

IN THE SUPREME COURT OF THE STATE OF NEVADA

NEVADA POLICY RESEARCH
INSTITUTE, a Nevada domestic nonprofit
corporation,

Appellant,

vs.

NICOLE J. CANNIZZARO, an individual
engaging in dual employment with the
Nevada State Senate and Clark County
District Attorney; JASON FRIERSON, an
individual engaging in dual employment
with the Nevada State Assembly and Clark
County Public Defender; HEIDI SEEVERS
GANSERT, an individual engaging in dual
employment with the Nevada State Senate
and University of Nevada, Reno; GLEN
LEAVITT, an individual engaging in dual
employment with the Nevada State
Assembly and Regional Transportation
Commission; BRITTNEY MILLER, an
individual engaging in dual employment
with the Nevada State Assembly and Clark
County School District; DINA NEAL, an
individual engaging in dual employment
with the Nevada State Senate and Nevada
State College; JAMES OHRENSCHALL, an
individual engaging in dual employment
with the Nevada State Senate and Clark
County Public Defender; MELANIE
SCHEIBLE, an individual engaging in dual
employment with the Nevada State Senate
and Clark County District Attorney; JILL
TOLLES, an individual engaging in dual
employment with the Nevada State
Assembly and University of Nevada, Reno;

Supreme Court Case No.: 82341

Electronically Filed
Feb 04 2021 04:37 p.m.
District Court Case No.:
A-20-817757-C Elizabeth A. Brown
Clerk of Supreme Court

**DOCKETING STATEMENT
CIVIL APPEALS**

and SELENA TORRES, an individual
engaging in dual employment with the
Nevada State Assembly and Clark County
School District,

Respondents,

and Legislature of the State of Nevada,

Intervenor-Respondent.

1. Judicial District: Eighth Judicial District, Department 24

County: Clark Judge: The Honorable Jim Crockett

District Ct. Case No.: A-20-817757-C

2. Attorney(s) filing this docketing statement:

Attorneys: Deanna L. Forbush, Esq. and Colleen E. McCarty, Esq.

Telephone: (702) 262-6899

Firm: Fox Rothschild LLP

Address: 1980 Festival Plaza Drive, Suite 700, Las Vegas, NV 89135

Client: Nevada Policy Research Institute ("NPRI")

3. Attorney(s) representing Respondents:

Attorneys: Berna L. Rhodes-Ford, Esq.

Telephone: (702) 992-2378

Firm: Nevada State College

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Clients: Respondents Heidi Seevers Gansert and Dina Neal

Attorneys: Gary A. Cardinal, Esq.

Telephone: (775) 784-3495

Firm: University of Nevada, Reno

Address: 1664 N. Virginia Street/MS 0550, Reno, NV 89557

Clients: Respondents Heidi Seevers Gansert and Dina Neal

Attorneys: Bradley Schrager, Esq. and Daniel Bravo, Esq.

Telephone: (702) 639-5102

Firm: Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP

Address: 3556 E. Russell Road, Second Floor, Las Vegas, NV 89120

Clients: Respondents, Brittney Miller and Selena Torres

Attorneys: Jonathan D. Blum, Esq.

Telephone: (702) 910-3329

Firm: Wiley Petersen

Address: 1050 Indigo Drive, Suite 200B, Las Vegas, NV 89145

Clients: Respondents Jason Frierson, Nicole Cannizzaro, and Melanie Schieble

Attorneys: Kevin C. Powers, Esq.

Telephone: (775) 684-6830

Firm: Legislative Counsel Bureau, Legal Division

Address: 401 S. Carson Street, Carson City, NV 89701

Client: Intervenor-Respondent, Legislature of the State of Nevada

4. Nature of disposition below (check all that apply):

- | | | |
|------------------------------------------------------------|--------------------------|---------------------------------------------------|
| <input type="checkbox"/> Judgment after bench trial | X | Dismissal |
| <input type="checkbox"/> Judgment after jury verdict | | <input type="checkbox"/> Lack of jurisdiction |
| <input type="checkbox"/> Summary judgement | | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | X | Other (specify): See below. |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> | Divorce Decree: |

☐ Grant/Denial of declaratory relief ☐ Original ☐ Modification

☐ Review of agency determination **Other disposition (specify):** Dismissal based on finding that NPRI lacks standing and/or does not otherwise meet criteria for application of the public-importance exception.

