

1 will cost more money to implement AB 579 than it would have lost if it failed
2 to comply with the unfunded federal mandate. Thus, the Department will save
3 money. Third, a stay will avoid the absurd situation of enforcing the law for a
4 brief period of time before the legislature makes changes next session. As it
5 stands now, despite the fact that laches and estoppel may apply, the State is
6 insistent on steaming ahead to enforce the law—mistakes and all—for seven
7 months, at which point enforcement will likely be stayed when the Nevada
8 Legislature convenes in February 2017 and once again reconsiders AB 579.

9 Again, and in contrast, the challengers to AB 579—and their families—
10 face very grave harm if the law is enforced. In light of the threatened uneven
11 application by the State of Nevada, people who should not actually be subjected
12 to the law will face being forever labeled as dangerous sex offenders. They may
13 lose their jobs. People face having to meet confusing and burdensome
14 requirements. The State itself is confused by the law but persons who may be
15 subjected to it are expected to comply. And, even if the State is making an error,
16 a person subjected to the State’s misapplication face the stark choice of either
17 subjecting themselves to the life-ruining law or risking criminal (state and
18 potentially federal) penalties for failure to register. Most importantly of all,
19 challengers to the law fear that their family members—people who have never
20 committed any wrong—will be subjected to violence.

21 **II. STATEMENT OF FACTS AND PROCEDURAL HISTORY**

22 **A. Summary of Changes Implemented By AB 579**

23
24 Under the prior version of Nevada’s sex offender registration laws as
25 codified at Chapter 179D of the Nevada Revised Statutes, the State conducted
26 an individualized, risk-based assessment of individuals convicted of sexual
27 offenses to determine an offender’s tier assignment. *See* NRS 179D.720 (1999).

1 Under the risk-based approach, offenders were assigned to Tier levels 0, I, II,
2 or III. Tier 0 was reserved for individuals who presented the lowest risk of
3 danger to the community, while Tier III was reserved for offenders who
4 presented the greatest risk of danger to the community.

5 The prior version of the sex offender registration laws also afforded
6 individuals the ability to contest their tier designation if they believed the State
7 had made an error, and also gave individuals the ability to petition for a
8 reassessment of their tier designation if, after a five-year period of registration,
9 they could demonstrate that their risk of danger to the community had changed.
10 *See generally* NRS 179D.760 (1999). Additionally, the prior version of
11 Nevada’s sex offender registration scheme required offenders in all tier levels
12 to submit an annual verification form to provide a current set of fingerprints, a
13 current photograph, and other information relevant to his or her registration. *See*
14 NRS 179D.480 (2001). These forms could be completed by mail. Under NRS
15 179D.480(2), only individuals who were designated as “sexually violent
16 predator[s]” had to complete verifications every 90 days, and those could be
17 submitted by mail. The old version of the sex offender registration scheme also
18 contained a provision establishing levels of community notification based on
19 an individual’s risk of recidivism. *See* NRS 179D.730 (2005). Finally, under
20 the pre-AB 579 version NRS 179D.490, any offender except for those
21 designated as sexually violent predators could petition to terminate his or her
22 duties to register after registering with the State for 15 consecutive years. *See*
23 NRS 179D.490 (2001).

24 AB 579 replaces the State’s individualized risk-based assessment of
25 offenders with a one-size-fits-all approach to categorizing offenders. AB 579 is
26 an overbroad, sweeping law that is retroactive to July 1, 1956 based solely on
27 individual’s offense of conviction. AB 579 provides zero due process and does
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1 not include any mechanisms to either (1) correct errors in application, or (2)
2 remove offenders after they completed their applicable periods of registration.
3 Furthermore, the State of Nevada has and continues to make numerous errors
4 in applying AB 579, and is applying it in an unequal manner. Additionally, the
5 State of Nevada has also tried to enforce AB 579 against persons who have
6 obtained court orders relieving them of any obligation to register as sex
7 offenders. Because of this, AB 579 and Nevada's problematic and unequal
8 application of the new laws constitute violations of Plaintiffs' rights under the
9 Nevada Constitution.

10 Moreover, the implementation of AB 579 will drain the State of
11 Nevada's limited financial resources. Currently, the State has no information
12 regarding the projected costs related to the implementation of AB 579.
13 However, the State's responses to public records requests regarding the re-
14 designation of some offenders to a tier level which requires increased
15 registration obligations indicate that the cost to Nevada taxpayers will be huge.
16 Under AB 579, persons who the Department of Public Safety ("DPS") has
17 determined to be Tier III offenders must register with local law enforcement
18 every 90 days. Under the prior statutory scheme, DPS had only 239 persons
19 designated as Tier III offenders. Pursuant to the amendments to Chapter 179D
20 wrought by AB 579, the State of Nevada projects that number will balloon to
21 3,014. (See App., Exh. 4, at p. 1.) This means that local law enforcement offices
22 will be overwhelmed by persons who must appear in person every 90 days to
23 renew their registration, and that State and local agencies will have to expend
24 enormous resources to manage the increased, in person registration demands.

25 These changes are intentionally punitive, have drastic punitive effects
26 for Does, and will tax the already limited resources of the State. Because of this,
27 AB 579 violates Does' rights under the Nevada Constitution, specifically the
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1 Due Process Clause, the Equal Protection Clause, Double Jeopardy, Separation
2 of Powers, and the Contracts Clause. AB 579 also violates the protection against
3 ex post facto laws afforded by the Nevada constitution because it applies to
4 individuals who committed their crimes years—and, in many cases, decades—
5 before the legislature enacted it. Moreover, in implementing AB 579, the State
6 is exceeding its jurisdiction by requiring individuals who do not qualify as sex
7 offenders under NRS 179D.095—the provision of Chapter 179D which defines
8 “sex offender”—to register as offenders.

9 **B. New Facts Regarding the State’s Planned Enforcement of**
10 **AB 579**

11 On February 8, 2016, Does sent a public records request to the State of
12 Nevada pursuant to NRS 239.010 *et seq.* (see App., Exh. 1.) Among other
13 things, counsel requested documents from the State which contain information
14 pertaining to the States’ plans to implement and enforce AB 579, as well as
15 documents pertaining to its efforts to coordinate with state and local law
16 enforcement to ensure consistent application of AB 579. (See App., Exh. 1 at
17 pp. 1-2.) The State’s responses to those requests demonstrate that the State is
18 not adequately prepared to effectively—and equally—enforce AB 579, and has
19 no plans or policies in place to correct easily foreseeable errors.

20 First, as set forth in Does’ First Amended Complaint, the State is not
21 planning to equally enforce AB 579. Because AB 579 has changed the operative
22 definitions of “sex offender” and “sexual offense,” see NRS 179D.095 and NRS
23 179D.097, individuals with offenses that did not previously qualify as “sexual
24 offenses” now fit within AB 579’s definition of “sex offender.” However, the
25 State has no plans in place to identify and enforce AB 579 as to those
26 individuals. Instead, it is simply reclassifying persons already on the registry.
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Specifically, in their records request to the State, Does requested the following records:

Public Records Request No. 5

Documents regarding or reflecting procedures or plans to provide persons who were not subject to registration before Chapter 179D was amended but who became subject to registration pursuant to amendments to Chapter 179D. Notice regarding their obligations pursuant to amendments to Chapter 179D of the Nevada Revised Statutes.

Public Records Request No. 6

All documents regarding plans or policies regarding enforcement of Chapter 179D of the Nevada Revised Statutes to persons who were not subject to registration before Chapter 179D was amended but who became subject to registration pursuant to amendments to Chapter 179D.

Public Records Request No. 7

All documents regarding or reflecting any efforts to ascertain the number of persons who were not subject to registration before Chapter 179D was amended but who became subject to registration pursuant to amendments to Chapter 179D

(App., Exh. 1 at p. 2.) The State's response to each of these requests was the same: "No such documents exist." (App., Exh. 2 at p.2.)

These responses lead to only one conclusion: that the State only intends to enforce AB 579 only as to existing registered offenders. This violates a fundamental tenet under the Nevada Constitution: that individuals must be treated equally under the law. *See Nev. Const., Art. 1, Sec. 1.*

Second, the State's responses to the public records request demonstrate the State has no plans in place for correcting errors in any misapplication of AB 579. As discussed in Does' First Amended Complaint and in this motion and application, AB 579 is set to re-designate thousands of registered offenders at a

1 higher tier level. Re-designation carries harsh personal and social consequences
2 for these individuals—several thousand will be required to appear in person at
3 local law enforcement several times a year to verify their registration status.
4 Those individuals re-designated under AB 579 will also have their names,
5 pictures, addresses, and other identifying information listed on the State’s sex
6 offender registry website, and may also be subject to community notification.
7 As stated in the First Amended Complaint, the consequences for several
8 offenders could be immediate and devastating. However, the State has no plan
9 in place for correcting any errors in the application of AB 579. In their public
10 records request, counsel for Does requested “[a]ll documents that describe or
11 pertain to policies or procedures that the Nevada Department of Public Safety
12 has in place to correct errors in application of Chapter 179D of the Nevada
13 Revised Statutes, as amended in 2007.” (App., Exh. 1 at p. 2.) In response, all
14 the State provided was data entry instructions for verifying offender records.
15 (See App., Exh. 2 (at Exh. C to State’s letter).)

