IN THE SUPREME COURT OF THE STATE OF NEVADA

DOES 1- 24, individuals
Appellants,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK, AND THE HONORABLE DOUGLAS E. SMITH, DISTRICT JUDGE

Respondent,

CATHERINE CORTEZ MASTO, ATTORNEY GENERAL OF THE STATE OF NEVADA; JAMES WRIGHT, DIRECTOR OF THE NEVADA DEPARTMENT OF PUBLIC SAFETY, BERNARD W. CURTIS, CHIEF OF THE PAROLE AND PROBATION DIVISION OF THE NEVADA DEPARTMENT OF PUBLIC SAFETY, JULIE BUTLER, DIVISION ADMINISTRATOR OF THE RECORDS AND TECHNOLOGY DIVISION OF THE NEVADA DEPARTMENT OF PUBLIC SAFETY, DOUGLAS GILLESPIE, SHERIFF OF THE LAS VEGAS METROPOLITAN POLICE DEPARTMENT, PATRICK E. MOERS, POLICE CHIEF OF THE HENDERSON POLICE

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Clerk of Supreme Court

Case No.:

Dist. Case No.: A-14-694645-C

<u>EMERGENCY PETITION FOR WRIT OF MANDAMUS OR IN THE ALTERNATIVE PROHIBITION PURSUANT TO NRAP 27(e)</u>

<u>ACTION REQUIRED: FEBRUARY 1, 2014</u>

Docket 64890 Document 2014-03050

1 DEPARTMENT, STEVEN
2 WOLFSON, CLARK COUNTY
DISTRICT ATTORNEY;
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4 Real Parties in Interest.
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8 **PETITION FOR WRIT OF MANDAMUS, OR, IN THE**
9 **ALTERNATIVE, PROHIBITION**

10 The State is threatening to enforce AB 579, a drastic new sex offender
11 law with irreversible effects, on February 1, 2014. AB 579 replaces a tested
12 risk-based assessment with a classification, monitoring, and notification system
13 tied only to fact of conviction. Prior risk assessments will be tossed out the
14 window, and anybody who committed any crime with any sexual element since
15 1956 will be subject to the law. As a result, people who have been deemed non-
16 dangerous will now be treated like the most dangerous of offenders and
17 conversely, persons who are dangerous could have restrictions reduced.

18 For people who have already paid their debt to society, even people
19 whose crimes are in the distant past, this means that they will not only have to
20 register regularly, they will have to do so every time they change jobs or, for a
21 homeless person, every time they stay at a different shelter. NRS 179D.470.
22 Almost all sex offenders—and by default, their families—face being subjected
23 to community notification and danger. The problems with errors on the website
24 will be magnified because there will be no mechanism to correct errors, a
25 problem which is further magnified because the website is now the "source of
26 record" regarding sexual convictions. NRS 179B.250(2).
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After receiving notices from the State in January that they would be subject to the new law, the DOES brought a challenge to this action under the Nevada Constitution. The challenge included claims that AB 579 violates their expectations under guilty plea agreements and that it is being applied unevenly, in violation of the Equal Protection Clause. The DOES also asserted that the State should be equitably estopped from enforcing the law in a different fashion than the State had represented it would in an Eighth Judicial Court proceeding dissolving an injunction of AB 579 in a different case. The DOES also asserted that the facts, as alleged in their complaint and in declarations provided to the Court distinguished their case legally and factually from prior cases upholding AB 579.

On January 28, 2014, the District Court denied DOES' Application for a Temporary Restraining Order on the grounds that relief was precluded because other courts had found AB 579 constitutional, ignoring the new claims and facts asserted by DOES as well as the ways in which DOES distinguished the prior litigation. The denial of a temporary restraining order now necessitates emergency relief because, if it is not granted, DOES will be denied an adequate remedy at law. Much of the purposes of the litigation is to assess the legality of the planned enforcement of the laws, which will now begin on February 1, 2014. For example, as detailed below, DOE 1asserts that he is incorrectly classified and should not be on the website at all. If the website is allowed to go live, it will be too late to provide him effective relief given that website notification is a bell that cannot be unrung.

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In this petition, Petitioners, DOES ("DOES"), by and through their undersigned attorneys of LANGFORD MCLETCHIE LLC, respectfully represent:

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

2. DOES are currently classified as sex offenders based upon an individualized classification.

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

4. The State has informed DOES that it will begin enforcing AB 579 starting on February 1, 2014.

5. The community notification website provisions of AB 579 go into effect February 1, 2014, notifying the public of Tier I, II, and III sex offenders. DOES will be placed on the website.

6. DOES face drastic changes from the law including, but not limited to, effects that parallel lifetime supervision.

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

Nev. Const., art. 1, § 1 (Equal Protection Clause);
Nev. Const., art. 3, § 1 (Separation of Powers);
Nev. Const., art. 1, § 15 (Contracts Clause).
Nev. Const., art. 1, § 8 (Due Process Clause);
Nev. Const., art. 1, § 15 (Ex Post Facto Clause); and
Nev. Const., art. 1, § 8 (Double Jeopardy Clause).

8. DOES moved for Temporary Restraining Order (TRO) and Preliminary Injunction on January 21, 2014.

9. The district court held a hearing for the TRO on January 28, 2014 and denied DOES temporary relief, ruling that this cases was substantially similar to prior cases that had been litigated.

10. DOES continue to face immediate, irreversible, irreparable harm.

11. The circumstances of this matter are urgent because AB 579 goes into effect February 1, 2014 and the DOES—and their families—face irreparable harm, including the risk of violence and the loss of jobs.

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

ISSUES PRESENTED

I. Whether the Eighth Judicial District Court and the Honorable Douglas E. Smith manifestly abused its discretion or exercised it arbitrarily or capriciously in denying DOES' request for a temporary restraining order to allow the issues raised in their case to be fully litigated.