5. **Does this appeal raise issues concerning any of the following?** Not applicable.

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

6. **Pending and prior proceedings in this court.** List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

Not applicable.

7. **Pending and prior proceedings in other courts.** List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (*e.g.*, bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

Not Applicable.

8. **Nature of the action.** Briefly describe the nature of the action and the result below:

On July 23, 2020, Appellant NPRI filed the operative Amended Complaint for Declaratory and Injunctive Relief in the public interest to address the ongoing constitutional violations, pursuant to Nevada Const. Art. 3, §1, ¶1, by Respondents, and each of them, for engaging in dual employment by simultaneously holding elected offices in the Nevada State Legislature and paid positions with Nevada State or local governments. The Amended Complaint alleges that Respondents' dual employment expressly violates the Separation of Powers requirement of Nevada Const. Art. 3, §1, ¶1 and undermines the ethics of their legislative service by creating conflicts, concentrating power, and diluting the separation of powers.

On September 18, 2020, Respondent Brittney Miller filed a Motion to Dismiss Complaint (“Miller MTD”). On September 24, 2020, Respondents Osvaldo Fumo (subsequently dismissed), Heidi Seevers Gansert and Dina Neal filed a Motion to Dismiss Pursuant to NRCP 12(b)(5) and NRCP 12(b)(6) (“NSHE Respondents MTD”). On October 5, 2020, Respondent Jason Frierson filed a Motion to Dismiss (“Frierson MTD”). On October 19, 2020, Respondent Nicole Cannizzaro filed a Motion to Dismiss (“Cannizzaro MTD,” and with the Miller MTD, the NSHE Defendants’ MTD and the Frierson MTD, collectively the “Motions to Dismiss”). The Motions to Dismiss argued in pertinent part that NPRI lacked standing to bring its claims because it failed to meet the public-importance exception set forth by this Court in *Schwartz v. Lopez*, 132 Nev. 732, 743, 382 P.3d 886, 894 (2016) or to articulate its own particularized injury.

Thereafter, Respondents Fumo, Gansert and Neal joined the Miller MTD on September 24, 2019. On October 5, 2020, Respondent Frierson joined the Miller MTD and the NSHE Respondent’ MTD. On October 6, 2020, Respondent Selena Torres joined the Miller MTD and Respondents Torres and Miller collectively joined the NSHE Respondents’ MTD and the Frierson MTD. And, on October 19, 2020, Respondent Cannizzaro joined the Miller MTD and the NSHE Respondents’ MTD.

On September 25, 2020, following the appearance of in-house counsel with the Nevada System of Higher Education (“NSHE”) on behalf of Respondents Fumo, Gansert and Neal (“NSHE Respondents”), NPRI filed Plaintiff’s Motion to Disqualify the Official Attorneys from Representing Defendants Osvaldo Fumo, Heidi Seevers Gansert, and Dina Neal (“Motion to Disqualify Official Attorneys”). NPRI argued that the NSHE Defendants were sued solely because of their alleged individual actions to engage in dual employment in violation of Article 3 of the Nevada Constitution and not it any official capacity that would constitute a circumstance under which an official government attorney is permitted to provide their defense at the State’s expense.

Finally, on September 30, 2020, the Legislature of the State of Nevada moved to

intervene in the matter below by filing Nevada Legislature's Motion to Intervene as Defendant ("Motion to Intervene"). Attorneys for the Legal Division of the Legislative Counsel Bureau argued on behalf of the Legislature that the Legislature had an unconditional right and standing to intervene pursuant to NRCP 24(a) and (b) and NRS 218F.720.

