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1 ADAM PAUL LAXALT  
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2 GREGORY D. OTT  
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(775) 684-1229  
5 *Attorneys for the State of Nevada,  
State Public Charter School Authority*

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

9 DAVID & CARLY HELD individually  
and on behalf of their minor child N.H.;  
10 VERONICA BERRY individually and on  
behalf of her minor child J.B.; RED AND  
11 SHEILA FLORES individually and on  
behalf of their minor child C.F.;  
12 JAOUAD AND NAIMI BENJELLOUN,  
individually and on behalf of their minor  
13 children L.K.1 and L.K.2.; NEVADA  
CONNECTIONS ACADEMY,

14 Plaintiffs,

15 vs.

16 STATE OF NEVADA, ex rel., STATE  
PUBLIC CHARTER SCHOOL  
17 AUTHORITY, a political subdivision of  
the STATE OF NEVADA, and PATRICK  
18 GAVIN, in his official capacity as  
Executive Director of the STATE  
19 PUBLIC CHARTER SCHOOL  
AUTHORITY,

20  
21 Respondents.

CASE NO. 16 OC 002491 B

DEPT. NO. I

**STATE PUBLIC CHARTER SCHOOL  
AUTHORITY AND PATRICK  
GAVIN'S MOTION FOR  
PROTECTIVE ORDER TO  
PREVENT TESTIMONY OF DR.  
STEVE CANAVERO AND  
KATHLEEN CONABOY**

22 Defendants STATE OF NEVADA, ex rel., STATE PUBLIC CHARTER SCHOOL  
23 AUTHORITY (the "Authority"), and PATRICK GAVIN ("Mr. Gavin") submit this Motion  
24 for Protective Order on the grounds that Dr. Steve Canavero (Dr. Canavero) has no  
25 testimony relevant to the hearing on November 30, 2016 (November Hearing) on the  
26 Motion for Preliminary Injunction in accordance with Nevada Rules of Civil Procedure  
27 (NRCPP) 45(c)(3)(A).

28 ///

Attorney General's Office  
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**Third-Party Witness Has No Testimony Relevant to the Scope of the  
November Hearing**

Nevada Connections Academy (NCA) has asked this Court for a hearing on its Motion for a Preliminary Injunction to prevent the Authority from holding a December 16, 2016 hearing regarding a Notice of Intent to Revoke a Written Charter (Notice of Intent). The sole issue for the Court to decide at the November Hearing will be whether the hearing set for December 16, 2016 should proceed or not.

Dr. Canavero is currently serving as the Superintendent of Public Instruction for the State of Nevada and serves as the educational leader for the system of K-12 public education in this State.<sup>1</sup> Dr. Canavero is not a member of the Authority Board nor is he employed by the Authority.<sup>2</sup> He serves as head of the Nevada Department of Education (NDE), which is not a party to this case.<sup>3</sup> NDE is not the sponsor of NCA: it has no ability to issue a Notice of Intent or to hold a hearing on the deficiencies that prompted the Notice of Intent.<sup>4</sup> NCA has stated that Dr. Canavero is necessary to provide testimony regarding the Authority's 2013 renewal of NCA and as to conversations that he had regarding graduation rate.<sup>5</sup> Neither of these present, disputed facts are relevant to the Motion for Preliminary Injunction. The renewal in 2013 occurred years before the Authority's issuance of the Notice of Intent, and the NCA renewal in 2013 is a matter of public record established by the minutes of the meeting. Furthermore, conversations Dr. Canavero had regarding the graduation rate have no relevance to the Notice of Intent as NCA has not disputed the graduation rate. Additionally, the graduation rate calculation is a pure matter of law.<sup>6</sup> Dr. Canavero is not a party, has no control over

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<sup>1</sup> NRS 385.175.  
<sup>2</sup> Exhibit 1, Declaration of Gregory D. Ott, paragraph 2.  
<sup>3</sup> Exhibit 1, Declaration of Gregory D. Ott, paragraph 3.  
<sup>4</sup> Exhibit 1, Declaration of Gregory D. Ott, paragraph 4.  
<sup>5</sup> Dr. Canavero served as Director of the Authority in 2013, but was not a member of its Board  
<sup>6</sup> 34 CFR 200.19(b)(1).