16 Third, the State’s response to the public records request demonstrate
17 that the State does not understand either the prior or current tier designation
18 scheme. Under the prior version of Chapter 179D of the Nevada Revised
19 Statutes, registrants were designated as Tier 0, I, II, or III offenders based on
20 their risk of danger to the community.¹ However, in its response to counsel’s
21 request for documents “regarding or reflecting any efforts to ascertain the
22 number of persons who will have their tier level increased as a result of
23 amendments to Chapter 179D,” the State identified the pre-AB 579 tier levels
24 as Tier 1, 2, 3, or 4. (App., Exh. 4 at p. 1.)

26 ¹ See <http://www.nvsexoffenders.gov/definitions.aspx> (last accessed June
27 26, 2016).

1 Fourth, the State's response to counsel's public records requests
2 demonstrates the State has no plans or procedures in place for coordinating with
3 state and local law enforcement—the agencies that will bear the brunt of the
4 increased number of offenders who will be required to update their registration
5 in person multiple times per year, as well as responsibility for carrying out AB
6 579's community notification provisions. Other than sending letters to state and
7 local agencies about the pending effective date of AB 579 (*see* Exh. 3 at Exhs.
8 D-1—D-4), the State has apparently made no efforts to coordinate with law
9 enforcement agencies to ensure the consistent application and enforcement of
10 AB 579. The failure to coordinate with state and local law enforcement agencies
11 and provide guidelines or plans for application and enforcement of AB 579 will
12 lead to uneven application by different agencies tasked with carrying out AB
13 579's most onerous and devastating provisions, particularly the community
14 notification provision.

15 Fifth, the State has no idea how much implementation of AB 579 will
16 cost the State or its taxpayers. Counsel for Does requested all “documents that
17 describe, analyze, estimate, or project costs related to the implementation” of
18 AB 579 (App., Exh. 1 (PRA) at p. 2.) In its response, the State admitted “no
19 such documents exist.” (App., Exh. 2 at p.2.)

20 Thus, the State's responses to the public records requests shows the
21 State is moving forward to implement AB 579 in an unequal and arbitrary
22 manner, has no mechanism to correct errors, has provided no guidance to state
23 and local law enforcement to ensure those agencies uniformly apply and enforce
24 AB 579, and has no idea how much implementation of this new and unfair
25 registration scheme will cost.

26 / / /

1 **C. The State Implementation of the Sex Offender Registry Website**
2 **Exceeds the State’s Jurisdiction under AB 579.**

3 The pre-AB 579 version of NRS 179D.250 only subjected Tier II and
4 Tier III offenders to website notification on the State’s sex offender registry
5 site. Under the changes wrought to that statute by AB 579, certain Tier I
6 offenders who have been convicted of a sexual offense against a child or a crime
7 against a child will now also appear on the website. NRS 179B.250(7)(b).
8 However, on information and belief, users who access the sex offender registry
9 website can still determine that Tier I offenders not subject to website
10 notification under AB 579 are in fact registered sex offenders. As documented
11 in the screen capture of the website (*see* App., Ex. 18) if a visitor to the website
12 enters the Social Security number of an offender who is designated as Tier I
13 and not subject to website notification, the visitor will receive an error message
14 that indicates that the requested information is not “available to the general
15 public through the Statewide registry.” (*Id.*) This error notice is an oblique
16 admission that an individual is a registered offender. Under Chapter 179D, that
17 information should not be available to the general public. By comparison, if a
18 visitor enters the Social Security number of someone who is *not* a registered
19 offender, the error message the visitor receives clearly indicates “NO
20 MATCHING RECORD” exists. (*See id.*)

21 “A[n] administrative agency’s powers are generally limited to the
22 powers set forth by statute, although “certain powers may be implied even
23 though they were not expressly granted by statute, when those powers are
24 necessary to the agency’s performance of its enumerated duties.” *City of*
25 *Henderson v. Kilgore*, 122 Nev. 331, 334, 131 P.3d 11, 13 (2006). However,
26 the State—in addition to subjecting people who do not qualify as “sex
27 offenders” under AB 579 to registration—is acting in excess of its jurisdiction
28

1 by telegraphing to visitors to the sex offender registry website that offenders
2 who should not be subject to website notification are in fact registered
3 offenders.

4 In addition, the State's website² links to a private site,
5 <http://www.familywatchdog.us/>. This site allows for searches that are
6 inconsistent with the law governing the State of Nevada and, once they
7 download the data from the State (for free, and then they profit from it), there
8 is no way to even fix or "claw back" data. In essence, this is an illegal work
9 around Nevada law regarding how the State can present, and how members of
10 the public can access, data regarding purported sex offenders.

11 **D. Pending Petitions**

12 A number of the Clark County Does and other persons subject to
13 registration have been able to successfully petition for release from registration
14 (for example, from Tier 1 because they have met the discretionary 10-year early
15 release provision pursuant to NRS 179D.490 or because they have met the full
16 required 15 years). This is in part due to the fact that the State is not applying
17 the new tier classifications until July 1, 2016. However, a number of people
18 have filed petitions that are still pending. While the State has agreed to stay the
19 enforcement of AB 579 against at least one person while his petition is heard,
20 Does respectfully contend that additional persons should have the opportunity
21 to have their matters heard before the State applies the new tier level
22 designations. (See App., Exs. 13-17.) This will allow people to be treated fairly
23 and consistently and will allow for removal of persons who do not pose a safety
24 risk. Furthermore, the State should, of its own accord, remove all current Tier
25 1 offenders who registered for the requisite period (both in-state and out-of-

26
27 ² <http://www.nvsexoffenders.gov/Links.aspx>
28

1 state registration periods count). This will avoid serious problems with equal
2 protection claims and will streamline application of the new law. Not allowing
3 these issues to be resolved will lead to only more petitions and more litigation
4 and the potential of inconsistent and unfair application of the law.

5 **E. Current Legislative Issues**

6 Last session, the Legislature unanimously passed a bill—SB 99—that
7 would have amended the Adam Walsh Act, largely to address issues regarding
8 persons (such as Doe 6) who were juveniles when they committed triggering
9 offenses.³ While the Governor vetoed the bill⁴, the Legislature can certainly
10 override that veto this session. Indeed, these issues continue to be discussed at
11 advisory committee meetings⁵, and will be on the agenda next session. Senator
12 Tick Segerblom intends to introduce legislation to address some of the
13 problems highlighted in this ongoing litigation. (See App., Exh. 7 (Declaration
14 of Senator Tick Segerblom).)

15 Allowing the Legislature the opportunity to address these issues is
16 important in part because, while AB 579 was enacted to comply with federal
17 guidelines, since AB 579 was passed in 2007, the federal government's
18 guidelines for implementation of the Adam Walsh Act have drastically
19 changed. The two key problems with SORNA—its application to juveniles and

20
21 ³ See <https://legiscan.com/NV/bill/SB99/2015>

22 ⁴See [http://www.reviewjournal.com/politics/government/veto-juvenile-sex-](http://www.reviewjournal.com/politics/government/veto-juvenile-sex-offender-law-changes-shocks-advocates)
23 [offender-law-changes-shocks-advocates](http://www.reviewjournal.com/politics/government/veto-juvenile-sex-offender-law-changes-shocks-advocates).

24 ⁵ See, e.g.,
25 [http://ag.nv.gov/uploadedFiles/agnv.gov/Content/Hot_Topics/Open/2016-](http://ag.nv.gov/uploadedFiles/agnv.gov/Content/Hot_Topics/Open/2016-05-16_Notic...)
26 [05-](http://ag.nv.gov/uploadedFiles/agnv.gov/Content/Hot_Topics/Open/2016-05-16_Notic...)
27 [16_Notic...of_PublicMeeting_AdvisoryCommitteeToStudyLawsReSexOffe](http://ag.nv.gov/uploadedFiles/agnv.gov/Content/Hot_Topics/Open/2016-05-16_Notic...)
28 [nderRegistration.pdf](http://ag.nv.gov/uploadedFiles/agnv.gov/Content/Hot_Topics/Open/2016-05-16_Notic...nderRegistration.pdf)

1 its retroactive application—have been addressed by the SMART office. For
2 example the application to juveniles has narrowed:

3 The supplemental guidelines give states discretion to exempt juvenile
4 delinquency adjudications from public web site posting. Additionally,
5 jurisdictions are not required to disclose adjudications to entities that include
6 certain schools, public housing, social services and volunteer entities. ...”
7 SORNA Guidelines; available at: [http://www.ncsl.org/research/civil-and-](http://www.ncsl.org/research/civil-and-criminal-justice/supplemental-sorna-guidelines.aspx)
8 [criminal-justice/supplemental-sorna-guidelines.aspx](http://www.ncsl.org/research/civil-and-criminal-justice/supplemental-sorna-guidelines.aspx) (last accessed June 27,
9 2016).

10 On July 1, 2016, the new law will be implemented and the community
11 notification website goes live, and will expose many of Does 1-17 to
12 community notification.

13 On July 1, 2016, Does’ 1-17 constitutional rights under the Nevada
14 Constitution will be infringed upon and there is no immediate remedy available
15 except equitable relief. There is extensive confusion about the enactment and
16 implementation of the law, and a stay must be issued pending resolution. Does
17 1-17 require immediate clarification of the law. Does 1-17 moved the district
18 court for a TRO to allow for a brief period to permit the Attorney General to
19 clarify the law *before the law goes into effect*. That motion was denied by the
20 district court on June 30, 2016. If this petition is not granted, Does 1-17 will
21 have immediate, irreversible, irreparable harm, and will have to wait until July
22 12, 2016 to be heard. This will leave Does 1-17 without an adequate remedy at
23 law. The TRO is the appropriate remedy and should have been granted by the
24 district court.