All of the above-referenced Motions and Joinders were fully briefed and finally set for hearing on November 19, 2020. On November 18, 2020, without a hearing, the district court issued a Minute Order deciding all pending motions. The district court specifically granted the Motions to Dismiss, and although not referenced, presumably all joinders thereto, based on a finding that, "Nevada Policy Research Institute clearly lacks standing to bring this suit and thus the Motions[s] to Dismiss must be GRANTED." The district court further found that "Nevada Policy Research Institute ... does not make persuasive arguments regarding standing," and that the Court "is not persuaded that Nevada Policy Research Institute comes within the recent *Schwartz* [public importance] exception." The district court, however, did not indicate which factor or factors permitting standing to sue under the public importance exception set forth in *Schwartz v. Lopez* that NPRI failed to meet.

The district court further denied NPRI's Motion to Disqualify Official Attorneys on the same basis. And, the district court further granted the Legislature's Motion to Intervene, finding that the Legislature was entitled to intervention as a matter of right and that in the event it was only entitled to permissive intervention, the trial court would exercise its discretion to allow it to intervene permissively. The district court directed the prevailing parties to prepare the Orders.

In light of the significant importance, for purposes of the instant appeal, of knowing the district court's basis for denying the application of the public importance exception in the instant case, on December 1, 2020, NPRI brought Plaintiff's Motion for the Court's Clarification of its Decision to Grant Defendants' Motions to Dismiss Based on Plaintiff's Lack of Standing on Order Shortening Time ("Motion for Clarification"). At the time of that filing, no prevailing party had timely submitted a proposed order for review by NPRI or the district court, and no future hearings were pending. Further, the imminent retirement of the Honorable Jim Crockett

prompted NPRI to move expeditiously.

Respondents opposed NPRI's effort to seek clarification of the district court's decision and filed a Joint Opposition to Plaintiff's Motion for the Court's Clarification of its Decision to Grant Defendants' Motions to Dismiss Based on Plaintiff's Lack of Standing and Countermotion to Dismiss all Remaining Defendants Based on Plaintiff's Lack of Standing ("Joint Opposition and Countermotion"). Throughout the course of the litigation, Respondents Glen Leavitt, James Orenschall, and Melanie Schieble intentionally evaded service and were not included within the district court's disposition in the November 18 Minute Order. Service by publication of all three was effective on December 10, 2020, although Respondent Schieble retained counsel who accepted service on her behalf on December 9, 2020. In the Joint Opposition and Countermotion, filed December 7, 2020, Respondents argued that the district court could not clarify orders that had not yet been entered.

The following day, on December 8, 2020, the district court entered an Omnibus Order Granting Motion to Dismiss, and on December 9, 2020, it entered the Order Denying Plaintiff's Motion to Disqualify Official Attorneys and the Order Granting Legislature's Motion to Intervene as Defendants. On December 14, 2020, NPRI referenced the Orders in Plaintiff Nevada Policy Research Institute's: (1) Notice of Non-Opposition to Joint Countermotion to Dismiss All Remaining Defendants Based on Plaintiff's Lack of Standing and (2) Limited Reply in Support of Motion for the Court's Clarification of its Decision to Grant Defendants' Motions to Dismiss Based on Plaintiff's Lack of Standing ("Non-Opposition and Reply"), which again sought clarification of the trial court's decision and entry of a final judgment as to all remaining Defendants pursuant to NRCP 54(b).

On December 15, 2020, the district court entered a Minute Order denying the Motion for Clarification on the incorrect basis that "there is no order that has been signed and filed yet and thus the motion is premature since one cannot clarify what does not exist." In its letter of December 16, 2020, which was left-side filed into the case, NPRI reminded the trial court that it entered all pending orders on December 8 and 9, 2020, and requested that it either place the

Motion for Clarification back on calendar or correct the record and provide the actual basis for its denial of NPRI's request. The following day, again by Minute Order, the district court revised its basis for denying the Motion for Clarification and stated, "... the Court is of the view that the issue of Standing needs no further clarification and is entirely dispositive of the arguments raised by Plaintiff." The district court entered a final order on the Motion for Clarification and Countermotion on December 28, 2020.