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RELIEF SOUGHT

Petitioners pray that this Court grant the instant Emergency Petition for Writ of Prohibition or in the Alternative a Writ of Mandamus pursuant to N.R.A.P. 21(a)(6) and N.R.A.P. 27(e) as the only option to protect Does' 1-24 constitutional rights. Petitioners pray that this Court grant the Temporary Restraining Order to prevent immediate, irreversible, irreparable harm.

Respectfully Submitted,

/S/ Kevin Kampschror
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VERIFICATION

STATE OF NEVADA)
)
COUNTY OF CLARK)

Under penalty of perjury, the undersigned declares that he is the attorney for the Petitioner named in the foregoing petition and knows the contents thereof, that the pleading is true of his own knowledge, except as to those matters stated on information and belief, and that as to such matters he believes them to be true. This verification made by the undersigned attorney, pursuant to NRS 15.010, on the ground that the matters stated, and relied upon, in the foregoing petitioner are all contained in the prior pleadings and other records of the Court and district court, true and correct copies of which have been included in the appendix submitted with the petition.

DATED THIS the 29th day of January, 2014.

/s/ Kevin Kampschror
KEVIN KAMPSCHROR, ESQ.
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POINTS AND AUTHORITIES IN SUPPORT OF EMERGENCY PETITION FOR WRIT OF PROHIBITION OR IN THE ALTERNATIVE WRIT OF MANDAMUS

STATEMENT OF THE CASE

In 2007, the Nevada Legislature passed AB 579—which made sweeping, drastic changes to how sex offender registration, reporting, monitoring, and notification is handled—in order comply with an unfunded federal mandate. The Nevada Supreme Court has described the legislative history as follows:

> … it does not appear from the legislative history that the Nevada Legislature ever considered the impact of [AB 579] on juveniles or public safety. The body's motivation for passing the bill appears to be compliance with the Walsh Act and avoidance of the reduction in grant monies that would come with noncompliance. See, e.g., Hearing on A.B. 579 before the Assembly Select Comm. on Corrections, Parole, and Probation, 74th Leg. (Nev., April 10, 2007).

State v. Eighth Judicial Dist. Court ("Logan"), 306 P.3d 369, 376 (Nev. 2013). Because the Legislature failed to consider questions such as the effect on public safety, AB 579 poses many problems. It also raises numerous legal issues, only some of which have already been litigated. That other courts have previously upheld AB 579 in prior challenges to its application does not mean that Does 1 –24 cannot now show a sufficient likelihood of success on the merits and obtain a preliminary injunction. This case presents new and meritorious claims and the prior cases that have addressed *some* of the legal questions about AB 579 in *other contexts* do not preclude relief, for a number of reasons.

The Attorney General as well as the Nevada Department of Public Safety (DPS), Clark County District Attorney, Las Vegas Metropolitan Police

Department, and Henderson Police Department are vested with responsibility for the implementation and enforcement of AB 579, Nevada's adoption of the Adam Walsh Act.

The new law goes into effect on February 1, 2014. DOES have all recently received letters from DPS informing them of the sudden change of the law, as well as that their current classification under current law will be changing from an individualized classification to a classification based only on past offense. (Does Declarations, vol. III at 0371-0385.).

On January 16, 2014, DOES filed suit against Catherine Cortez Masto, Attorney General of the State of Nevada; James Wright, Director of the Nevada Department of Public Safety, Bernard W. Curtis, Chief of the Parole and Probation Division of the Nevada Department of Public Safety, Julie Butler, Division Administrator of the Records and Technology Division of the Nevada Department of Public Safety, Douglas Gillespie, Sheriff of the Las Vegas Metropolitan Police Department, Patrick E. Moers, Police Chief of the Henderson Police Department, Steven Wolfson, Clark County District Attorney. (Complaint, vol. I., at 0003.). On January 21, 2014 DOES filed an Application for a Temporary Restraining Order and Motion for a Preliminary Injunction. The State responded to the motion on January 27, 2014. (State's Opposition to Application for Temporary Restraining Order and Preliminary Injunction, vol. IV at 0589-0603.). The State Defendants contended that collateral estoppel applied because the undersigned counsel was involved in prior litigation and that such as the DOES had "slept on their rights." The undersigned states true of his own knowledge, except as to those matters stated on information and belief that DOES only received letters in January 2014.

At the hearing on the Application for a Temporary Restraining Order held on January 28, 2014, the District Court stated that this case was

1 overwhelming, but held that DOES' case was substantially similar to prior
2 litigation. Because prior litigation upheld AB 579, the District Court denied
3 relief. (Order, vol. IV at 0605-0606.).
4 The District Court's ruling was erroneous because it failed to consider
5 that DOES asserted different facts and causes of action and the ways in which
6 DOES distinguished prior litigation. DOES deserve their day in court and the
7 opportunity for this matter to be fully heard. Without emergency relief, DOES
8 will be denied an adequate remedy at law.
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10 **STATEMENT OF FACTS**
11 AB 579, Nevada's enactment of SORNA, is set forth in large part in
12 Chapter 179D of the Nevada Revised Statutes (Registration of "Sex Offenders"
13 and Offenders Convicted of "A Crime Against A Child") (NRS 179D.010 et
14 seq.).
15 On February 1, 2014—if enforced—AB 579 will make many, wide-
16 sweeping changes to how Nevada classifies, registers, and monitors sex
17 offenders, and how it notifies the public regarding sex offenders. Most
18 centrally, it broadens who is subject to sex offender laws and re-categorizes
19 previously assessed and rehabilitated offenders. NRS 179D.490. It then applies
20 new restrictions, rules, and community notification to the newly reclassified
21 offenders. NRS 179D.010 *et seq.*; NRS 179D.475.
22 While AB 579 threatens to reclassify them based on only on conviction
23 and increase the length and nature of registration, DOES have also already been
24 assessed for actual dangerousness by the State of Nevada and have been
25 classified appropriately. (Does Decl., vol. III at 0371-0385.). Further, the
26 majority of DOES in the lawsuit have been convicted pursuant to pleas, which
27 are supposed to govern the terms of their punishment and restrictions. (Doe 2-
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5, Decl., vol. III at 0374-0385.). The facts regarding DOES are detailed in the complaint (Complaint, vol. I., at 0004-0011.), and some specific examples include:

John Doe 1, now 54, was charged with solicitation to commit a lewd act in Florida in 1997. (Doe 1, Decl., vol. III at 0372 ¶ 3.). He was 38 at the time of the offense. (Id.). The "child" at the center of this issue was a fictional 14 year old male. (Id.). He went to trial and was found guilty but received a withheld adjudication. (Id. at ¶ 4.). The adjudication was withheld pending successful completion of two years community control and 36 months of sex offender probation. (Id. at ¶ 5.). He successfully completed both the community control and the sex offender probation. (Id. at ¶ 7.). At the time of his trial and after conviction, Doe 1 was not subject to lifetime supervision. (Id. at ¶ 8.). This was not contemplated by him or the District Attorney because it did not apply to his case based upon his conviction. Doe 1 was not subject to community notification. (Id. at ¶ 10). When Doe 1 moved to Nevada, he was classified as a Tier I. (Id.). Doe 1 recently received a letter from DPS stating he would be reclassified at Tier II. (Id. at ¶ 11.). Doe 2 called DPS after receiving the letter and DPS informed him there was an error, and that DPS would be keeping Doe 1 as a Tier I. (Id. at ¶ 13.). Doe 1 did then receive an updated letter from DPS affirming their representation on the phone that Doe 1 would remain as a Tier I. (Id.). Because of the change in the law, Doe 1 will be subject to community notification. (Id. at ¶ 12.).

Doe 1 was lucky he was able to contact DPS and catch the "error." It is unconscionable to think where the consequences are so severe and punishing, that there could be an "error" when implementing AB 579. Further, if Doe 1 would not have caught the "error" *on his own,* Doe 1 would have been classified as a Tier II and would have no redress. Because of the new law, Doe 1 faces

community notification complete with his picture and address for Nevada to see. NRS 179D.443.

John Doe 2, now 40 years old, was charged with sexual assault in Michigan in 1994 when he was only 20 years-old. (Doe 2, Decl., vol. III at 0375 at ¶ 4,6.). The victim was a fifteen year-old co-worker. (Id. at ¶ 4.). Doe 2 was unaware she was under 16. (Id.). Doe 2 pled guilty to the sexual assault charge. (Id. at ¶ 5.). Doe 2 served 30 days in jail and was placed in a Youth Training Program in Michigan because of his young age at the time of the offense (20). (Id. at ¶ 7.). There was no condition of his plea requiring him to register as a sex offender. (Id. at ¶ 8.). In 2000, Doe 2 enlisted in the Marine Corps and was discharged in 2004. (Id. at ¶ 10.). In 2007, Doe 2 was sent a letter informing him that he would have to register as a sex offender for fifteen (15) years from the date of conviction or plea. (Id. at ¶ 12.).

Based upon this representation, Doe 2 would be off the registration as of April 24, 2009. (Id. at ¶ 13.). Doe 2 is currently a Tier I and DPS recently notified him he will be moved to a Tier II. (Id. at ¶ 15.). Because of the change in the law, Doe 2 will be subject supervision for twenty-five (25) years. (Id. at ¶ 17.). Because of the change in the law, Doe 2 will be subject to community notification. (Id. at ¶ 16.). Doe 2 has been subject to two different sets of rules since his guilty plea. First, there were no registration requirements, then there were. Then after complying with the "new" requirements in Nevada, Doe 2 still remains on the registry even though the April 24, 2009 date has long passed. Once AB 579 is implemented, Doe 2's registration period will increase dramatically and the law – and DPS – is unclear as to how long Doe 2 will *now* be required to register. According to the Attorney General, DPS is not going to seek out those who have "rehabilitated themselves completely out of the criminal justice system." (Transcripts Case # A564966, Injunction Hearing –

October 15, 2013, vol. III at 0348, lines 1-11.) DPS has done just that to Doe 2.

John Doe 3, now 45 years old, pled guilty to lewdness with a child under 14 in Nevada in 2001. (Doe 3 Decl., vol. III at 0378 at ¶ 4). The offense happened in 1994. (Id. at ¶ 3.). Doe 3 was 25 at the time of the offense. (Id. at ¶ 5.). Doe 3 was given 5 years of probation and was required to register as a Tier 1 offender. (Id. at ¶¶ 6-7.). At the time of the plea, he was not subject to community notification. (Id. at ¶ 10.). In 2006, Doe 3 came off of probation, including extensive psychiatric assistance, and is supposed to fall off the registry in 2016. (Id. at ¶ 9.). Doe 3 is classified as a Tier I and recently received a letter from DPS stating he would be reclassified as a Tier III. (Id. at ¶ 13.). Because of the change in the law, Doe 3 will have to register for life. (Id. at ¶ 16.). Because of the change in the law, Doe 3 will be subject to community notification. (Id. at ¶ 14.).

Doe 3 is subject to harsh new terms and conditions that were not a part of his original plea 13 years ago. Doe 3 came off of probation in 2006 and has not been arrested or convicted of any offense since. (Id. at ¶ 11.). Overnight, Doe 3 will be profiled as a dangerous sexual predator with his picture on the website for all of Nevada to see. After Doe 3 loses his job, he will be subject to even more harsh consequences. This was not part of his original plea agreement. (Id. at ¶ ¶ 8, 10.).