1 Authority actions, does not participate in Authority deliberations, and has no testimony  
2 relevant to the November Hearing.<sup>7</sup>

### 3 **Improper Notice and Undue Burden**

4 Dr. Canavero is subpoenaed to appear at the November Hearing. Defendants are  
5 informed and believe that NCA served Dr. Canavero on November 18, 2016 just six  
6 business days prior to the hearing date. Six business days is not reasonable time for  
7 compliance and presents an undue burden for a third-party witness with no relevant  
8 testimony to give. Additionally, defense counsel learned late Monday evening that Dr.  
9 Canavero had surgery on Monday and is currently recuperating and may be physically  
10 unable to attend the November Hearing.<sup>8</sup>

### 11 **Harassment of Witnesses**

12 Dr. Canavero's subpoena for testimony is the latest in a string of aggressive  
13 discovery requests that make no attempt to comport with the Nevada Rules of Civil  
14 Procedure, show no respect for the burdens that NCA is attempting to place on witnesses,  
15 and serve only to harass prominent public servants of the education system of Nevada.

16 NCA's aggressive discovery requests commenced shortly after this Court set a  
17 hearing regarding NCA's Motion for a Preliminary Injunction on November 15, 2016.  
18 Despite having initially sued the Authority on August 26, 2016, NCA did not disclose that  
19 discovery would be requested prior to setting.<sup>9</sup> After the setting for the November  
20 Hearing, and after NCA's request to stipulate to prehearing discovery was denied, NCA  
21 filed a request to open discovery and despite having no ruling from this Court, proceeded  
22 to attempt to perfect service of the deposition notices that were void on their face as a  
23 violation of NRCP 26.<sup>10</sup>

24 ///

25 <sup>7</sup> Exhibit 1, Declaration of Gregory D. Ott, paragraph 5.

26 <sup>8</sup> Exhibit 1, Declaration of Gregory D. Ott, paragraph 6.

27 <sup>9</sup> Case No. 16 OC 001941B and Declaration of Gregory D. Ott. Paragraph 7

28 <sup>10</sup> To date NCA has issued two deposition notices for Patrick Gavin, three for Steve  
Canavero, and one each for Adam Johnson and Kathleen Conaboy, despite the fact that  
discovery is not open.

1 The Authority is informed and believes that Dr. Canavero was served on November  
2 18, 2016 not only with a subpoena for the November Hearing, but also with a void  
3 deposition subpoena for November 29, 2016. Further, based on information, the  
4 Authority believes that process servers continue to attempt to serve other non-party  
5 witnesses with subpoenas for dates where they have already indicated unavailability.  
6 Non-Party Witness Kathleen Conaboy was also approached November 28, 2016 with a  
7 subpoena that is believed to have been for the November Hearing. Ms. Conaboy has  
8 previously filed a declaration with this Court attached to Defendant's Opposition to  
9 Plaintiffs' Request for Prehearing Discovery demonstrating her unavailability based on  
10 travel. Ms. Conaboy should be protected from and subpoena that has been or may be  
11 served on Ms. Conaboy based on undue burden of pre-arranged travel.

12 NCA have responded to a crisis of their own making by delay in seeking pre-  
13 hearing discovery by harassing third-party witnesses with documents Defendants' know  
14 have no legal affect. NCA's efforts to bully witnesses into attending improper depositions  
15 and hearings that were scheduled without their knowledge or consideration of their  
16 schedules should not be rewarded.

### 17 CONCLUSION

18 Dr. Canavero possesses no information relevant to the November Hearing, and  
19 furthermore, the subpoena requesting his testimony does not allow adequate time for  
20 compliance. No decision has been made on NCA's closure and this Court should not  
21 permit NCA to encumber the Authority with civil discovery or irrelevant testimony from

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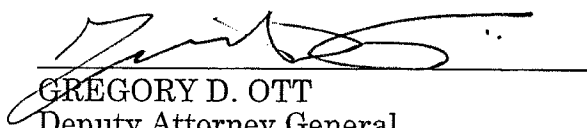
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1 third-party witnesses prior to even a final decision. This Court should issue an Order  
2 protecting Dr. Canavero from NCA's attempts to force him to attend the  
3 November Hearing.