9. Issues on appeal. State concisely the principal issues in this appeal (attach separate sheets as necessary):

This appeal follows seeking this Court's guidance on the pure questions of law of: (i) whether NPRI has standing to challenge Defendants' dual employment pursuant to the Separation of Powers requirement of Nevada Const. Art. 3, §1, ¶1; (ii) whether the NSHE Defendants were entitled to representation by the Official Attorneys; and (iii) whether the Nevada Legislature qualified for intervention, either as a matter of right or permissively.

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket number and identify the same or similar issue raised.

State v. Dist. Ct. (Plumlee (Jennifer)), Case No. 82236

State v. Dist. Ct. (Molen (Matthew)), Case No. 82236

The above-referenced Petitions for Writ of Mandamus challenge another district court's decisions to vacate the criminal convictions of defendants who were tried by Deputy District Attorney Melanie Schieble, on the basis that Ms. Schieble violated the Separation of Powers Clause of the Nevada Constitution by engaging in dual employment by simultaneously holding elected office in the Nevada State Legislature and a paid position with the Office of the Clark County District Attorney. Ms. Schieble is also a Respondent in the instant appeal.

- 11. Constitutional issues.** If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A
☐ Yes
☐ No

If not, explain:

- 12. Other issues.** Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the cases(s))
☐ An issue arising under the United States and/or Nevada Constitutions
☒ A substantial issue of first impression
☒ An issue of public policy
☒ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions
☐ A ballot question

If so, explain:

This appeal seeks to permit NPRI the opportunity, pursuant to the public-importance exception to the particularized harm requirement for standing, to address first in the district court and then ultimately in this Court the public interest implicated by the ongoing constitutional violations, pursuant to Nevada Const. Art. 3, §1, ¶1, of Respondents, and each of them, for engaging in dual employment by simultaneously holding elected offices in the Nevada State Legislature and paid positions with Nevada State or local governments. The matter raises an issue of first impression, as well as a question of statewide public importance, and would necessarily require en banc consideration to maintain uniformity of this Court's decisions.

- 13. Assignment to the Court of Appeals or retention in the Supreme Court?** Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s)

or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

Nevada Policy Research Institute respectfully asserts this appeal, which arises from a case originating in the Eighth Judicial District Court, is presumptively retained by the Supreme Court pursuant to NRAP 17(11) and NRAP 17(12).

14. Trial. If this action proceeded to trial, how many days did the trial last?

Not Applicable.

Was it a bench or jury trial?

Not applicable.

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse himself/herself from participation in this appeal? If so, which Justice?

No.

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from.

1. Omnibus Order Granting Motions to Dismiss, entered on December 8, 2020;
2. Order Granting Nevada Legislature's Motion to Intervene as Defendant, entered on December 8, 2020;
3. Order Denying Plaintiff's Motion to Disqualify Official Attorneys, entered on December 9, 2020; and
4. Order Denying Plaintiff's Motion for Clarification, Granting Joint Countermotion to Dismiss All Remaining Defendants Based on Plaintiff's Lack of Standing, and Entering Final Judgment in Favor of All Defendants Based on Plaintiff's Lack of Standing entered on December 28, 2020.

17. Date written notice of entry of judgment or order was served.

1. Omnibus Order Granting Motions to Dismiss, entered on December 8, 2020;
2. Order Granting Nevada Legislature's Motion to Intervene as Defendant, entered on December 8, 2020;

3. Order Denying Plaintiff's Motion to Disqualify Official Attorneys, entered on December 9, 2020; and
4. Order Denying Plaintiff's Motion for Clarification, Granting Joint Countermotion to Dismiss All Remaining Defendants Based on Plaintiff's Lack of Standing, and Entering Final Judgment in Favor of All Defendants Based on Plaintiff's Lack of Standing entered on December 28, 2020.

