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Testimony of Solicitor General Jeff E. Parker on AB 341

With its waiver of Eleventh Amendment immunity, AB 341 eliminates a legal defense otherwise available to the State of Nevada in federal actions and thus will allow plaintiffs to avoid the Nevada tort damages cap contained in NRS 41.035. Therefore, the bill will have a substantial effect on the resources, primarily financial, on the State of Nevada, its agencies, and the Office of the Attorney General. Currently, plaintiffs can seek relief in Nevada State courts, subject, of course, to the tort damages cap contained in NRS 41.035

Civil rights actions are the most expensive cases brought against the State. The average cost over the past five fiscal years to settle a civil rights claim against the State is \$40,964. A conservative estimate of the cost of taking a simple case to trial in federal court would exceed \$20,000 per case. It is likely the Office of the Attorney General would need to add at least two additional Deputy Attorneys General, as well as support staff, to handle the increase in caseload. It is also likely that in a case in which a State agency is named as well as an employee of the agency, the State would have to hire outside counsel to avoid a conflict at an estimated cost of \$40,000 per case.

Unfortunately, because of the federal court rules, the State is in a lose/lose situation.

Generally if the State loses a case in federal court, the State not only has to pay the

109
ASSEMBLY JUDICIARY
DATE: 4/2/03 ROOM: 3133 EXHIBIT E
SUBMITTED BY: JEFF PARKER

judgment but all the plaintiff's attorney fees and costs. If the State prevails in federal court, it is at the court's discretion to award the State its costs and the State is rarely awarded fees unless it can prove the case was frivolous. Therefore, the cost of taking a case to trial is rarely if ever recovered by the State.

A conservative estimate of the cost to the Tort Claims Fund alone would be \$1,500,000 per year or about a 30% to 50% increase. These costs would be reflected in increased premiums paid by all State agencies. The majority of these are General Fund agencies. It is conceivable that, given the expansion of possible causes of action to which the State would be exposed if this bill passes, the total liability of the State could more than double.

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