25 **F. Petitioners**

26 Plaintiff John Doe 1, now 82, pled guilty in 2003 to one gross
27 misdemeanor count of Solicitation of a Minor to Engage in Acts Constituting
28

1 Infamous Crimes Against Nature in violation of NRS 201.195(2), a crime that
2 was subsequently repealed by the Nevada State Legislature in 2013. The
3 legislature repealed NRS 201.195(2) because it unconstitutionally treated
4 consensual same-sex sexually activity differently than opposite-sex sexual
5 activity. Doe 1 was sentenced to probation for two (2) years. At the time of the
6 plea, he was not subject to community notification. He was required to register
7 as a Tier 0 offender for fifteen (15) years.⁶ In May 2008, following the passage
8 of AB 579, Doe 1 was re-classified as a Tier I offender. In 2008, after the
9 American Civil Liberties Union of Nevada filed suit in the United States
10 District Court for the District of Nevada in *ACLU v. Masto*, U.S. Dist. Ct. Case
11 No. 2:08-cv-00822-JCM-PAL, the federal district court presiding over the case
12 permanently enjoined the State from retroactive enforcement of AB 579. That
13 injunction was dissolved by the United States Court of Appeals for the Ninth
14 Circuit in *ACLU v. Masto*, 670 F.3d 1046 (9th Cir. 2012). In December 2013,
15 Doe 1 received a letter from DPS stating he will remain a Tier 1 offender.
16 However, because of the change in the law, Doe 1 would be subject to
17 community notification, a condition he was not previously subject to. Since his
18 conviction under a now-repealed law, Doe 1 participated in sex offender
19 treatment for over a year, has committed no new offenses of any kind. Thus,
20 he is not a risk. He and his wife of over 50 years are active participants in their
21 retirement community. In April 2016, after almost 13 years of registering as

22
23 ⁶ *Under Nevada's pre-AB 579 registration scheme, the State of Nevada*
24 *categorized offenders whose underlying conviction was not specifically*
25 *listed under the prior version of NRS 179D.620 as Tier 0 offenders. The*
26 *State did not subject Tier 0 offenders to a risk assessment, and did not*
27 *subject them to community notification. AB 579 eliminated Tier 0, and*
28 *offenders currently designated as Tier 0 will be re-designated based on*
their underlying conviction.

1 an offender and almost three years after the repeal of his crime of conviction,
2 Doe 1 petitioned the district court for an order terminating his duties to register
3 pursuant to NRS 179D.490. The district court granted his petition. Doe 1
4 remains concerned, however, that he may once again be subject to registration
5 and community notification if the State implements AB 579. The threat of
6 potentially being subjected to community notification has caused Doe 1 and
7 his wife such extreme emotional distress that they have both sought
8 counseling. They fear that community notification could destroy the lives that
9 they have built for themselves, and could lead to the loss of many of the
10 friendships they have established in their community.

11 Plaintiff John Doe 2, now 57, was charged with solicitation to commit
12 a lewd act in Florida in 1997. He was 38 at the time of the offense. The “child”
13 at the center of this issue was a fictional 14 year old male. In 2003, Doe 2
14 received a withheld adjudication; thus, Doe 2 has no criminal convictions. The
15 adjudication was withheld pending successful completion of 2 years
16 community control and 36 months of sex offender probation. He successfully
17 completed both the community control and the sex offender probation. He was
18 not subject to lifetime supervision. He was not subject to community
19 notification. Doe 2 later registered as an offender in the state of Florida in 2003,
20 and maintained his registration status consistently over the course of several
21 moves. When Doe 2 moved to Nevada, he was classified as a low-risk Tier I
22 offender. He hired counsel and attempted to address the facts that: (1) he had
23 no criminal conviction, and (2) even if he had, the analog crime in Nevada
24 would have been solicitation to commit the infamous crime against nature, an
25 unconstitutional and repealed law. In or around December 2013, Doe 2
26 received a letter from the Nevada Department of Public Safety (“DPS”) stating
27 he would be reclassified at Tier II. Doe 2 then called DPS and was told there
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1 was an error and that he would be kept at a Tier I. DPS then sent Doe 2 another
2 letter indicating he would remain at a Tier I, but would be subject to
3 community notification. However, when Doe 2 submitted his annual
4 verification in or around May 2015, DPS designated him as a Tier 0 offender
5 under the registration and notification laws in place prior to AB 579, which
6 indicated that DPS considered him to be an extremely low-risk offender. In
7 April 2016, Doe 2 successfully petitioned to terminate his duties to register
8 pursuant to Nev. Rev. Stat. § 1279D.490. However, especially in light of prior
9 errors, Doe 2 fears that he may once again be subject to registration and
10 community notification if the State implements AB 579, and fears local law
11 enforcement. Since his 2003 withheld adjudication, Does 2 has committed no
12 new offenses, participated in sex offender treatment, and presents no risk of
13 danger to the community. He is a stable and productive member of society.

14 Plaintiff John Doe 3, now 74, pleaded guilty in 1961 in the state of
15 California to one misdemeanor count of indecent exposure, and one
16 misdemeanor account of annoying a minor. Doe 3 was 19 years old at the time
17 of his plea, and the child at the center of the case was between eight and ten
18 years old. At the time of his conviction, Doe 3 was not required to register as
19 an offender, was not subject to supervision, and was not subject to community
20 notification. In the 55 years since he entered a plea, Doe 3 has not committed
21 any new offenses, and presents no risk of recidivism. After his conviction, Doe
22 3 started a family, and has four adult daughters. Doe 3 moved to Nevada in
23 2008, and the State not notify him he was required to register as an offender
24 until 2012. At the time of his initial registration, Doe 3 was categorized as a
25 Tier 0 offender. If AB 579 goes into effect, Doe 3 will be required to register
26 as a Tier I offender, and will be subject to community notification. Because he
27 fears the negative social consequences of community notification, Doe 3 has
28

1 ended friendships and relationships and withdrawn from his participating in
2 his retirement community.

3 Plaintiff Jane Doe 4, now 45 years old, was convicted of four (4)
4 counts of sexual assault on a minor in Nevada in 1989. At the time of her
5 conviction, Doe 4 was only 19 years old. The conviction was overturned in
6 favor of a guilty plea. She was sentenced to up to ten (10) years in prison. At
7 the time of the plea, the district court did not impose any sentence of probation,
8 and did not require Doe 4 to register as a sex offender. She was also not subject
9 to lifetime supervision. She served six (6) years and eight (8) months. Since
10 her conviction, Doe 4 has rebuilt her life. She has worked for the past seventeen
11 years as an electrician, has married a woman with whom she has been in a
12 stable, long-term relationship, and has established a life that is surrounded with
13 friends and family. Doe 4 did not receive a Tier designation when she was
14 released. In 2000, Doe 4 was initially classified as a Tier II offender. In 2011,
15 Doe 4 participated in a psychosexual evaluation; the professional who
16 conducted the evaluation determined that she poses a very low risk of ever
17 committing any new offenses. In 2012, Doe 4 was re-assessed and lowered to
18 Tier I status. In December 2013, Doe 4 received a letter from DPS stating she
19 would be reclassified as a Tier III. In May 2016, Jane Doe 4 successfully
20 petitioned the district court for an order terminating her duties to register. At
21 the time the court granted her petition, Doe 4 had registered as an offender for
22 a total of approximately 16 years. Because of previous errors by DPS, Doe 4
23 fears that, although a court has released her from registration, she may
24 nevertheless be subject to community notification and lifetime supervision—
25 two conditions she was not previously subject to—if the State implements AB
26 579. Doe 4 fears that community notification will subject her and her family
27 to harassment, ridicule, and social isolation.

1 Plaintiff John Doe 5, a 48 year old North Las Vegas resident, entered
2 a plea of *nolo contendere* in 1997 in the state of Florida to one count of
3 solicitation of a child via computer, and one count of attempted lewd and
4 lascivious act in the presence of a minor. The child at the center of that case
5 was 13 years old. At the time of sentencing, Doe 5 received a withheld
6 adjudication. Thus, Doe 5 has no criminal convictions for any sexual offenses.
7 Indeed, since he received a withheld adjudication, Doe 5 has no criminal
8 convictions of any kind. Nevertheless, when Doe 5 moved to Nevada in 2006,
9 he was required to register as an offender. At that time, DPS determined he
10 was a low-risk Tier I offender. Doe 5 has been married to his wife, a school
11 teacher, since 2004. Doe 5 started small business in 2015. In or around June 1,
12 2016, Doe 5 received notification that he would be reclassified as a Tier III
13 offender. Because of the change in the law, Doe 5 will be subject to lifetime
14 registration, and will be subject to community notification; two conditions he
15 was not previously subjected to. Doe 5 fears that community notification will
16 subject him to harassment, and also fears that he will lose his business because
17 of the stigma attached to his Tier III designation. He also fears that his wife
18 will be subject to harassment in her workplace if he subjected to community
19 notification.