Was service by: ☐ Delivery x Mail/electronic/fax

18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59): Not applicable.

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

- ☐ NRCP 50(b) Date of filing
☐ NRCP 52(b) Date of filing:
☐ NRCP 59 Date of filing:

(b) Date of entry of written order resolving tolling motion:

(c) Date written notice of entry of order resolving tolling motion was served:

Was service by:

- ☐ Delivery
☐ Mail/electronic/fax

19. Date notice of appeal filed.

January 8, 2021

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

Not applicable.

20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other:

NRAP 4(a)(1)

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appeal from:

(a)

- | | | | |
|-------------------------------------|-----------------|--------------------------|--------------|
| <input checked="" type="checkbox"/> | NRAP 3A(b)(1) | <input type="checkbox"/> | NRS 38.205 |
| <input type="checkbox"/> | NRAP 3A(b)(2) | <input type="checkbox"/> | NRS 233B.150 |
| <input type="checkbox"/> | NRAP 3A(b)(3) | <input type="checkbox"/> | NRS 703.376 |
| <input type="checkbox"/> | Other(specify): | | |

(b) Explain how each authority provides a basis for appeal from the judgment or order:

NRAP 3A(b)(2) allows an appeal to be taken from the final judgment or order of a district court. The district court's orders at issue in this appeal dismissed all matters in dispute raised by NPRI's Complaint. There is nothing remaining to be adjudicated by the parties.

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

1. Plaintiff: Nevada Policy Research Institute
2. Defendants: Nicole J. Cannizzaro, Jason Frierson, Heidi SeEVERS Gansert, Glen Leavitt, Brittney Miller, Dina Neal, James Ohrenschall, Melanie Schieble, Jill Tolles, and Selena Torres

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

Defendants in the district court action, Osvaldo Fumo, Teresa Benitez-Thompson and Kasina Douglass-Boone were voluntarily dismissed below.

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

The district court dismissed NPRI's Amended Complaint for Declaratory and Injunctive Relief based upon a purported lack of standing, on December 8, 2020.

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☒ Yes

☐ No

25. If you answered “No” to question 24, complete the following: Not applicable.

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

All Parties listed in Question 22 above remain below.

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☐ No

26. If you answered “No” to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):

Not applicable.

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Order of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Nevada Policy Research Institute	Deanna L. Forbush, Esq. and Colleen E. McCarty, Esq.
Date: February 4, 2021	<u>/s/ Deanna L. Forbush</u> Signature of counsel of record
<u>State of Nevada, County of Clark</u> State and county where signed	

CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of February, 2021, I caused the foregoing to be served on all parties to this action by electronically filing it with the Court's e-filing system, which will electronically serve the following:

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Henderson, Nevada 89002
Email: berna.rhodes-ford@nsc.edu
*Attorneys for Defendants Heidi Seevers
Gansert and Dina Neal*

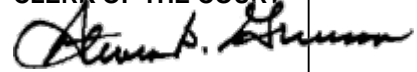
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Nevada Policy Research Institute

DISTRICT COURT

CLARK COUNTY, NEVADA

NEVADA POLICY RESEARCH INSTITUTE, a
Nevada domestic nonprofit corporation,

Plaintiff,

vs.

NICOLE J. CANNIZZARO, an individual engaging
in dual employment with the Nevada State Senate
and Clark County District Attorney; KASINA
DOUGLASS-BOONE, an individual engaging in
dual employment with the Nevada State Assembly
and Clark County School District; JASON
FRIERSON, an individual engaging in dual
employment with the Nevada State Assembly and
Clark County Public Defender; OSVALDO FUMO,
an individual engaging in dual employment with the
Nevada State Assembly and University of Nevada,
Las Vegas; HEIDI SEEVERS GANSERT, an
individual engaging in dual employment with the
Nevada State Senate and University of Nevada
Reno; GLEN LEAVITT, an individual engaging in
dual employment with the Nevada State Assembly
and Regional Transportation Commission;
BRITTNEY MILLER, an individual engaging in
dual employment with the Nevada State Assembly
and Clark County School District; DINA NEAL, an