John Doe 5, now 50, was enlisted in the United States Marine Corps in 1983. (Doe 5, Decl., vol. III at 0384 at ¶ 4.). In 1984, Doe 5 was adjudicated to a charge of rape when he was 20 years-old and the victim was 19 years-old. (Id.). Doe 5 was sentenced to ten (10) years in prison. (Id. at ¶ 6.). At the time of the plea, he was not subject to lifetime supervision. (Id. at ¶ 8.). At the time of the plea, he was not subject to community notification. (Id. at ¶ 11.). He

was paroled and moved to Nevada in 1993 where he was classified as a low risk Tier I offender. (Id. at ¶ ¶ 9-10.). However, Doe 5 recently received a letter from DPS stating he will be reclassified as a Tier III. (Id. at ¶ 12.). Because of the change in the law, Doe 5 will be subject to lifetime supervision. (Id. at ¶ 14.). Because of the change in the law, Doe 5 will be subject to community notification. (Id. at ¶ 15.).

Doe 5 will be subject to two sets of rules as well. Doe 5 registered as a Tier I in 1993 which would mean he would fall off the registry in 2003. However, Doe 5 remains on the registry a decade later. Sex offender registration was not contemplated upon adjudication and certainly 20 years of registration was not contemplated. (Id. at ¶¶ 7-8.). To add to the injustice for Doe 5, AB 579 will now require him to register for life. (Id. at ¶ 14.). Doe 5 has been subject to arbitrary and punitive laws, and AB 579 is no exception. All other Does face similar harms.

On February 1, 2014, the new law will be implemented and the community notification website goes live, and will expose DOES to website community notification.

On February 1, 2014, DOES' constitutional rights under the Nevada Constitution will be infringed upon and there is no immediate remedy available except equitable relief. There is extensive confusion about the enactment and implementation of the law, and a stay must be issued pending resolution. DOES require immediate clarification of the law.

If this petition is not granted, DOES will suffer immediate, irreversible, irreparable harm on February 1, 2014. (Does Decl., vol. III at 0371-0385.) This will leave DOES without an adequate remedy at law. Injunctive relief to allow the issues raised in DOES' Complaint to be addressed is the appropriate remedy and should have been granted by the District Court.

ARGUMENT

The District Court arbitrarily and/or capriciously abused its discretion in denying the DOES's requests for a temporary restraining order because the DOES face immediate, irreversible, irreparable harm and because they demonstrated a reasonable likelihood of success on the merits. *Univ. & Cmty. Coll. Sys. v. Nevadans for Sound Gov't*, 120 Nev. 712, 721, 100 P.3d 179, 187 (2004). *City of Sparks v. Sparks Mun. Court*, 302 P.3d 1118, 1124 (Nev. 2013); NRS 33.010. The standard for receiving a preliminary injunction mirror those for a TRO. NRS 33.010.

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

Here, DOES face immediate, irreversible, irreparable harm once the website goes live on February 1, 2014. Many DOES will, overnight, be reclassified as violent, sexual predators as Tier III offenders, subject to lifetime supervision and community notification. (Doe Decl. vol. III at 0374-0379; 0383-0385.). The website will become the "source of record" regarding their conviction (NRS 179B.250(2)) and there will be no mechanism to correct errors. DOES do not have a "plain, speedy, and adequate remedy" and the petition must be granted. *See* NRS 34.170.

"It is not an easy task to unring a bell…" *State v. Rader*, 62 Ore. 37 (1912). Once the new law and website are implemented, the bell will not be able to be unrung for DOES. They should be granted a writ of prohibition (or, in the alternative, a writ of mandamus). Petitions for extraordinary writs are addressed to the sound discretion of the Court, and can issue when there is no

plain, speedy, and adequate remedy at law. NRS 34.330; *Jeep Corp. v. Second Judicial Dist. Court*, 98 Nev. 440, 442-43, 652 P.2d 1183, 1185 (1982).

Standard for Mandamus

This Court may issue a writ of mandamus to enforce "their performance of an act which the law enjoins as a duty especially from an office . . . or to compel the admission of a party to the use and enjoyment of a right . . . to which he is entitled and from which he is unlawfully precluded by such inferior tribunal." NRS 34.160.

Mandamus will not lie to control discretionary action unless it is manifestly abused or is exercised arbitrarily or capriciously. *Office of the Washoe County District Attorney v. Second Judicial District Court*, 5 P.3d 562, 566 (2000). Thus a writ of mandamus will issue to control a court's arbitrary or capricious exercise of its discretion." *Id.* (*citing Marshal v. District Court*, 108 Nev. 459, 466, 836 P.2d 47, 52 (1992)); *City of Sparks v. Second Judicial District Court*, 998 P.2d 1190, 1193 (2000). It is within the discretion of the court to determine if such a writ will be considered. *Id.*; *see also State ex. rel.* Dep't Transportation v. Thompson, 99 Nev. 358, 662 P.2d 1338 (1983).

Standard for Prohibition

Nev. Rev. Stat. 34.320 states:

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

A Writ of Prohibition does not serve to correct errors, its purpose is to prevent courts from transcending the limits of their jurisdiction in the exercise of judicial but not ministerial power. *Olsen Family Trust v. District Court*, 110

Nev. 548, 551, 874 P.2d 778, 780 (1994); *Low v. Crown Point Mining Co*., 2 Nev. 75 (1866). However, "a writ of prohibition must issue when there is an act to be 'arrested' which is 'without or in excess of the jurisdiction' of the trial judge." *Houston Gen. Ins. Co. v. District Court*, 94 Nev. 247, 248, 78 P.2d 750, 751 (1978); *Ham v. Eight Judicial District Court*, 93 Nev. 409, 412, 566 P.2d 420, 422 (1977); *see also Goicoechea v. District Court,* 96 Nev. 287, 607 P.2d 1140 (1980); *Cunningham v. District Court*, 102 Nev. 551, 729 P.2d 1328 (1986).