4 DATED this 29th day of November, 2016.

5  
6 ADAM PAUL LAXALT  
Attorney General

7  
8 By:

  
9 GREGORY D. OTT  
Deputy Attorney General  
10 *Attorneys for State of Nevada,*  
*State Public Charter School Authority*

Attorney General's Office  
100 N. Carson Street  
Carson City, Nevada 89701-4717

**CERTIFICATE OF SERVICE**

I certify that I am an employee of the State of Nevada, Office of the Attorney General, and that on this 29th day of November, 2016, I filed the foregoing **STATE PUBLIC CHARTER SCHOOL AUTHORITY AND PATRICK GAVIN'S MOTION FOR PROTECTIVE ORDER TO PREVENT TESTIMONY OF DR. STEVE CANAVERO**, with the Clerk of the Court and served the following party by way of the United States Postal Service:

Nevada Connections Academy  
555 Double Eagle Ct., #2000,  
Reno, NV 89521

And by electronic mail to:

Laura K. Granier  
Davis Graham & Stubbs, LLP  
50 W Liberty St., Ste. 950  
Reno, NV 89501  
[Laura.granier@dgsllaw.com](mailto:Laura.granier@dgsllaw.com)

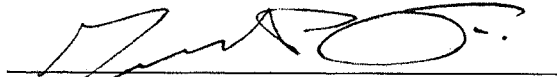
Patrick Gavin, Executive Director  
State Public Charter School Authority  
1749 North Stewart St., Ste. 40  
Carson City, NV 89706-2543  
[pgavin@spsca.nv.gov](mailto:pgavin@spsca.nv.gov)

/s/ Marissa Houk  
Marissa Houk, Employee of the State of  
Nevada, Office of the Attorney General

**AFFIRMATION PURSUANT TO NRS 239B.030**

The undersigned does hereby affirm that the preceding document does not contain the personal information of any person.

DATED this 29th day of November, 2016.



GREGORY D. OTT  
Deputy Attorney General  
*Attorneys for the State of Nevada,  
State Public Charter School Authority*

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EXHIBIT INDEX

Exhibit	Description	Number of Pages
1	Declaration of Gregory D. Ott	2

Attorney General's Office  
100 N. Carson Street  
Carson City, Nevada 89701-4717

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**EXHIBIT 1**

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21

22 Respondents.

CASE NO. 16 OC 002491 B

DEPT. NO. I

**DECLARATION OF GREGORY D.  
OTT IN SUPPORT OF  
DEFENDANTS' MOTION FOR  
PROTECTIVE ORDER**

23 I, Gregory D. Ott, do certify under penalty of perjury as follows:

24 1. I am the Deputy Attorney General currently assigned as counsel to the State  
25 Public Charter School Authority staff and have personal knowledge of the facts stated  
26 herein, and if called upon to testify as to the matters set forth herein, I would be  
27 competent to do so. I make this declaration in support of Defendants' Motion to Dismiss  
28 ("Motion").

1           2.     Dr. Steve Canavero is not a member of the Authority Board, or employed by  
2 the Authority.

3           3.     Dr. Canavero serves as head of the Nevada Department of Education (NDE),  
4 who is not a party to this case.

5           4.     NDE is not the sponsor of NCA: it has no ability to issue a Notice of Intent or  
6 to hold a hearing on the deficiencies that prompted the Notice of Intent.

7           5.     Dr. Canavero is not a party and has no control over Authority actions and  
8 does not participate in Authority deliberations.

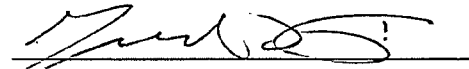
9           6.     I learned late Monday evening that Dr. Canavero had surgery on Monday,  
10 November 28 and was recuperating and may be physically unable to attend the November  
11 30 hearing.

12          7.     I was not informed that Plaintiffs would request discovery prior to setting  
13 the hearing on Plaintiff's Motion for Preliminary Injunction on November 15.

14          8.     Plaintiffs have issued 2 deposition notices for Patrick Gavin, 3 for Steve  
15 Canavero and 1 each for Adam Johnson and Kathleen Conaboy, despite the fact that  
16 discovery is not open.

17           DATED this 29th day of November, 2016.

18  
19  
20           By:

  
GREGORY D. OTT  
Deputy Attorney General