Case No.: A-20-817757-C

Dept. No.: II

**AMENDED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

[Exemption from Arbitration Based on
Equitable Relief Requested]

individual engaging in dual employment with the Nevada State Assembly and Nevada State College; JAMES OHRENSCHALL, an individual engaging in dual employment with the Nevada State Senate and Clark County Public Defender; MELANIE SCHEIBLE an individual engaging in dual employment with the Nevada State Senate and Clark County District Attorney; TERESA BENITEZ-THOMPSON, an individual engaging in dual employment with the Nevada State Assembly and University of Nevada, Reno; JILL TOLLES, an individual engaging in dual employment with the Nevada State Assembly and University of Nevada, Reno; and SELENA TORRES, an individual engaging in dual employment with the Nevada State Assembly and Clark County School District,

Defendants.

NEVADA POLICY RESEARCH INSTITUTE (“NPRI”), by and through its attorneys of record, Deanna L. Forbush, Esq. and Colleen E. McCarty, Esq., of Fox Rothschild LLP, hereby alleges and complains against NICOLE J. CANNIZZARO, KASINA DOUGLASS-BOONE, JASON FRIERSON, OSVALDO FUMO, HEIDI SEEVERS GANSERT, GLEN LEAVITT, BRITTNEY MILLER, DINA NEAL, JAMES OHRENSCHALL, MELANIE SCHEIBLE, TERESA BENITEZ-THOMPSON, JILL TOLLES, and SELENA TORRES (collectively herein “Defendants”), as follows:

FACTS COMMON TO ALL CLAIMS

1. NPRI files this Complaint for Declaratory and Injunctive Relief in the public interest to address the ongoing constitutional violations by Defendants, and each of them, for engaging in dual employment by simultaneously holding elected offices in the Nevada State Legislature and paid positions with Nevada State or local governments.

2. The Nevada Constitution reads in relevant part:

The powers of the Government of the State of Nevada shall be divided into three separate departments, the Legislature, the Executive and the Judicial; and no person charged with the exercise of powers properly belonging to one of these departments shall exercise any functions, appertaining to either of the others, except in the cases expressly directed or permitted in this constitution. Nevada Const. Art. 3, §1, ¶1.

3. The rationale underlying the Separation of Powers requirement of Nevada Const. Art. 3, §1, ¶1 can be traced to the desires of the constitutional framers to encourage and preserve the independence and integrity of the actions and decisions of individual members of the Nevada State Legislature and to guard against conflicts of interest, concentration of powers, and dilution of the separation of powers.

4. Defendants' dual employment by simultaneously holding elected offices in the Nevada State Legislature and paid positions with Nevada State or local governments expressly violates the Separation of Powers requirement of Nevada Const. Art. 3, §1, ¶1 and undermines the ethics of their legislative service by creating conflicts, concentrating power, and diluting the separation of powers.

5. If allowed to proceed with the dual employment stated herein, legislative expenditures or appropriations and taxpayer monies will be paid to Defendants in violation of Nevada Const. Art. 3, §1, ¶1. NPRI presents this action, pursuant to NRS 30.030, *et seq.*, and NRS 33.010, *et seq.*, respectively, and can and will fully advocate for: (1) the Court's declaration that it is unconstitutional for Defendants to engage in the dual employment stated herein, and (2) the Court's injunction to prevent Defendants from continuing to engage in the unconstitutional dual employment stated herein.

PARTIES

6. NPRI is a public interest nonprofit, nonpartisan corporation organized under the laws of the State of Nevada whose primary missions are to conduct public policy research and advocate for policies that promote transparency, accountability, and efficiency in government.