20 Plaintiff John Doe 6, now 53, was convicted in 1980 of Battery With
21 Intent to Commit Sexual Assault in Nevada. At the time of his offense, Doe 6
22 was 16 years old, as was the victim, and both were in juvenile detention.
23 Despite the fact that he was a minor, Doe 6 was tried as an adult. Doe 6 served
24 approximately six years in prison, and was released in 1986. After his
25 conviction, Doe 6 spent several years struggling to reintegrate into the
26 community, as being sent to an adult prison at such a young age left him ill-
27 equipped to be an adult. Nevertheless, Doe 6 built a new life for himself, and
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1 has one adult son. He has committed no new offenses of any kind since his
2 1980 conviction, has participated in therapy, and presents no risk of re-offense.
3 At the time of his conviction, Doe 6 was not required to register as a sex
4 offender. In fact, Doe 6 was not required to register as a sex offender until
5 2010. At that time, despite his age at the time of his offense and the staleness
6 of his conviction, DPS determined him be a Tier II offender. In June 2016, Doe
7 6 received notification that he would be reclassified as a Tier III offender.
8 Because of the change in the law, Doe 6 will be subject to lifetime registration
9 and community notification; two conditions he was not previously subjected
10 to. Because he is currently a Tier II offender, Doe 6 is already on the sex
11 offender registry website. His inclusion on the website has already resulted in
12 harassment, including vandalism of his home. Doe 6 fears that if he is subject
13 to community notification, the acts of harassment and vandalism will increase,
14 and could potentially become more dangerous,

15 Plaintiff John Doe 7, now 53, pleaded guilty in 2001 to one count of
16 Attempt Lewdness with a Minor in Nevada. At sentencing, the court imposed
17 a five-year term of probation and lifetime supervision pursuant to NRS
18 176A.410. Following his conviction, DPS determined that Doe 7 was a low
19 risk Tier I offender. He was not subject to community notification. Doe 7
20 participated in sex offender treatment for over a year. In 2011, after completing
21 his probation and successfully complying with all of the terms of his lifetime
22 supervision, the Nevada Board of Parole Commissioners entered an order
23 releasing Doe 7 from lifetime supervision. That same year, Doe 7 participated
24 in a psychosexual evaluation; the professional who conducted the evaluation
25 determined that Doe 7 posed a very low risk of reoffending. As Doe 7's life
26 demonstrates, he presents no risk of reoffending: he has worked for the same
27 employer for 35 years, he has been married for fourteen years and has one
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1 child, and is a dedicated husband and father. In April 2016, after consistently
2 registering as a sex offender for 15 years, a court in Nevada entered an order
3 terminating Doe 7 from his duties to register as a sex offender. Doe 7
4 subsequently received a letter from DPS confirming that he was no longer
5 required to register. Nevertheless, Doe 7 subsequently received a letter in June
6 2016 notifying him that he would be designated a Tier III offender, and subject
7 to community notification. Doe 7 has had to utilize the services of attorneys to
8 address the conflict between the court's order and the letter from DPS. Doe 7
9 hopes the conflict can be resolved, but fears further confusion and errors, and
10 fears erroneous application of AB 579 by local law enforcement.

11 Plaintiff John Doe 8, now 42 years old, was charged with sexual
12 assault in Michigan in 1994 when he was only 20 years old. The victim was a
13 fifteen year-old co-worker. Doe 8 was unaware she was under 16. Doe 8 pled
14 guilty to the sexual assault charge. Doe 8 served 30 days in jail and was placed
15 in a Youth Training Program in Michigan because of his young age at the time
16 of the offense. There was no condition of his plea requiring him to register as
17 a sex offender. In 2000, Doe 8 enlisted in the Marine Corps and was honorably
18 discharged in 2004. In 2004, Doe 8 moved to Nevada. In 2007, Doe 8 was sent
19 a letter informing him that he would have to register as a sex offender for
20 fifteen (15) years from the date of conviction or plea. Doe 8 is currently a Tier
21 I offender. In or around June 2016, DPS notified him he would be moved to a
22 Tier II. Under NRS 179D.490, Doe 8 would have been eligible to petition to
23 terminate his registration duties in 2017. However, because of the change in
24 the law, Doe 8 will be subject to supervision for twenty-five (25) years. Thus,
25 he will not be able to terminate his registration until 2033. Additionally,
26 because of the change in the law, Doe 8 will be subject to community
27 notification, a condition he was not previously subject to. Since his 1994
28

1 offense, Doe 8 has committed no new offenses, and presents no risk of danger
2 to the community.

3 Plaintiff John Doe 9, now 53, was enlisted in the United States Marine
4 Corps in 1983. He was adjudicated to a charge of rape. He was 20 years old at
5 the time of his offense. Doe 9 was sentenced to ten (10) years in military prison.
6 At the time of the plea, he was not subject to lifetime supervision. At the time
7 of the plea, he was not subject to community notification. He was paroled and
8 moved to Nevada in 1993. He has registered in Nevada as a Tier I offender
9 since September of 2001. Since his 1983 conviction, Doe 9 has committed no
10 new offenses. He has worked for the same employer for over two decades, has
11 helped raise a daughter and seen the birth of two grandchildren, and has built
12 a life for himself in the State of Nevada. Under the pre-AB 579 version of NRS
13 179D.490, he would have been fulfilled his obligations to register as a Tier I
14 offender for 15 years in September 2016, and would have been eligible for
15 removal from the sex offender registry. However, on or around June 1, 2016,
16 Doe 9 received a letter from DPS stating he would be reclassified as a Tier III
17 offender, which imposes a lifetime term of registration. In addition to lifetime
18 registration, Doe 9 will also be subject to community notification. Doe 9 fears
19 that community notification may lead to the loss of his job. He also fears that
20 he and his family will be targeted for harassment.

21 Plaintiff Doe 10, now 30, pleaded guilty in 2005 in the United States
22 District Court for the District of Montana to one count of importation or
23 transportation of obscene materials, a violation of 18 U.S.C. § 1462. The
24 underlying conduct was the possession of 13 videos containing child
25 pornography. Doe 10 was 17 at the time he committed his offense. The court
26 in that case sentenced Doe 10 to 66 months' imprisonment. Doe 10 was
27 released from federal custody in 2010, and moved to Nevada. Although his
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1 offense of conviction is not a “sexual offense” as defined under either NRS
2 179D.410—the pre-AB 579 statute defining “sexual offense”—or NRS
3 179D.097—the new statute under AB 579 defining “sexual offense”—the
4 State required Doe 10 to register as a sex offender. On information and belief,
5 the State reached this conclusion by reviewing the facts underlying Doe 10’s
6 conviction, rather than simply relying solely on the statute of conviction. At
7 the time of his registration, the State determined Doe 10 to be a low risk Tier I
8 offender. After moving to Nevada, Doe 10 participated in a psychosexual
9 evaluation. Doe 10’s evaluator determined that he presents an extremely low
10 risk of recidivism. Doe 10 has worked to rebuild his life since his conviction.
11 He participated in sex offender therapy while in prison, and continued
12 treatment after his release. He has consistently worked since his release, and
13 enjoys the support of several family members who live in Nevada. Thus, Doe
14 10 presents no risk of danger. In June 2016, Doe 10 received a letter from DPS
15 notifying him that he would be redesignated as a Tier II offender, and subject
16 to community notification. As a Tier I offender, Doe 10 would have been
17 eligible to petition to terminate his registration in 2020. If he becomes a Tier
18 II offender, Doe 10 will not be able to terminate his registration until 2035. At
19 the time of his sentencing and initial registration with the State, Doe 10 was
20 not subject to community notification. Now, however, he will be subject to
21 community notification. Doe 10 fears that if he is subject to community
22 notification, he may become a target for harassment and assault. He also fears
23 that he will no longer be able to reside in his current home, and may even be
24 forced to move away from Nevada to avoid harassment and assault.

25 Plaintiff John Doe 11, now 42, pleaded guilty to a charge of sexual
26 assault of a child under 14 in Nevada in 1992. He was sentenced to ten (10)
27 years in prison. At the time of the plea, Doe 11 was not subject to community
28

notification, nor was he subject to lifetime supervision. He is currently on parole and is also on lifetime parole. When Doe 11 was released from prison in 2002, the State of Nevada determined he was a low-risk Tier I offender. Since his release from prison, Doe 11 has complied with every condition of his lifetime supervision, has committed no new crimes, and has worked to rebuild his life and reintegrate into society. Doe 11 recently received a letter from DPS stating he will be reclassified as a Tier III. As a Tier I offender, Doe 11 would have been eligible for release from any obligations to register as an offender in 2017. Because of the change in the law, however, Doe 11 will be subject to lifetime registration. Additionally, because of the change in the law, Doe 11 will be subject to community notification.⁷ Doe 11 fears that community notification will place him at a great risk for assault, societal isolation, and the loss of his employment.

Plaintiff John Doe 12, now 34, pleaded guilty to two counts of gross sexual imposition in Ohio in 2003. The conduct underlying the conviction occurred in 2000, when Doe 12 was only 18 years old. The child at the center of the case was 13 years old. At the time of his plea, the court imposed five years of probation and ten years of registration. At the time of his plea, he was not subject to community notification. Since his conviction, Doe 12 married, and he and his wife have four children. When he moved to Nevada, Doe 12 was classified as a Tier II offender. In or around June 1, 2016, Doe 12 received notification that he would be reclassified as a Tier III offender. If Doe 12 remained at Tier II, he would have been eligible for removal from the sex offender registry in 2028. However, because of the change in the law, Doe 12

⁷ *Had Doe 11 known that AB 579 would subject him to lifetime registration and community notification, he would not have entered into a plea agreement.*

1 will now be subject to lifetime supervision, and will also be subject to
2 community notification, two conditions he was not previously subjected to.
3 Doe 12 fears that community notification will place his family at risk. He also
4 fears that community notification could lead to him losing his job.

