

# GOVERNMENT AFFAIRS UPDATE

November 8, 2019

## FEDERAL AND STATE POLITICS

- A recent poll conducted by the publication “The Nevada Independent” showed former Vice President Joe Biden holding a 10-point lead in Nevada over Massachusetts Senator Elizabeth Warren and Vermont Senator Bernie Sanders. The poll sampled 600 potential Democratic caucus-goers over a six-day period and has a margin of error of 4%. The top issue for respondents was electing a candidate who can beat President Donald Trump, a question posed that was roughly two to three times more popular than any other question.
- A proposed constitutional amendment backed by the League of Women Voters of Nevada and RepresentUs aims to create a bipartisan, independent redistricting commission to combat partisan gerrymandering. If approved, the ballot initiative would create a seven-member “Independent Redistricting Commission” designed to avoid individuals with political or partisan histories. Under Nevada law, approving a constitutional amendment is a five-year process that requires approval in two subsequent elections. The next census will take place next year, and new maps will be drawn and approved by the Legislature in 2021. This would mean if the ballot initiative passes, the state will have to go through at least one election cycle with legislatively drawn maps before moving to the new system in 2023.
- A controversial ordinance that makes sleeping or camping in downtown Las Vegas a misdemeanor crime if there is room at a shelter available, was passed this week by a 5-2 vote, with Councilmembers Diaz and Knudsen in opposition. City officials have described the ordinance as a necessary step to address the homeless problem, but the issue has sparked major backlash from advocates nationwide, including several Democratic Presidential hopefuls. While the ordinance goes into effect this weekend, the criminal penalty provisions will not go into effect until January 2020.
- Nevada Secretary of State Barbara Cegavske reported an increase of active registered voters during the month of October, increasing by 5,899 voters, or 0.38%. Democratic registration increased 0.84% while Republican registration decreased 0.13%. Nonpartisan registration increased 0.43% and “other” minor political parties decreased 0.61%.
- In an unprecedented move, Assembly Republicans have given pre-primary endorsement to Jake Wiskerchen for AD 31. Jake is running against incumbent Skip Daly. Jake is a fifth generation Nevadan and the small business owner of a mental health practice. The district covers parts of Sparks, Spanish Springs, Sun Valley, Golden Valley, and Lemmon Valley in Northern Nevada.
- In 2020, two seats on the seven member Nevada Supreme Court will be up for election. Justice Pickering has announced her intention to run for re-election, while Justice Gibbons has announced his intention to retire. Interest for both seats is already generating with Assemblyman Ozzie Fumo formally announcing he will seek Gibbons’ seat, and Douglas Herndon, the chief presiding criminal judge for Clark County’s District Court, will run in one of the races as well.

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- In the 8<sup>th</sup> Judicial District located in Clark County, all 52 district court judges will be on the ballot in 2020 for a six-year term.
- Michael J. Brown has been named the Director of the Governor’s Office of Economic Development, taking over an agency that has increasingly come under fire for multibillion-dollar tax breaks doled out to large tech companies, such as Tesla, Amazon, Apple and Google. Brown is the former Director of the Department of Business and Industry, which will be taken over by longtime deputy director Terry Reynolds.
- Deonne E. Contine, the Director of the Department of Administration, resigned her position this week citing family obligations. Contine was appointed to the Department earlier this year after an unsuccessful run for the Assembly in 2018, but is best known as the former head of the Department of Taxation and her role leading the effort to authorize recreational marijuana sales. It was revealed this week, however, that a “Deonne E. Contine” holds eight marijuana licenses in Nevada, and Nevada law requires all elected and appointed officials to disclose their sources of income. While Contine has denied holding the licenses, the coincidence and timing of the resignation is unusual.
- McDonald Carano is excited to announce that [Mackenzie Warren](#) has joined the Government Affairs and Advocacy team as an Associate and Vice President. Mackenzie will be based in the Las Vegas office along [Maggie O’Flaherty](#) who is relocating from Reno.

## LEGAL

- After the 2019 legislative session, a group of GOP legislators and business interests filed suit against the State on two bills that increased state revenues by canceling scheduled rate decreases. Both bills were passed with a simple majority. The suit alleges that the bills failed to obtain a super-majority vote as required by the Nevada Constitution for any legislation that increases revenue. The State argues that the bills only required a simple majority because cancelling a rate decrease does not create new revenue, but only carries forward existing revenue. The State relies on arguments set forth by the Legislative Counsel Bureau during the session opining that a simple majority is sufficient for bills that cancel rate decreases, as well as for bills that cancel tax exemptions, on the theory that the underlying base computation for the tax is not impacted.

The case carries significant implications. If the State prevails, the legislature will presumably be free to modify existing taxes in a variety of ways without a supermajority vote requirement. Tax exemptions, thresholds for taxes such as the Commerce Tax, and even longstanding property tax abatements could all presumably be changed or eliminated with a simple majority. With the GOP in the State Senate holding a one-vote cushion over a super-majority, the stakes of the case are high for both the GOP and for Nevada taxpayers. The case is currently in briefing before the First Judicial District Court in Carson City. Oral argument has been scheduled for December 16, 2019. This case will almost certainly end up before the Nevada Supreme Court at some point.

This case is also interesting because one of the defendants is a democratic state senator. The plaintiffs, including eight republican state senators, filed a motion to disqualify the legislative counsel bureau from representing the democratic state senator. The legislative counsel bureau not only opposed the motion to disqualify but filed a separate motion on behalf of the entire legislature to intervene in the case as a party. The legislative counsel bureau has historically been a non-partisan office. It will be interesting to see if this aspect of the case gives more credence to previously sporadic calls for partisan legislative counsel bureau staff.

- Early last month the Taxation Commission attempted to adopt a regulation pertaining to the application of the sales tax to delivery charges. Opponents of the regulation pointed out that it was fatally flawed with both procedural and substantive errors, and that it could not be adopted without starting the regulatory process over because it had already been pending for over two years. Additionally, various substantive issues were also pointed out, including conflicts with statute and unintended consequences on retailers. The Tax Department eventually agreed that the two-year process required a restart of the regulatory process, and a new regulatory workshop will be scheduled at some point in the future.
- An additional regulation released by the Department of Taxation pertains to the application of the sales tax to retailers who sell food both for immediate consumption and to-go. The Department is proposing a calculation whereby total sales of food is compared to total sales of food for immediate consumption, and further purports to tax all sales in most circumstances if 75% or more of the total food sales are for immediate consumption. A regulatory workshop will be scheduled in the future.
- Clark County Sheriff Joe Lombardo recently announced that the Las Vegas Metro Police Department will no longer honor an agreement with Immigrations and Customs Enforcement to hold suspected violators of immigration laws until federal authorities could take custody of those individuals. The Sheriff's office pointed to a court order in California holding that such immigration holds are unconstitutional. Others have questioned whether such a decision jeopardizes federal funding and may result in the federal government labelling Clark County a "sanctuary" jurisdiction.

## THIS WEEK IN HISTORY

Named for former coach and Director of Athletics, Glenn "Jake" Lawlor, the \$26 million Lawlor Events Center at UNR, home of Wolf Pack basketball, held it's grand opening (November 4, 1983); Flour made at Riverside Mill Company in Reno won 1<sup>st</sup> prize at the World's Fair in Chicago (November 4, 1893); Nevada Governor Paul Laxalt defeated then-Lieutenant Governor Harry Reid for the office of U.S. Senator by 611 votes after a recount (November 5, 1974); The 31-story Landmark Hotel in Las Vegas was imploded and video footage of the event was incorporated into the movie "Mars Attacks!" (November 7, 1995).