7. At all relevant times, Defendant Nicole J. Cannizzaro has simultaneously held the elected office of Nevada State Senator and the paid government position of Chief Deputy District Attorney for the County of Clark, State of Nevada.

8. At all relevant times, Defendant Kasina Douglass-Boone has simultaneously held the elected office of Nevada State Assemblyperson and the paid government position of Social Worker Mental Health Specialist for the Clark County School District.

1 9. At all relevant times, Defendant Jason Frierson has simultaneously held the elected
2 office of Nevada State Assemblyperson and the paid government position of Assistant Public
3 Defender for the County of Clark, State of Nevada.

4 10. At all relevant times, Defendant Osvaldo Fumo has simultaneously held the elected
5 office of Nevada State Assemblyperson and the paid government position of Adjunct Instructor for
6 the University of Nevada, Las Vegas.

7 11. At all relevant times, Defendant Heidi Seevers Gansert has simultaneously held the
8 elected office of Nevada State Senator and the paid government position of Executive Director,
9 External Relations for the University of Nevada, Reno.

10 12. At all relevant times, Defendant Glen Leavitt has simultaneously held the elected
11 office of Nevada State Assemblyperson and the paid government position of Public Affairs Analyst
12 for the Regional Transportation Commission.

13 13. At all relevant times, Defendant Brittney Miller has simultaneously held the elected
14 office of Nevada State Assemblyperson and the paid government position of Teacher for the Clark
15 County School District.

16 14. At all relevant times, Defendant Dina Neal has simultaneously held the elected office
17 of Nevada State Assemblyperson and the paid government position of Adjunct Professor for the
18 Nevada State College.

19 15. At all relevant times, Defendant James Ohrenschall has simultaneously held the
20 elected office of Nevada State Senator and the paid government position of Deputy Public Defender
21 for the County of Clark, State of Nevada.

22 16. At all relevant times, Defendant Melanie Scheible has simultaneously held the elected
23 office of Nevada State Senator and the paid government position of Deputy District Attorney for the
24 County of Clark, State of Nevada.

25 17. At all relevant times, Defendant Teresa Benitez-Thompson has simultaneously held
26 the elected office of Nevada State Assemblyperson and the paid government position of Adjunct
27 Professor for the University of Nevada, Reno.
28

18. At all relevant times, Defendant Jill Tolles has simultaneously held the elected office of Nevada State Assemblyperson and the paid government position of Adjunct Professor for the University of Nevada, Reno.

19. At all relevant times, Defendant Selena Torres has simultaneously held the elected office of Nevada State Assemblyperson and the paid government position of Teacher for the Clark County School District.

JURIDICTION AND VENUE

20. The Court has jurisdiction over all parties, where Plaintiff conducts business in the County of Clark, State of Nevada, and all Defendants either reside in or carry out the duties of their elected offices throughout the State of Nevada, including in the County of Clark.

21. Venue is appropriate because the events giving rise to Plaintiff's causes of action have occurred, and continue to occur, in the County of Clark, State of Nevada.

FIRST CAUSE OF ACTION

Violation of Separation of Powers (Declaratory Relief)

22. Plaintiff realleges and incorporates by reference herein each and every foregoing paragraph of this Complaint as if set forth in full.

23. There is an actual controversy between Plaintiff, acting in the public interest, and the Defendants and each of them, as to the meaning of the Separation of Powers requirement of Nevada Const. Art. 3, §1, ¶1 and its application to Defendants and their conduct. Plaintiff has taken the position that Defendants are persons simultaneously holding elected offices in the Nevada State Legislature and paid positions with Nevada State or local governments in violation of the Separation of Powers requirement of Nevada Const. Art. 3, §1, ¶1. Upon information and belief, Defendants disagree with Plaintiff's position stated above.

24. Plaintiff seeks relief pursuant to NRS 30.010, *et seq.*, in the form of a declaration that Defendants simultaneously holding elected offices in the Nevada State Legislature and paid positions with Nevada State or local governments violates the Separation of Powers requirement of Nevada Const. Art. 3, §1, ¶1. A declaration resolving the actual controversy between Plaintiff and

Defendants will serve a useful purpose in settling the legal issues in this action and offering relief from uncertainty for all parties to this action.