5 Plaintiff John Doe 13, now 71, pleaded guilty to child rape and child
6 molestation in 2000 in Washington. Doe 13 was 54 when the offense occurred
7 in 1999. Doe 13 served six (6) months of work release, five (5) years of a
8 treatment program, two (2) years of a de-escalation program, and was released
9 from probation in 2008. Doe 13 has reconciled with the victim, who was his
10 youngest daughter. Since his conviction in 2000, Doe 13 has worked hard to
11 rebuild his life and regain the trust of his family, and has rehabilitated his
12 relationship with his daughter. Doe 13 is a productive member of society, and
13 presents no risk of recidivism. When Doe 13 moved to Nevada, DPS
14 determined he was a low-risk Tier I offender. Doe 13 recently received a letter
15 from DPS stating he would be reclassified as a Tier III. Because of the change
16 in the law, Doe 13 will be subject to lifetime supervision. Because of the
17 change in the law, Doe 13 will be subject to community notification.

18 Plaintiff John Doe 14, a 28 year old North Las Vegas resident, pleaded
19 guilty to two (2) counts of attempted lewdness with a minor in Nevada in 2009.
20 He was sentenced to five (5) years of probation. At the time of the plea, he was
21 not subject to community notification. After his conviction, Doe 14 returned
22 to school and earned a bachelor's degree in computer science. Doe 14 also
23 participated in group counseling. At the time of his conviction, Doe 14 was
24 required to register as a Tier II offender. Doe 14 has committed no new
25 offenses since his 2009 conviction, and presents a low risk of recidivism. Doe
26 14 recently received a letter from DPS stating he will be reclassified as a Tier
27 III. As a Tier II offender, Doe 14 would have been eligible for removal from
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1 the sex offender registry in 2034. However, because of the change in the law,
2 Doe 14 will now be subject to lifetime registration. Additionally, Doe 14 will
3 be subject to community notification.⁸ Doe 14 fears that community
4 notification may result in him being the target of vigilante acts. Indeed, after
5 his conviction, Doe 14's house was vandalized in what he believes to be an act
6 of vigilantism. Doe 14 fears that if he is subject to community notification, he
7 will experience additional, more serious attacks from members of the
8 community.

9 Plaintiff John Doe 15, now 41, pleaded guilty in 2008 to one count of
10 attempted lewdness with a child under the age of 14. The court sentenced him
11 to up to ten (10) years in prison. The court also imposed a five year term of
12 probation, required Doe 15 to register as a sex offender, and imposed lifetime
13 supervision. Doe 15 served four months in custody. In 2011, Doe 15 was
14 honorably discharged from probation. Doe 15 initially registered as a Tier I
15 offender. Since his conviction, Doe 15 has worked to rebuild his life and
16 become a productive member of society. He is married, and is employed as an
17 electrician. In or around June 2016, Doe 15 received notification that he would
18 be reclassified as a Tier III offender. Because of the change in the law, Doe 15
19 will be subject to lifetime registration and community notification, a condition
20 he was not previously subject to. Doe 15 fears that if he is subject to community
21 notification, he and his wife may be targeted for harassment. He also fears that
22 community notification may jeopardize his employment.

23 Plaintiff John Doe 16, now 69, pleaded guilty to incest in the state of
24

25 ⁸ *If Doe 14 known that AB 579 would subject him to lifetime registration*
26 *and community notification, he would not have entered into a plea*
27 *agreement.*
28

1 Texas in 1987. The child at the center of the case was 16 years old. Doe 16
2 served three years in prison. Since his release from prison, Doe 16 has become
3 a stable member of society. Doe 16 first registered as an offender in Missouri
4 in 2002. Doe 16 moved to Nevada in 2012 to take care of his elderly father,
5 who is a World War II veteran. When he moved to Nevada, Doe 16 was
6 designated as a low-risk Tier I offender. In or around June 1, 2016, Doe 16
7 received notification that he would be reclassified as a Tier III offender.
8 Because of the change in the law, Doe 16 will be subject to lifetime
9 registration, and will be subject to community notification; two conditions he
10 was not previously subjected to. Doe 16 fears that community notification
11 places both him and his father at risk of being harassed or assaulted.

12 Plaintiff John Doe 17, now 57, pleaded guilty in 1986 in the state of
13 California to lewdness with a minor under the age of 14. The children at the
14 center of that case were 6, 11, and 12 years old. In 2003, Doe 17 moved to
15 Nevada. At that time, the State determined Doe 17 was a low-risk Tier I
16 offender. In or around June 1, 2016, Doe 17 received notification that he would
17 be reclassified as a Tier III offender. Because of the change in the law, Doe 17
18 will be subject to lifetime registration, and will be subject to community
19 notification; two conditions he was not previously subjected to. Doe 17 fears
20 that community notification places him at risk of being harassed or assaulted.

21 ***Washoe County Does (Plaintiffs in Separate Lawsuit Filed in the Second***
22 ***Judicial District)***

23 Reno Doe A, now 41, pled guilty to four (4) counts of unlawful sex with
24 a minor and one (1) count of unlawful copulation with a minor in California in
25 2000. He was sentenced to one (1) year in jail and five (5) years of probation.
26 The child at the center of that case was 17 years old. At the time of the plea, he
27 was not subject to community notification. When Reno Doe A moved to
28

1 Nevada in 2001, he was classified as a Tier I offender. Upon moving to Nevada,
2 Reno Doe A started his own business, and established deep roots in his
3 community. Reno Doe A is married and has two children. He has committed no
4 new offenses, and presents no risk of recidivism. In June 2016, Reno Doe A
5 received a letter from DPS stating he will be reclassified as a Tier II. Under
6 NRS 179D.490, Reno Doe A would be eligible for removal from the sex
7 offender registry in 2016. However, because of the change in the law, Reno Doe
8 A may not be eligible for removal from the sex offender registry until 2026.
9 Moreover, because of the change in the law, Reno Doe A will be subject to
10 community notification. Reno Doe A fears that if he is subject to community
11 notification, his wife and children will be targeted for harassment. He also fears
12 his wife's employment as a school teacher may be affected by his status as a
13 Tier II offender. Reno Doe A is moving to protect his wife and children from
14 harassment, and now faces a life where he will not get to be with his family
15 every day. He also fears that he will lose his business because of the stigma
16 attached to community notification.

17 Reno Doe B, now 33, pled guilty to one (1) count of attempted sexual
18 assault with a minor in Colorado in 2006. The child at the center of the issue
19 was a fictional fourteen (14) year old female. He was sentenced to six (6)
20 months of work release and two years of probation. At the time of the plea, he
21 was not subject to community notification. Since his conviction, Reno Doe B
22 earned a bachelor's degree, a master's degree, and is currently pursuing his PhD
23 at a Nevada university. He has committed no new offenses, and presents no risk
24 of recidivism. When Reno Doe B moved to Nevada, he was classified as a Tier
25 I offender. In or around December, 2013, he received a letter from DPS stating
26 he would be reclassified as a Tier II. Subsequently, in June 2016, Reno Doe B
27 received another letter from DPS stating that he would be moved from Tier I to
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1 Tier III. There was no explanation regarding why the tier re-designation had
2 changed between 2013 and 2016. Because of the change in the law, Reno Doe
3 B will be subject to community notification, a condition he was not previously
4 subject to. Reno Doe B fears that community notification could result in a loss
5 of job opportunities in the competitive field of study he has pursued for almost
6 a decade. He also fears that he will be subject to harassment and social isolation.

7 **II. ARGUMENT**

8
9 The District Court arbitrarily or capriciously abused its discretion in
10 denying emergency relief because there is immediate, irreversible, irreparable
11 harm to Petitioners.

12 This Court has jurisdiction to issue writs of mandamus and prohibition.
13 Nev. Const. art. 6, § 4; *see also* NRS 34.160. The writ shall not issue if the
14 petitioner has a plain, speedy, and adequate remedy in the ordinary course of
15 the law. NRS 34.170; *Jeep Corp. v. Second Judicial Dist. Court*, 98 Nev. 440,
16 442-43, 652 P.2d 1183, 1185 (1982).

17 Here, Petitioners face immediate, irreversible, irreparable harm once
18 the website goes live on July 1, 2016. Many will be reclassified as high-risk
19 Tier III offenders, subject to lifetime supervision and community notification.
20 This is so even if there are patent errors in their classifications by the State.
21 They do not have a “plain, speedy, and adequate remedy” and the petition must
22 be granted. *See* NRS 34.170. “It is not an easy task to unring a bell...” *State v.*
23 *Rader*, 62 Ore. 37 (1912). “Unring the bell is a good analogy which can save a
24 lot of words in making the point...gross imperfections should not go
25 unnoticed.” *United States v. Lowis*, 174 F.3d 881, 885 (1999). This is precisely
26 the issue before the Court in reviewing this petition. Once the new law and
27 website are implemented, the bell will not be able to be unring for Petitioners,
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1 and they are therefore entitled to a writ of prohibition or in the alternative a writ
2 of mandamus.

3 **Standard for Mandamus**

4 The court may issue a writ of mandamus to enforce “their performance
5 of an act which the law enjoins as a duty especially from an office . . . or to
6 compel the admission of a party to the use and enjoyment of a right . . . to which
7 he is entitled and from which he is unlawfully precluded by such inferior
8 tribunal.” NRS 34.160.

