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10 *Attorneys for Plaintiffs*

11
12 **IN THE FIRST JUDICIAL DISTRICT COURT**
13 **OF THE STATE OF NEVADA IN AND FOR CARSON CITY**

14 JOHN WALKER, an individual;
15 THE CENTER FOR BIOLOGICAL
16 DIVERSITY, a 501(c)(3) registered charitable
organization,

17 Plaintiffs,

18 vs.

19 JAMES A. SETTELMEYER, an individual;
20 JOSEPH M. LOMBARDO, in his official
capacity as Governor of the State of Nevada;
21 DEPARTMENT OF CONSERVATION AND
NATURAL RESOURCES, STATE OF
22 NEVADA, a political subdivision of the State
of Nevada,

23 Defendants.

Case No.:

Dept. No.:

**COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF AND PETITION
FOR WRIT OF MANDAMUS**

Arbitration Exemption: Declaratory and
Injunctive Relief

24
25 Plaintiffs, John Walker and The Center for Biological Diversity (hereinafter “Plaintiffs”), by
26 and through undersigned counsel, bring this Complaint for Declaratory and Injunctive Relief, and
27 for a Writ of Mandamus against Defendants, James A. Settelmeyer, Joseph M. Lombardo, in his
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1 official capacity as Governor of the State of Nevada, and the Department Of Conservation and
2 Natural Resources, State of Nevada (hereinafter, “Defendants”). Under this Complaint, Plaintiffs
3 allege as follows:

4 **JURISDICTION AND VENUE**

5 1. This Court has jurisdiction to issue a writ of mandamus pursuant to NRS 34.160, and
6 to grant declaratory and injunctive relief pursuant to NRS 30.030, 30.040, and 33.010.

7 2. Venue is proper under NRS 13.020 and 13.040 and pursuant to NRS 34.160.

8 **PARTIES**

9 3. Plaintiff John Walker is an elector and resident of Douglas County, Nevada, and
10 previously worked for the State of Nevada’s Environmental Commission and the Nevada Division
11 of Environmental Protection as an Environmental Scientist level four (4).

12 4. Plaintiff The Center for Biological Diversity is a 501(c)(3) registered charitable
13 organization known for its work protecting endangered species through science, law, and creative
14 media, with a focus on protecting the lands, waters and climate that species need to survive.

15 5. Plaintiffs are informed and believe and thereupon allege that at all times relevant
16 herein, Defendant James A. Settlemeyer, was and is the appointed Director of the Department of
17 Conservation and Natural Resources for the State of Nevada.

18 6. Plaintiffs are informed and believe and thereupon allege that at all times relevant
19 herein, Defendant Joseph M. Lombard, was and is the Governor of the State of Nevada, and
20 appointed co-Defendant Settlemeyer to his current role.

21 7. Plaintiffs are informed and believe and thereupon allege that at all times relevant
22 herein, Defendant Department Of Conservation and Natural Resources, State of Nevada, was and is
23 an executive agency of the State of Nevada.

24 **GENERAL FACTUAL ALLEGATIONS**

25 8. Defendant Settlemeyer was a member of the Nevada State Senate, representing
26 District 17, beginning at the general election of 2010, and left office on November 9, 2022, having
27 been re-elected to four-year terms in 2014 and 2018.

1 paragraphs of this Complaint as though set forth fully herein.

2 16. Nevada Constitution Article IV, Section 8 prohibits the appointment of Nevada
3 legislators “to any civil office of profit under this State” that has its salary increased “during the term
4 for which he [or she] shall have been elected, [or] for one year thereafter[.]” *See Nev. Const. art. IV,*
5 § 8.

6 17. During Mr. Settlemeyer’s term as a Nevada State Senator, the salary for the Director
7 of the NDCNR increased multiple times, including in 2022.

8 18. Mr. Settlemeyer was appointed Director of the NDCNR, a civil office of profit under
9 this State, less than one year after Defendant Settlemeyer’s term as a Nevada State Senator ended.

10 19. There is an actual controversy between Plaintiffs and the Defendants, and each of
11 them, as to the validity of Mr. Settlemeyer’s appointment as Director of the NDCNR pursuant to
12 Article IV, Section 8 of the Nevada Constitution, and its application to Defendants.

13 20. Mr. Settlemeyer’s appointment as Director of the NDCNR is invalid and in violation
14 of Article IV, Section 8 of the Nevada Constitution, and he is ineligible to serve in his current
15 capacity.

16 21. Plaintiffs seek relief pursuant to NRS 30.010, *et seq.*, in the form of a declaration that
17 Mr. Settlemeyer’s appointment as Director of the NDCNR violates Article IV, Section 8 of the
18 Nevada Constitution. A declaration resolving the actual controversy between Plaintiffs and
19 Defendants will serve a useful purpose in settling the legal issues in this action.

20 22. It was necessary for Plaintiffs to retain the services of an attorney to bring this cause
21 of action, and they should be properly compensated therefore.