The object of a writ of prohibition is to restrain inferior courts from acting without authority of law in cases where wrong, damage, and injustice are likely to follow such action. *Olsen Family Trust*, 110 Nev. at 552, 874 P.2d at 781; *Silver Peaks Mines v. Second Judicial District*, 33 Nev. 97, 110 P. 503 (1910).

I. THE DISTRICT COURT MANIFESTLY ABUSED ITS DESCRETION OR EXERCISED ARBITRARILY OR CAPRICIOUSLY WHEN IT DENIED DOES' 1-24 TRO

On January 28, 2014 the District court denied DOES' request for a Temporary Restraining Order, ignoring the fact that the DOES assert different causes of action and facts than raised in prior litigation upholding AB 579.who have not had their days in court. The District Court erroneously ruled that it was bound by decisions in the Ninth Circuit and a juvenile case in the Nevada Supreme Court. The District Court abused its discretion or exercised it arbitrarily or capriciously in denying the TRO. (Order, vol. IV at 0605-0606.); *See also Cameron v. State*, 114 Nev. 1281, 968 P.2d 1169 (1998).

A. LEGAL STANDARD FOR AWARDING EMERGENCY EQUITABLE RELIEF

The Nevada Supreme Court has recently explained when injunctive relief is available:

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

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

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

DOES have demonstrated serious questions going to the merits because of the constitutional rights being infringed upon and a balance of hardships that tips sharply in their favor because of the harm that will occur on February 1, 2014. *See Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127 (9th Cir.

2011). DOES show immediate, irreversible, irreparable harm and that it is in the State's best interest for the District Court to grant injunctive relief. *See id*.

Here, as detailed below, DOES face immediate, irreversible, irreparable harm and can show "a reasonable likelihood of success on the merits." Thus, they are entitled to a temporary restraining order. 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 that DOES 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).

DOES overwhelmingly meet the test for a temporary restraining order, and are entitled to relief pending the hearing for the preliminary injunction. The District Court's denial of the request for a temporary restraining order was an arbitrary or capricious exercise of its discretion. *See Marshal*, 108 Nev. At 466, 836 P.2d at 52.

In light of the circumstances set forth above, DOES maintain circumstances of urgency and strong necessity exist as the community notification website and the new law are being implemented on February 1, 2014. DOES maintain circumstances or urgency and strong necessity exist because once DOES are reclassified and subject to the new requirements, they cannot be reversed and will be damaged significantly and permanently. DOES will face the repercussions of the new law before they have an opportunity to have the District Court fully consider their claims. Therefore, DOES are entitled to a temporary restraining order. This Court should grant this petition.

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B. DOES FACE IMMEDIATE, IRREVERSABLE, AND IRREPARABLE HARM

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

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

DOES face serious constitutional harm as well as other serious harms. A TRO is necessary to protect Does' 1-24 constitutional rights, and more importantly, to protect them from immediate, irreversible, irreparable harm. Wrong, damage, and injustice are the result of the District Court's denial of the TRO. *See Olsen Family Trust*, 110 Nev. At 552, 874 P.2d at 781. The District Court has precluded rights entitled to DOES and the petition must be granted to control the discretionary action that was manifestly abused. NRS 34.160; *Washoe County*, 5 P.3d at 566.

DOES will face immediate irreparable harm from the enforcement of AB 579. DOES—and their families—face very grave harm if the law is enforced. The District Court erred in failing to fully consider the irreversible harm that will occur February 1, 2014 that will result from the court's denial. *Washoe County*, 5 P.3d at 566 (mandamus will not lie to control discretionary action unless it is manifestly abused or is exercised arbitrarily or capriciously).

To illustrate the immediate, irreversible, irreparable harm, John Doe 3 pled guilty to an offense in 2001 in Nevada. (Doe 3, Decl., vol. III at 0377-0379.). Doe 3 was given five years of probation and was not subject to community notification at the time of his plea. (Id.). Doe 3 was required to register as a Tier I offender and has been classified as low-risk. (Id.). Doe 3 was supposed to fall off the registry altogether in 2016, however recently received a letter he will be moving to a Tier III and will have to register for life. (Id.). Doe 3 is not a danger to anyone, at least this is what, under the current law, DPS has indicated in classifying him as a Tier I. However, Doe 3 faces immediate, irreversible, irreparable harm because his face will now be on the website for neighbors, friends, family, and employers to see. Once this occurs, this will be immediate, irreversible, irreparable harm. Doe 3 will lose his current job and may have to move from his neighborhood. Most alarmingly is the irreparable damage to his minor children who reside with him, as they will face ridicule and harassment, and possible danger. This is irreparable harm. The bell cannot be unrung.

John Doe 2 pled guilty to an offense in Michigan in 1994. (Doe 2, Decl., vol. III at 0374-0376.). After Doe 2 left the Marine Corps, he was required to register as a Tier I offender in Nevada. (Id.). In 2007, Doe 2 received a letter he would have to continue to register for 15 years from the date of his plea. (Id.). Doe 2 was supposed to fall off the registry on April 24, 2009. (Id.). However, Doe 2 will now be classified as a Tier II and subject to community notification and remain on the website for 25 years. (Id.). Doe 2's face will be on the website, and Doe 2 is afraid he will have to move from his neighborhood and his wife may lose her job. (Id.). Once Doe 2's face is on the website, it will be immediate, irreversible, irreparable harm. Just as is the case for Doe 3, Doe 2 has the alarming problem of the irreparable damage to

his minor child who resides with him, as there is the fear of ridicule and harassment, and possible danger. This is irreparable harm. The bell cannot be unrung.