9 Mandamus will not lie to control discretionary action unless it is
10 manifestly abused or is exercised arbitrarily or capriciously. *Office of the*
11 *Washoe County District Attorney v. Second Judicial District Court*, 5 P.3d 562,
12 566 (2000). Thus a writ of mandamus will issue to control a court’s arbitrary or
13 capricious exercise of its discretion.” *Id.* (citing *Marshal v. District Court*, 108
14 Nev. 459, 466, 836 P.2d 47, 52 (1992)); *City of Sparks v. Second Judicial*
15 *District Court*, 998 P.2d 1190, 1193 (2000). It is within the discretion of the
16 court to determine if such a writ will be considered. *Id.*; see also *State ex. rel.*
17 *Dep’t Transportation v. Thompson*, 99 Nev. 358, 662 P.2d 1338 (1983). The
18 Court may entertain district court denials of motion to dismiss where “no factual
19 dispute exists and the district court is obligated to dismiss an action pursuant to
20 clear authority under statute or rule.” *State v. Eighth Judicial District Court ex.*
21 *rel.*, 42 P.3d 233, 238 (2002).

22 **Standard for Prohibition**

23 Nev. Rev. Stat. 34.320 states:

24 The writ of prohibition is the counterpart of the writ of
25 mandate. It arrests the proceedings of any tribunal,
26 corporation, board or person from exercising judicial
27 functions, when such proceedings are without or in excess of
28

1 the jurisdiction of such tribunal, corporation, board or
2 person.

3 A writ of prohibition does not serve to correct errors, its purpose is to prevent
4 courts from transcending the limits of their jurisdiction in the exercise of
5 judicial but not ministerial power. *Olsen Family Trust v. District Court*, 110
6 Nev. 548, 551, 874 P.2d 778, 780 (1994); *Low v. Crown Point Mining Co.*, 2
7 Nev. 75 (1866). However, “a writ of prohibition must issue when there is an act
8 to be ‘arrested’ which is ‘without or in excess of the jurisdiction’ of the trial
9 judge.” *Houston Gen. Ins. Co. v. District Court*, 94 Nev. 247, 248, 78 P.2d 750,
10 751 (1978); *Ham v. Eighth Judicial District Court*, 93 Nev. 409, 412, 566 P.2d
11 420, 422 (1977); see also *Goicoechea v. District Court*, 96 Nev. 287, 607 P.2d
12 1140 (1980); *Cunningham v. District Court*, 102 Nev. 551, 729 P.2d 1328
13 (1986).

14 The object of a writ of prohibition is to restrain inferior courts from
15 acting without authority of law in cases where wrong, damage, and injustice are
16 likely to follow such action. *Olsen Family Trust*, 110 Nev. at 552, 874 P.2d at
17 781; *Silver Peaks Mines v. Second Judicial District*, 33 Nev. 97, 110 P. 503
18 (1910). Petitions for extraordinary writs are addressed to the sound discretion
19 of the Court, and may only issue when there is no plain, speedy, and adequate
20 remedy at law. NRS 34.330; *Jeep Corp. v. Second Judicial Dist. Court*, 98 Nev.
21 440, 442-43, 652 P.2d 1183, 1185 (1982).

22 **A. THE DISTRICT COURT MANIFESTLY ABUSED ITS**
23 **DISCRETION OR EXERCISED ARBITRARILY OR**
24 **CAPRICIOUSLY WHEN IT DENIED A STAY**

25 On June 30, 2016, the district court denied the temporary restraining
26 order because it determined that Petitioners had delayed pursuing relief and
27 because (1) The district court abused its discretion or exercised it arbitrarily or
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1 capriciously in denying the TRO. *See generally City Council v. Irvine*, 102 Nev.
2 277, 279, 721 P.2d 371, 372 (1986) (concluding that a city board acts arbitrarily
3 and capriciously when it denies a license without any reason doing for doing
4 so).

5 **B. LEGAL STANDARD FOR AWARDING**
6 **EMERGENCY EQUITABLE RELIEF**

7 The Nevada Supreme Court has recently explained:

8 A preliminary injunction is available when it appears from
9 the complaint that the moving party has a reasonable
10 likelihood of success on the merits and the nonmoving
11 party's conduct, if allowed to continue, will cause the
12 moving party irreparable harm for which compensatory relief
is inadequate.

13 *Univ. & Cmty. Coll. Sys. v. Nevadans for Sound Gov't*, 120 Nev. 712, 721, 100
14 P.3d 179, 187 (2004). *City of Sparks v. Sparks Mun. Court*, 302 P.3d 1118, 1124
15 (Nev. 2013); NRS 33.010. The standard for receiving a preliminary injunction
16 mirror those for a TRO. NRS 33.010.

17 The denial of a TRO is not an appealable order, nor does another legal
18 remedy exist, and is therefore appropriate for this extraordinary relief prayed
19 for. *See Sicor, Inc. v. Sacks*, 127 Nev. Adv. Op. No. 81 (December 15, 2011).
20 The Court held "even for appealable interlocutory orders, however, we have
21 consistently required that, for an appeal to be proper, the order must finally
22 resolve the particular issue. For example, while a preliminary injunction is
23 appealable under N.R.A.P. 3(A)(b)(3), a temporary restraining order, which is
24 necessarily of limited duration pending further proceedings on the injunction
25 request, is not." *Id.* (citing *Sugarman Co. v. Morse Bros.*, 50 Nev. 191, 255 P.
26 1010 (1927)).

Petitioners have demonstrated serious questions going to the merits because of the constitutional rights being infringed upon, as well as the much needed clarification of the law, and a balance of hardships that tips sharply in their favor because of the harm that will occur on July 1, 2016. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127 (9th Cir. 2011). Petitioners show immediate, irreversible, irreparable harm and that it is in the State’s best interest for the district court to grant the preliminary injunctive relief. *See Id.* Nevada has a duty to protect its citizens from violation of constitutional rights.

Here, as detailed above, Petitioners face immediate, irreversible, irreparable harm and can show “a reasonable likelihood of success on the merits.” Thus, they are entitled to a TRO. Meanwhile, Nevada faces little harm by enjoining its enforcement of AB 579. *See Clark County School. Dist. v. Buchanan*, 112 Nev. 1146 (1996). Further, all they are seeking is to preserve the status quo ante while this matter is resolved. *Number One Rent-A-Car v. Ramada Ins.*, 94 Nev. 779, 780-781 (1978).

In light of the circumstances set forth above, Petitioners maintain circumstances of urgency and strong necessity exist as the community notification website and the new law are being implemented on July 1, 2016. Petitioners maintain circumstances of urgency and strong necessity exist because once they are reclassified and subject to the new requirements, they cannot be reversed and will be damaged significantly and permanently. they will face the repercussions of the new law before they have an opportunity to be heard. Therefore, they are entitled to a stay, and this Court must grant this petition.

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1 **C. DOES 1-17 FACE IMMEDIATE, IRREVERSABLE,**
2 **IRREPARABLE HARM**

3 Does 1-17 overwhelmingly can show immediate, irreversible,
4 irreparable harm, and are entitled to immediate relief. *See* NRS 34.160; NRS
5 34.320. The District Court abused its discretion. *See Cameron v. State*, 114
6 Nev. 1281, 968 P.2d 1169 (1998).

7 The Nevada Supreme Court has explained that, in cases involving
8 constitutional harm, injunctive relief is often the appropriate remedy: “[a]s a
9 constitutional violation may be difficult or impossible to remedy through
10 money damages, such a violation may, by itself, be sufficient to constitute
11 irreparable harm.” *City of Sparks v. Sparks Mun. Court*, 302 P.3d 1118, 1124
12 (Nev. 2013) (citing *Monterey Mech. Co. v. Wilson*, 125 F.3d 702, 715 (9th
13 Cir. 1997).

14 The Petitioners face serious constitutional harm as well as other
15 serious harms. (See above facts and App., Exhs. 8-12.) A stay is necessary to
16 protect Does’ 1-24 constitutional rights, and more importantly, to protect them
17 from immediate, irreversible, irreparable harm. Wrong, damage, and injustice
18 are the result of the district court’s denial of the stay. *See Olsen Family Trust*,
19 110 Nev. At 552, 874 P.2d at 781. The district court has precluded rights
20 entitled to Petitioners and the emergency relief must be granted to control the
21 discretionary action that was manifestly abused. NRS 34.160; *Washoe*
22 *County*, 5 P.3d at 566.

23 Nothing will change in the event the TRO is granted. *See Number One*
24 *Rent-A-Car*, 94 Nev. 780-81. The State will be able to continue enforcing the
25 current laws. The State will also obtain the much needed time to clarify the law
26 and collectively implement the law with consistency and accuracy. As
27 discussed below, there is no remedy for mistakes or errors. There are also
28

1 contradictions made from the Attorney General on the record when speaking of
2 possible remedies.

3 For example, all the challengers will remain in the same tiers they are
4 currently in, remain with the same level of supervision they are currently under,
5 and would not be a danger to the public in any way as they were yesterday or
6 today. The challengers would continue to be subject to the plea agreement they
7 entered with the State of Nevada—under the terms that were agreed upon when
8 they were entered. Thus, Nevada is not in any danger if the challengers
9 remaining in their current classifications. Challengers do not pose a danger in
10 their current classifications. If there were no danger to the public before, they
11 will not automatically become a danger within 15 days if the TRO is granted.