22 **SECOND CAUSE OF ACTION**
23 **Violation of Nev. Const. Art. IV, Sec. 8**
24 **(Injunctive Relief)**

25 23. Plaintiffs incorporate by reference each of the allegations contained in the foregoing
26 paragraphs of this Complaint as though set forth fully herein.

27 24. Nevada Constitution Article IV, Section 8 prohibits the appointment of Nevada
28 legislators “to any civil office of profit under this State” that has its salary increased “during the term

1 for which he [or she] shall have been elected, [or] for one year thereafter[.]” *See* Nev. Const. art. IV,
2 § 8.

3 25. During Mr. Settlemeyer’s term as a Nevada State Senator, the salary for the Director
4 of the NDCNR increased multiple times.

5 26. Mr. Settlemeyer was appointed Director of the NDCNR, a civil office of profit under
6 this State, less than one year after Defendant Settlemeyer’s term as a Nevada State Senator ended.

7 27. Mr. Settlemeyer’s appointment as Director of the NDCNR violates Article IV,
8 Section 8 of the Nevada Constitution.

9 28. Without this Court’s intervention, Mr. Settlemeyer will continue to violate Article
10 IV, Section 8 of the Nevada Constitution, and irrevocable and irreparable harm will occur to the
11 rights provided under this provision of the Nevada Constitution.

12 29. Plaintiffs have no other adequate remedy at law to prevent the constitutional violation
13 caused by Defendants.

14 30. Plaintiffs, acting in the public interest, are entitled to injunctive relief to stop and
15 prevent the violation of Article IV, Section 8 of the Nevada Constitution by Defendants stated herein.
16 The Court has the power to grant such relief by enjoining Mr. Settlemeyer’s further occupancy of
17 his current office, pursuant to its inherent ability to grant equitable relief and the provisions of
18 NRS 33.010, *et seq.*

19 31. It was necessary for Plaintiffs to retain the services of an attorney to bring this cause
20 of action, and they should be properly compensated therefore.

21 **WRIT OF MANDAMUS**

22 32. Plaintiffs incorporate by reference each of the allegations contained in the foregoing
23 paragraphs of this Complaint as though set forth fully herein.

24 33. This Court has the power to issue writs of mandamus, and all other writs proper and
25 necessary to the complete exercise of their jurisdiction. *See* Nev. Const. art. VI, § 6(1).

26 34. NRS 34.160 states that a writ of mandate “may be issued by ... a district court or a
27 judge of the district court, to compel the performance of an act which the law especially enjoins as
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1 a duty resulting from office, trust or station[.]” NRS 34.160; *see also DR Partners v. Bd. of Cnty.*
2 *Comm’rs of Clark Cnty.*, 116 Nev. 616, 620, 6 P.3d 465, 468 (2000).

3 35. Nevada law specifically authorizes this Court to issue a writ of mandamus when no
4 plain, speedy and adequate remedy exists in the ordinary course of the law. *See* NRS 34.170.

5 36. Nevada Constitution Article IV, Section 8 prohibits the appointment of Nevada
6 legislators “to any civil office of profit under this State” that has its salary increased “during the term
7 for which he [or she] shall have been elected, [or] for one year thereafter[.]” *See* Nev. Const. art. IV,
8 § 8.

9 37. During Mr. Settlemeyer’s term as a Nevada State Senator, the salary for the Director
10 of the NDCNR increased multiple times.

11 38. Mr. Settlemeyer was appointed Director of the NDCNR, a civil office of profit under
12 this State, less than one year after his term as a Nevada State Senator ended.

13 39. Mr. Settlemeyer’s appointment as Director of the NDCNR violates Article IV,
14 Section 8 of the Nevada Constitution.

15 40. Plaintiffs respectfully request that the Court issue a writ of mandamus commanding
16 Governor Lombardo to exercise his non-discretionary duty to vacate the office of Director of the
17 NDCNR and rescind the appointment of Mr. Settlemeyer as Director of the NDCNR.

18 41. Plaintiffs have no other adequate remedy at law to prevent the constitutional violation
19 caused by Defendants.

20 42. It was necessary for Plaintiffs to retain the services of an attorney to bring this cause
21 of action, and they should be properly compensated therefore.

22 **PRAYER FOR RELIEF**

23 **WHEREFORE**, Plaintiffs ask for the following relief:

24 A. For a declaration that Mr. Settlemeyer’s appointment as Director of the NDCNR
25 violates Article IV, Section 8 of the Nevada Constitution;

26 B. For an injunction against Mr. Settlemeyer and the NDCNR prohibiting
27 Mr. Settlemeyer from continuing to serve as Director of the NDCNR;

28

1 C. For the Court to issue a writ of mandamus that commands Governor Lombardo to
2 vacate the office of Director of the NDCNR and rescind the appointment of Mr. Settlemeyer as
3 Director of the NDCNR;

4 D. For reasonable attorneys' fees and costs; and

5 E. For such other and further relief as may be just, equitable, and proper, to effect the
6 necessary result required in this action.

7 **AFFIRMATION**

8 The undersigned hereby affirm that the foregoing document does not contain the social
9 security number of any person.

10 DATED this ___ day of February, 2023.

11 By: _____

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