DOES' fears' are well-founded. Human Rights Watch, in a comprehensive 2007 study of sex offender laws (laws that were far less extreme than AB 579 about to be implemented in Nevada) and their effects and utility, found that public safety was not furthered by expansive notification and restriction provisions, but offenders were subject to vigilantism[1]:

Information provided by state online sex offender registries, as well as information provided during community notification by law enforcement, is not just used by private citizens to determine what streets their children can walk on, or whom to avoid. **Neighbors as well as strangers harass, intimidate, and physically assault people who have committed sex offenses.[2] At least four registered sex offenders have been killed.**

DOES will have to provide their name, aliases, social security number, address, name and address where they will be a worker or student, license plate number, a description of their vehicle, a biological specimen, a complete description with photograph, fingerprints, and palm prints pursuant to NRS 179D.443. For those moving from Tier I status now to Tier III status, they will be required to appear in person every 90 days. NRS 179D.480(1)(c).

Also, every time a person subject to the law changes his or her address, he or she must provide notice to the appropriate law enforcement agency. NRS 179D.470(1). He or she must also provide extensive information, including

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[1] Human Rights Watch study at p. 89; available at http://www.hrw.org/reports/2007/us0907/us0907web.pdf (last checked 1/17/14) (emphasis added).

[2] *Id.*

"all other information that is relevant to updating the record of registration, including, but not limited to, any change in the sex offender's name, occupation, employment, work, volunteer service or driver's license and any change in the license number or description of a motor vehicle registered to or frequently driven by the sex offender." Id.

These requirements—which require, *inter alia*, re-registering every time, for example, a day worker gets a different gig or a homeless person changes shelters, do place undue restraints on offenders' rights to travel—and even to work. Thus, while the 2002 laws and AB 579 did both require in-person registration, in fact what "registration" involves and means is far different.

NRS 179B.250(2) was also amended in 2013 to state that "[t]he community notification website is the source of record for information available to the public concerning offenders listed in the statewide registry…" This source of record is a new system under AB 579. This source of record does not have any statutory controls in place in the event of an error or misclassification.

As amended in 2013, NRS 179B.250(2) states that "[t]he community notification website is the source of record for information available to the public concerning offenders listed in the statewide registry."

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

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

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

C. THE STATE FACES NO HARDSHIP

AB 579 has yet to be enforced, and as detailed in the Application for a Temporary Restraining Order (Appendix, vol. I at 0029-0098.), the State in fact stands to benefit from its non-enforcement. Senator Segerblom and Assemblywoman Fiore, the two legislative members of the States Advisory Committee To Study Sex offender Registration (*see* NRS 179D.132) have called for a stay of enforcement. *Id.*, vol. IV at 0604.

Nothing will change in the event injunctive relief is granted; the status quo will remain in effect. *See Number One Rent-A-Car*, 94 Nev. 780-81. The State will be able to continue enforcing the current laws. The State will also obtain the much needed time to clarify the law and collectively implement the law with consistency and accuracy.

For example, all DOES will remain in the same tiers they are currently in, remain with the same level of supervision they are currently under, and

would not be a danger to the public in any way as they were yesterday or today. DOES would continue to be subject to the plea agreement they entered with the State of Nevada—under the terms that were agreed upon when they were entered. Thus, Nevada is not in any danger if DOES remaining in their current classifications. Challengers do not pose a danger in their current classifications. *See, e.g*., Doe 1-4, Decl., vol. III at 0371-0382.) (Does 1-4 have not been arrested or convicted of *any* offense since their initial offenses). If there were no danger to the public before, they will not automatically become a danger if injunctive relief is granted. The risk-assessment model currently in place will better protect safety. (Appendix, vol. I at 0029-0098.).

D. DOES DEMONSTRATED A REASONABLE LIKELIHOOD OF SUCCESS ON THE MERITS

The DOES demonstrated a reasonable likelihood of success on the merits. (Appendix, vol. I at 0029-0098.). The District Court ruled DOES case was substantially similar to prior cases. This is incorrect because this case is factually different, the prior cases are distinguishable, different causes of action are asserted, the plaintiffs are different, and DOES have not had *their* day in court to decide *their* constitutional issues. In denying the DOES request for a temporary restraining order, the District Court did consider these issues.

DOES raise numerous legal issues, only some of which have already been litigated. That other courts have previously upheld AB 579 in prior challenges to its application does not mean that DOES cannot now show a sufficient likelihood of success on the merits and obtain a preliminary injunction in this case. This case presents new and meritorious claims and the prior cases that have addressed some of the legal questions about AB 579 in other contexts do not preclude relief.

ACLU v. Masto is not legally binding whatsoever on this Court (*see e.g. Doe v. Department of Public Safety and Correctional Services*, 430 Md. 535 (2013) (finding Maryland's enactment of SORNA unconstitutional)) and is factually distinguishable from this case. For example, the DOES raise questions about their expectations based on pleas and raise new contracts clause issues. (Complaint, vol. I at 0001-00028.). DOES also raise Separation of Powers issues regarding the absence of discretion by the court. In contrast, the holding of *ACLU v. Masto*, 670 F. 3d 1046 (2011) was limited to upholding AB 579 on Ex Post Facto and Double Jeopardy grounds (id. at 1046-558), Due Process (id. at 1058-59), and the Contracts Clause (id. at 1060). The Ninth Circuit did not address the question of whether AB 579 violated the Equal Protection Clause or Separation of Powers doctrine. *Masto*, 670 F. 3d 1046. Lastly, Nevada is not bound by federal court precedent and can offer its citizens additional protections than offered by the federal government. *See e.g. Doe*, 430 Md. 535.