12 The challengers will face immediate irreparable harm solely from the
13 enforcement of AB 579. The challengers—and their families—face very grave
14 harm if the law is enforced. The district court erred in failing to recognize the
15 dire consequences Petitioners are in. The district court acted arbitrarily and
16 capriciously in ignoring the permanent harm that will occur July 1, 2016 that
17 will result from the court’s denial. *Washoe County*, 5 P.3d at 566.

18 The challengers’ fears’ are well-founded. Human Rights Watch, in a
19 comprehensive 2007 study of sex offender laws (laws that were far less
20 extreme than AB 579 about to be implemented in Nevada) and their effects
21 and utility, found that public safety was not furthered by expansive notification
22 and restriction provisions, but offenders were subject to vigilantism⁹:

23 Information provided by state online sex offender registries, as well as
24 information provided during community notification by law enforcement, is not

25 ⁹No Easy Answers: Sex Offender Laws in the United States, Human Rights
26 Watch, available at:
27 <http://www.hrw.org/reports/2007/us0907/us0907web.pdf>.

1 just used by private citizens to determine what streets their children can walk
2 on, or whom to avoid. **Neighbors as well as strangers harass, intimidate, and**
3 **physically assault people who have committed sex offenses.**¹⁰ **At least four**
4 **registered sex offenders have been killed.**

5 “Unring the bell is a good analogy which can save a lot of words in
6 making the point...gross imperfections should not go unnoticed.” *Lowis*, 174
7 F.3d at 885. AB 579 presents gross imperfections when applied to the Plaintiffs
8 in this case. Not only are they subject to community notification and in some
9 cases register for life, if AB 579 is implemented and exposes Plaintiffs’ personal
10 information to the public, Plaintiffs face immediate, irreversible, irreparable
11 harm because the bell cannot be unrung.

12 Practically speaking, there is no need to be a lawyer or judge to
13 recognize that having a listing on the sex offender registry would cause
14 irreparable harm. The district court acted arbitrarily or capriciously in failing to
15 consider these harms for Does 1-24 with blatant disregard for the consequences
16 Does 1-24 are facing by the denial of the TRO. This Court must control the
17 district court’s discretionary action of denying the TRO because it was
18 manifestly abused or exercised arbitrarily and capriciously. *Marshal*, 108 Nev.
19 at 466, 836 P.2d at 52.

20 Does 1-24 overwhelmingly can show immediate, irreversible,
21 irreparable harm, and are entitled to immediate relief. See NRS 34.160; NRS
22 34.320. The district court abused its discretion. See *Cameron v. State*, 114 Nev.
23 1281, 968 P.2d 1169 (1998).

24 ///

25 ///

26
27 ¹⁰*Id.*

1 **D. THE STATE FACES NO HARDSHIP**

2 Nothing will change in the event emergency relief is granted. *See*
3 *Number One Rent-A-Car*, 94 Nev. 780-81. The State will be able to continue
4 enforcing the current laws. The State will also obtain the much needed time to
5 clarify the law and collectively implement the law with consistency and
6 accuracy. As discussed below, there is no remedy for mistakes or errors. There
7 are also contradictions made from the Attorney General on the record when
8 speaking of possible remedies.

9 The State faces no hardship—and in fact stands to benefit from a stay—
10 for a number of reasons. While the State mistakenly believed it would lose
11 money if it failed to enact AB 579, in fact it will cost more money to implement
12 AB 579 than it would have lost if it failed to comply with the unfunded federal
13 mandate. Thus, the Department will save money. In addition, a stay will avoid
14 the absurd situation of enforcing the law for a brief period of time before the
15 legislature makes changes next session.

16 Most importantly, a stay will promote, not damage, public safety. The
17 State has a workable sex offender system in place now. Indeed, it was not
18 improving public safety that motivated the passage of AB 579. AB 579 will
19 erode public safety. All the challengers will remain in the same tiers they are
20 currently in, remain with the same level of supervision they are currently under,
21 and would not be a danger to the public in any way as they were yesterday or
22 today. If there were no danger to the public before, they will not automatically
23 become a danger within if emergency relief is granted. Indeed, if you call the
24 Department of Public Safety¹¹, you get the following message:

25
26

27 ¹¹ The number is (775)684-6262
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- “A tier level does not imply risk of any offender in the community.”
- “We would like to stress that the assigned tier level no longer implies risk of any offender in the community.”

Further, estoppel and laches may apply because the State delayed over four months to enforce the law after the last stay was lifted. It makes no sense to apply the law now, after having waited since January to do so, only to enforce it with less than a year until the next legislative session.

E. PETITIONERS HAVE A LIKELIHOOD OF SUCCESS ON THE MERITS

Does (Petitioners) are likely to succeed on several of the claims set forth in their First Amended Complaint. As detailed in their emergency motion for the stay, Does 1-17 have shown immediate, irreversible, irreparable harm. A stay maintaining the status quo is therefore appropriate.

Does assert that the State’s plan to implement AB 579 violates their rights to equal protection as guaranteed by Article 1, Section 1 of the Nevada Constitution. As detailed in the Complaint and in the instant motion and application, the State’s planned implementation of AB 579 unequally subjects Does to the enhanced notification provisions of AB 579 because it has no plans in place for identifying individuals not previously required to register who now qualify as sex offenders pursuant to NRS 179D.095 and NRS 179D.097, nor does it have plans in place for enforcing AB 579 as to those individuals. Thus, the only people who face the heightened registration requirements—and the heightened penalties attached to failure to meet those requirements—are the Does and similarly situated individuals who are already registered as offenders. This sort of unequal enforcement of AB 579 violates Does’ rights to equal

1 protection. *See Allen v. State*, 100 Nev. 130, 135, 676 P.2d 792, 795 (1984)
2 (“Equal protection of the law has long been recognized to mean that no class
3 of persons shall be denied the same protection of the law which is enjoyed by
4 other classes in like circumstances.”) (citation omitted).

5 In addition, as discussed above, the State has made no effort to
6 coordinate with state and local law enforcement agencies to ensure consistent
7 enforcement of AB 579. The failure to have any plans to make sure that AB
8 579 is consistently enforced can lead to unequal and arbitrary enforcement by
9 local agencies. Without guidance from the State, some agencies may interpret
10 the community notification provisions in a way that has harsher consequences
11 for some Does. Given that the State has in essence conceded that it is treating
12 some offenders differently, and given that it has made no efforts to ensure
13 uniform application and enforcement of AB 579 by local law enforcement,
14 Does are likely to prevail on their equal protection claim.

15 Does are also likely to succeed on their claim that the State is
16 exceeding its jurisdiction in requiring Does who do not qualify as sex offenders
17 under NRS 179D.095 to register as sex offenders. NRS 179D.095 defines “sex
18 offender” as a person who has been “[c]onvicted of a sexual offense listed in
19 NRS 179D.097.” NRS 179D.095(1)(a) (emphasis added). As detailed in the
20 First Amended Complaint and above, Doe 5 pleaded *nolo contendere* in a
21 Florida one count of solicitation of a child via computer. At the time of
22 sentencing, Doe 5 received a withheld adjudication. Because he received a
23 withheld adjudication, Doe 5 has not been convicted of a sexual offense as
24 required by NRS 179D.095. Indeed, as recently held by the Florida Supreme
25 Court, a withheld adjudication is not a “conviction” pursuant to Florida law.
26 *See Clarke v. United States*, 41 Fla. L. Weekly S41, 184 So.3d 1107 (2016)
27 (holding that a withheld adjudication for possession of a firearm by a convicted
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1 felon does not qualify as a “conviction” for the purposes of Florida’s felon in
2 possession statute).

3 Despite the fact that he has no convictions, the State required Doe 5 to
4 register as a Tier I offender when he move the Nevada in 2006. He now faces
5 reclassification to Tier III status. The State’s actions with respect to Doe 5
6 exceed its jurisdiction. Doe 2 faces a virtually similar predicament: he received
7 a withheld adjudication in Florida in 2003 for solicitation to commit a lewd
8 act. Despite never being convicted of a sexual offense, Doe 2 was required to
9 register as an offender with the State. As discussed in the First Amended
10 Complaint, Doe 2 successfully petitioned to terminate his registration earlier
11 this year. However, given the errors the State has already committed in
12 implementing AB 579, Doe 2 faces possible re-designation as a Tier III
13 offender without ever having been convicted of a sexual offense—or any
14 offense.

15 Additionally, as set forth in the First Amended Complaint, Doe 10 also
16 does not qualify as a sex offender under NRS 179D.095 and NRS 179D.097,
17 and yet, the State now intends to re-designate him as a Tier II offender. As
18 discussed in Does’ First Amended Complaint, NRS 179D.097 contains a list
19 of enumerated crimes which qualify as “sexual offenses.” *See* NRS
20 179D.097(1)(a)-(o). The statute also contains a catch-all provision which
21 designates “[a]ny other offense that has an element involving a sexual act or
22 sexual conduct with another.” NRS 179D.097(1)(p). Doe 10, however, has no
23 such qualifying conviction.

24 Doe 10 pleaded guilty in the United States District Court for the
25 District of Montana to one count of importation or transportation of obscene
26 materials, a violation of 18 U.S.C. § 1462. This statute prohibits the
27 importation or transportation of:
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1 (a) any obscene, lewd, lascivious, or filthy book, pamphlet, picture,
2 motion-picture film, paper, letter, writing, print, or other matter of
3 indecent character; or

4 (b) any obscene, lewd, lascivious, or filthy phonograph recording,
5 electrical transcription, or other article or thing capable of producing
6 sound; or

7 (c) any drug, medicine, article, or thing designed, adapted, or intended
8 for producing abortion, or for any indecent or immoral use; or any
9 written or printed card, letter, circular, book, pamphlet, advertisement,
10 or notice of any kind giving information, directly or indirectly, where,
11 how, or of whom, or by what means any of such mentioned articles,
matters, or things may be obtained or made . . .

12 18 U.S.C. § 1462. This statute does not fall within the enumerated offenses
13 listed in NRS 179D.097, nor does it qualify as a sexual offense under NRS
14 179D.097(1)(p). Thus, the State is acting in excess of its jurisdiction under AB
15 579 by requiring him to register as an offender.

16 Does also have a likelihood of succeeding on their due process claims.
17 For example, in their Second Cause of Action, Does assert that AB 579 violates
18 their rights to procedural due process under Article 1, Section 9 of the Nevada
19 Constitution because AB 579 provides no remedy for offenders who are
20 misclassified or are being improperly subjected to other provisions of the law,
21 nor does it provide any mechanism for correcting errors made by the State of
22 Nevada. AB 579 also provides no process for registrants to get off the registry
23 once they have complied with their requirements to register for the time
24 periods prescribed by NRS 179D.490.

25 As the State's response to the aforementioned public records request
26 shows, the State has no real protocols or procedures in place for correcting
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possible errors. Additionally, as detailed in Does' First Amended Complaint, the State has already erroneously re-designated a Doe who had obtained a court order releasing him from any registration obligations. In that instance, Doe 7 obtained a court order earlier this year terminating his registration obligation. Nevertheless, on or about June 3, 2016, Doe 7 received a letter from the State notifying him the State was re-designating him as a Tier III offender. Absent the assistance of legal counsel, Doe 7 would have been subject anew to registration. In Doe 7's case, this would have been particularly devastating, because the State intended to move him from Tier I to Tier III. As a Tier III offender, Doe 7 would have had to appear in person every 90 days to verify his registration information, would have been listed on the sex offender registry website, and would have been subject to community notification. Doe 7 was fortunate that he had the resources to obtain legal assistance to correct this error. Other individuals may not have the necessary resources to pay a lawyer to correct similar errors by the State, and AB 579 provides them no procedural mechanism for obtaining relief.

Does also have a likelihood of succeeding on their claim that AB 579 is unconstitutionally vague. A statute is unconstitutionally vague and subject to facial attack if it (1) fails to provide notice sufficient to enable persons of ordinary intelligence to understand what conduct is prohibited and (2) lacks specific standards, thereby encouraging, authorizing, or even failing to prevent arbitrary and discriminatory enforcement. *Silvar v. Eighth Judicial Dist. Court ex rel. Cty. of Clark*, 122 Nev. 289, 293, 129 P.3d 682, 685 (2006); *see also State v. Colosimo*, 122 Nev. 950, 954, 142 P.3d 352, 355 (2006) (holding that a statute is unconstitutionally vague if "it fails to define the criminal offense with sufficient definiteness that a person of ordinary intelligence cannot understand what conduct is prohibited and if it lacks specific standards,

1 encouraging arbitrary and discriminatory enforcement”) (citation omitted). As
2 outlined in the First Amended Complaint, AB 579 is unconstitutionally vague
3 because it fails to sufficiently define who is subject to the law, what its effect
4 is, and what the penalties are for an individual’s failure to comply. It also does
5 not provide a person of reasonable intelligence with sufficient notice of
6 whether they would be subject to registration, or for how long. For example,
7 AB 579 fails to define how long an offender who has been re-designated to a
8 new tier level must register at his or her new tier level. If a person who has
9 been registering as a low-risk Tier I offender has been re-designated as a Tier
10 II offender, AB 579 does not indicate whether the time the offender has
11 registered as a Tier offender would count towards the 25-year registration
12 period a Tier II offender must complete before being eligible to terminate his
13 or her duties to register.

14 AB 579 is also unconstitutionally vague because NRS 179D.097,
15 which defines “Sexual Offense” for the purposes of Chapter 179D of the
16 Nevada Revised Statutes, contains an overbroad catch-all definition of “sexual
17 offense” that encompasses crimes that are not otherwise considered sexual
18 offenses. *Cf. Johnson v. United States*, 135 S. Ct. 2551 (2015). For example,
19 Doe 1 was convicted of “the infamous crime against nature,” a law which was
20 repealed by the Nevada legislature in 2013 because, as discussed above, it was
21 unconstitutional. However, Doe 1 and others convicted under the same
22 unconstitutional statute—may be subject to community notification.
23 Additionally, as discussed above, Does 2 and 5 both received withheld
24 adjudications in Florida, but the State has required both Does to register, and
25 may subject them to community notification. Also, as outline above, Doe 10
26 was convicted of a federal offense that, by its plain language, does not appear
27 to qualify as a “sexual offense” under AB 579. Nevertheless, the State has
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1 forced him to register, and is re-designating him a Tier II offender and
2 subjecting him to website and community notification.

3 Does are also likely to succeed on their ex post facto claim. As set forth
4 in Does' First Amended Complaint, AB 579 violates the prohibition against ex
5 post facto laws codified at Article 1, Section 15 of the Nevada Constitution
6 because it imposes new punishments on Does, including retroactive
7 punishment for crimes Does have already pleaded guilty to or been convicted,
8 the affirmative disability of having to register in person every ninety (90) days
9 in the case of Tier III offenders, and every 180 days in the case of Tier II
10 offenders—affirmative disabilities Does were not previously subjected to.
11 Does who face re-designation from Tier I to Tier III also face punitive
12 requirements they were not previously subject to: lifetime registration,
13 community notification, and website notification. The sole basis for these
14 onerous new requirements are based solely on Does' prior convictions. As
15 discussed in the First Amended Complaint, the other state courts which have
16 struck down similar registration and notification schemes have done so on ex
17 post facto grounds. *See, e.g., Doe v. State*, 189 P.3d 999, 1019 (Alaska 2008);
18 *Doe v. State*, 167 N.H. 382, 411, 111 A.3d 1077, 1101 (2015); *Starkey v.*
19 *Oklahoma Dept. of Corrections*, 305 P.3d 1004, 1031-32 (Ok. 2013); *State v.*
20 *Williams*, 129 Ohio St. 3d 344, 952 N.E. 2d. 1108 (2011); *Doe v. Department*
21 *of Public Safety and Correctional Services*, 62 A.3d 123, 430 Md. 535 (2013);
22 *Wallace v. State*, 905 N.E. 2d 371, 384 (2009); and *State v. Letalien*, 985 A.2d
23 4, 25 (Me. 2009).

24 Thus, Does have a strong likelihood of success on this claim.
25 Relatedly, Does also have a likelihood of success on their claim that AB 579
26 violates the prohibition against double jeopardy because it imposes new
27 punishments—increased or lifetime supervision, community notification, and
28

1 website notification.

2 Does are also likely to succeed on the other claims set forth in the First
3 Amended Complaint. In their Seventh Cause of Action, Does assert that AB
4 579 unconstitutionally interferes with contracts several of the Does made with
5 the State or other jurisdictions by way of entering into plea agreements
6 because, among other things, it imposes new terms not negotiated or
7 contemplated at the time of several of the Does' pleas which drastically
8 increase, and/or require lifetime supervision, registration, and/or community
9 notification. For the same reasons, Does are also likely to succeed on their
10 claim that AB 579 violates Nevada's Separation of Powers doctrine because it
11 frustrates prior agreements providing an additional harsh, irreversible,
12 retroactive punishments. Moreover, AB 579 eliminates a sentencing court's
13 discretion by substituting the court's sentencing decisions with new, harsh, and
14 irreversible punishments.

15 **CONCLUSION**

16 Based upon the foregoing reasons, Petitioners respectfully request this
17 Court to grant this emergency petition for writ of prohibition, or in the
18 alternative mandamus. The district court has manifestly abused its discretion
19 and acted arbitrarily and capriciously in denying relief.

20
21 /s/ Margaret A. McLetchie
22 Margaret A. McLetchie
23 Nevada State Bar No.10931
24 Alina M. Shell
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CERTIFICATE OF SERVICE

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NRAP 27(e) CERTIFICATE

Pursuant to NRAP 27(e), I hereby certify that I am counsel to
Petitioner and further certify:

- 1. The contact information for the attorneys for Real Parties in Interest
is:

David R. Keene
555 E. Washington Ave., Ste 3900
Las Vegas, NV 89101
(702) 486-3584
DKeene@ag.nv.gov

- 2. The facts showing the nature and cause of the emergency are set
forth in the Points and Authorities in Support of Emergency Petition for
Writ of Prohibition or in the Alternative Writ of Mandamus. These facts
include the following:

- a. On June 30, 2016, Respondent Court denied Petitioners’ Motion
for Temporary Restraining Order stating that Petitioners had
delayed in pursuing relief and that any errors can be fixed later.
- b. Respondent Court’s ruling permits Real Parties in Interest to
enforce AB 579 on July 1, 2016.

3. I notified Respondent of my intent to file this Emergency Writ Petition immediately after the hearing this morning.

4. I will email a copy of this Emergency Writ Petition immediately after filing it.

Respectfully submitted this the 30th day of June 30, 2016,

/s/ Margaret A. McLetchie
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