This Court's decision in *State of Nevada v. Eighth Judicial District Court* ("*Logan*"), 306 P.3d 369 is also distinguishable. This Court did did not consider Contracts Clause, Separation of Powers, or Equal Protection claims in that matter. More fundamentally, this Court's holding was expressly limited to juveniles (*see, e.g., Logan*, 306 P.3d at 385 ("We conclude that Nevada's scheme of offense-based tiering is consistent with the statute's goal of protecting the public from *recidivist juveniles*; it is reasonable to conclude that *juvenile offenders* who have committed the most severe offenses pose the greatest risk to the public.") (emphasis added).) Further, the decision s factually distinguishable as *Logan* was predicated on different facts than those presented here and a necessarily limited record due to the nature of the proceedings. Thus, DOES respectfully posit that the holdings in *Logan* even as to the claims that are also brought here are also distinguishable.

For example, with regard to the due process claim, this case presents a different problem than considered in Logan. In Logan, this Court held that the juvenile was "not entitled to procedural due process to prove a fact that is irrelevant under the statute." *Id.* at 379. The Court did not consider the problem of errors in classification, nor that of the fact the website is now the "source of record" for sexual convictions. NRS 179B.250(2). If an offender is mistakenly classified or mistakenly included on the registry, the lack of judicial review becomes a paramount problem. Because there is no judicial review or discretion, the offender would be stuck in his or her current status with no form of redress. The offender could remain a Tier III, subject to harsh community notification. For example, Doe 1 asserts that he should not be subject to the AB 579 at all (Doe 1 Decl., vol. III at 0371-0373) but there is no mechanism to address that issue. He has a reasonable likelihood of success on the merits of his due process claim.

II. THE PETITION RAISES IMPORTANT ISSUES OF LAW THAT DEMAND CLARIFICATION

Because a writ of mandamus is an extraordinary remedy, the decision to entertain a petition for the writ lies within the Court's discretion. *Hickey v. District Court*, 105 Nev. 729, 731, 782 P.2d 1336, 1338 (1989). In deciding whether to exercise that discretion, the Court may consider, among other things, whether the petition raises an important issue of law that needs clarification. *State v. District Court (Armstrong)*, 267 P.3d 777, 779-80 (2011).

AB 579 violates the DOES' constitutional rights under the Nevada Constitution. Nev. Const., art. 3, § 1 (Separation of Powers); Nev. Const., art. 1, § 8 (Due Process Clause); Nev. Const., art. 1, § 1 (Equal Protection Clause); Nev. Const., art. 1, § 15 Ex Post Facto Clause; Nev. Const., art. 1, § 8 (Double

Jeopardy Clause); Nev. Const., art. 1, § 15 (Contracts Clause). Therefore, this petition raises important issues of law regarding Does' 1-24 constitutional rights under the Nevada Constitution. *See Diaz v. Dist. Ct*., 116 Nev. 88, 93, 993 P.2d 50, 54 (2000) (quoting *Business Computer Rentals v. State Treas*., 114 Nev. 63, 67, 953 P.2d 13, 15 (1998)). Further, there are important questions about the application of the law which are in dire of need of resolution before application.

A. WHETHER APPLICATION OF AB 579 APPLIES TO DOES OUTSIDE OF THE CRIMINAL JUSTICE SYSTEM

The State has represented that "DPS will not proactively seek out sex offenders not currently in the registration system, not currently in our justice system." (Transcripts Case # A564966, Injunction Hearing – October 15, 2013, vol. III at 0348, lines 1-11). The State also represented:

> So, unless they're in one of those three categories [Tier I-III], we're not going to – if somebody's rehabilitated themselves completely out of the criminal justice system, DPS isn't going to practically seek them out and won't require them to register. So, again, it would only be individuals currently in the system such that they would have been noticed to register in compliance with AB 579. DPS won't seek criminal prosecution of anyone for failure to register unless they fall in any of those enumerated categories. And again, that's provided for in the SORNA guidelines.

(*Id*.).

Yet, the State has sent letters to those who have "rehabilitated themselves completely out of the criminal justice system." (*Id*.). In fact, none of the DOES are currently in the criminal justice system—they are not currently on probation, parole, or in prison. (Does Decl., vol. III at 0371-0385.). For

example, Doe 2 was supposed to register as a Tier I until April 2009. (Doe 2, Decl., vol. III at 0374-0376.). However, DPS sent him a letter that he would be reclassified to a Tier II which carries the 25 year registration requirement. (*Id*.). DPS is in fact "practically seeking him out and requiring him to register," a representation made by the Attorney General that would not occur. (Transcripts Case # A564966, Injunction Hearing – October 15, 2013, vol. III at 0348, lines 1-11). Similarly, Doe 5 was adjudicated in 1983 and became a Tier I in Nevada in 1993. (Doe 5, Decl., vol. III at 0383-0385.). Doe 5 is still a Tier I and will be moved to a Tier III because of the change in the law. (*Id*.). DPS is in fact "practically seeking him out and requiring him to register," a representation made by the Attorney General that would not occur.

B. WHETHER AB 579 CONTAINS PROCEDURAL PROTECTIONS

The State has also represented that there is some form of appeals process regarding classification. (Transcripts Case # A564966, Injunction Hearing – October 15, 2013, vol. III. at 0357-0358.). In other litigation surrounding AB 579, at hearing which resulted in the dissolution of an injunction enjoining the enforcement of AB 579, the district court asked the Attorney General "[h]ow would any of the individuals who feel as though they've been wronged somehow, what would be their avenue of redress, in your view?" (*Id*.). On behalf of the State, the deputy Attorney General responded, "[t]hey could write a letter to DPS. I see those letters come through my office all the time, unfortunately, routed to me, saying that they've been incorrectly tiered." (*Id*.).

Under the current law, offenders could write that letter the deputy Attorney General describes in court that "come through my office all the time." *See* NRS 179D.760. However, NRS 179D.760 does not exist in the new law.

C. WHETHER DOES' PRIOR REGISTRATION PERIODS APPLY

An injunction must also be issued to allow for court proceedings in the District Court to resolve whether any prior registration periods will apply to the new registration periods that will be enacted on February 1, 2014.

Under NRS 179D.490, a full period of registration is 15 years if the offender is a Tier I. If the offender is a Tier II, the registration period is 25 years. *Id*. If the offender is a Tier III, registration is for life. *Id*. The law is silent regarding the beginning date of the "new" registration period. Therefore, it is unclear whether the total registration period begins to run from February 1, 2014, or some other date not indicated in the statute.

D. WHETHER THE LAW CAN APPLY TO ONLY SAME-SEX CONDUCT

While AB 579 was recently amended to explicitly list "the infamous crime against nature" and does not list other sexual acts that have been removed from the criminal books (e.g., sodomy, cite), it is still being applied to offenders who was convicted of such crimes in Nevada, or analogous crimes out of state. For example, Doe 1was convicted on June 6, 1997 in Florida of "solicitation to commit lewd act." (Doe 1 Decl. vol. III at 0371-0373.). The "child" at issue was a fictional 14 year-old male. (Id.).

Doe 1 should not be a Tier 1 let alone a Tier 2 offender, and should not be subject to community and website notification. Hs underlying crime

does not fall within the constitutionally permissible ambit of Nevada's registration and notification laws.

Nevada law governs the determination of sex offender registration and notification requirements for persons in Nevada. *See Donlan v. State*, 249 P.3d 1231, 1233-1234 (Nev. 2011). Nev. Rev. Stat. § 179D.097 defines the sex offenses which trigger registration. It includes in its list of triggering offenses "[a]n offense committed in another jurisdiction that, if committed in this State, would be an offense listed in this section." NRS 179D.097(s).

Doe 1 was charged with solicitation to commit a lewd act; in Florida it is a crime to solicit a person under 16 years to commit a lewd or lascivious act. Florida Statutes 800.040(6). This crime most closely parallels Nevada's crime of solicitation of a minor to commit a "crime against nature" (NRS 201.195), which was previously a triggering sex offense implicating registration and notification. However, NRS 179D.097 has since been amended and the underlying crime, NRS 201.195, has likewise since been stricken from Nevada law by the 2013 Nevada Legislature. A criminal statute that criminalizes homosexual conduct more severely than identical conduct between heterosexuals violates equal protection. *See, e.g., State v. Limon*, 122 P.3d 22 (Kan. 2005) (invaliding statutory rape law that punished homosexual sex between teenagers more severely than heterosexual sex between teenagers).

The crime Doe 1 was charged with is arguably akin to attempt to commit lewdness with a child (NRS 201.230), which is also a triggering offense (NRS 179D.097(l) (lewdness with a child)); NRS 179D.097(q) (attempt). However, the underlying statute only applies to children under

14. If the Nevada legislature had intended to generally criminalize attempted lewdness with, or solicitation of, soliciting of minors 14 or older, it would have. "When the language of a statute is clear on its face, this court will deduce the legislative intent from the words used." *Szydel v. Markman*, 121 Nev. 453, 457, 117 P.3d 200, 202 (2005). Instead, Nevada previously only criminalized same-sex solicitation of sexual activity of minors 14 or older, which was not constitutionally permissible.

Thus, Doe 1 is not and should not be subject to AB 579. His case illustrates the fact that the AB 579 is not being consistently applied and that it is need of clarification.

E. THESE ISSUES REQUIRE CLARIFICATION PRIOR TO ENFORCEMENT OF AB 579

As these issues, which are not the only issues the law presents, demonstrate, AB 579 is a law is in desperate need of clarification. *Diaz*, 116 Nev. at 93, 993 P.2d at 54. However, On February 1, 2014, there will be no margin for error and no discretion of the courts to rectify mistakes.

To demonstrate there is no margin for error, NRS 179B.250(2) states that "[t]he community notification website is the source of record for information available to the public concerning offenders listed in the statewide registry." This source of record is a new system under AB 579. This source of record does not have any statutory controls in place in the event of an error or misclassification. Therefore, DOES would not have *any* protections available if there was an error. The district court's denial of the temporary restraining order is certain to cause immediate wrong, damage, and injustice to DOES. *See Olsen Family Trust*, 110 Nev. at 552, 874 P.2d at 781.

Emergency relief must be granted so that these issues can be clarified before such harms come to pass. *Armstrong*, 267 P.3d at 779-80. DOES cannot possibly follow a law that is a moving target.

CONCLUSION

Based upon the foregoing reasons, Petitioners, DOES, have demonstrated there is irreparable harm and that the denial of the temporary restraining order will deny them an adequate remedy at law. They met the standard for injunctive relief but the District Court denied relief anyway. Due to the irreparable harm and the needed clarification in the law, DOES respectfully requests this Court to grant this petition for writ of prohibition, or in the alternative mandamus. The District Court has manifestly abused its discretion and acted arbitrarily and capriciously in denying Does' 1-24 TRO.

/s/ Kevin Kampschror
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NRAP 27(e) CERTIFICATE

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

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

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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 January 28, 2014 Respondent Court denied Petitioners' Motion for Temporary Restraining Order stating that DOES case is substantially similar as prior cases not binding on the district court where AB 579 has already been deemed constitutional.

b. Respondent Court's ruling permits Real Parties in Interest to enforce AB 579 on February 1, 2014.

3. I notified Respondent of this Emergency Writ Petition by having a copy hand-delivered at approximately 1:00 p.m. on January 29, 2014. I notified counsel for Real Parties in Interest by email to each of them at the addresses set forth in Section 1 above at approximately 5:27 p.m. on January 29, 2014.

Respectfully submitted this 29th day of January, 2014.

/S/ Kevin Kampschror
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