25. It was necessary for Plaintiff to retain the services of an attorney to bring this cause of action, and it should be properly compensated therefore.

SECOND CAUSE OF ACTION
Violation of Separation of Powers
(Injunctive Relief)

26. Plaintiff realleges and incorporates by reference herein each and every foregoing paragraph of this Complaint as if set forth in full.

27. Defendants are persons simultaneously holding elected offices in the Nevada State Legislature and paid positions with Nevada State or local governments in violation of the Separation of Powers requirement of Nevada Const. Art. 3, §1, ¶1.

28. Without this Court's intervention, legislative expenditures or appropriations and taxpayer monies will be paid to Defendants in violation of Nevada Const. Art. 3, §1, ¶1, and irrevocable and irreparable harm will occur to the rights provided under this provision of the Nevada Constitution.

29. There exists no adequate remedy at law to prevent the constitutional violation caused by Defendants simultaneously holding elected offices in the Nevada State Legislature and paid positions with Nevada State or local governments in violation of the Separation of Powers requirement of Nevada Const. Art. 3, §1, ¶1.

30. Plaintiff, acting in the public interest, is entitled to injunctive relief to stop and prevent the Separation of Powers violations by Defendants stated herein. The Court has the power to grant such relief, pursuant to its inherent ability to grant equitable relief and the provisions of NRS 33.010, *et seq.*

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

///

///

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

3 1. For a declaration that Defendants simultaneously holding elected offices in the
4 Nevada State Legislature and paid positions with Nevada State or local governments violates the
5 Separation of Powers requirement of Nevada Const. Art. 3, §1, ¶1;

6 2. For an injunction against Defendants prohibiting each and every one of them from
7 continuing to simultaneously hold elected offices in the Nevada State Legislature and paid positions
8 with Nevada State or local governments in violation of the Separation of Powers requirement of
9 Nevada Const. Art. 3, §1, ¶1;

10 3. For reasonable attorneys' fees and costs; and

11 4. For such other and further relief as the Court may deem just and proper.

12 Dated this 28th day of July, 2020.

13 **FOX ROTHSCHILD LLP**

14
15 By: /s/ Deanna L. Forbush

16 DEANNA L. FORBUSH, ESQ.

17 Nevada Bar No. 6646

18 COLLEEN E. MCCARTY, ESQ.

19 Nevada Bar No. 13186

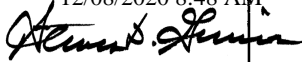
20 1980 Festival Plaza Dr., Suite 700

21 Las Vegas, Nevada 89135

22 Telephone: (702) 262-6899

23 Attorneys for Plaintiff

24 Nevada Policy Research Institute


CLERK OF THE COURT

ORDR

JONATHAN D. BLUM, ESQ.
Nevada Bar No. 09515

WILEY PETERSEN

1050 Indigo Dr., Suite 200B
Las Vegas, Nevada 89145
Telephone No. (702) 910-3329
Fax: (702) 553-3467
jblum@wileypetersenlaw.com

*Attorney for Defendants,
Jason Frierson and Nicole Cannizzaro*

DISTRICT COURT

CLARK COUNTY, NEVADA

NEVADA POLICY RESEARCH INSTITUTE,
a Nevada domestic nonprofit corporation,

Plaintiff,

vs.

NICOLE J. CANNIZZARO, an individual
engaging in dual employment with the
Nevada State Senate and Clark County
District Attorney; KASINA DOUGLASS-
BOONE,
an individual engaging in dual
employment with the Nevada State Assembly
and Clark County School District; JASON
FRIERSON, an individual engaging in dual
employment with the Nevada State Assembly
and Clark County Public Defender;
OSVALDO FUMO, an individual engaging
in dual employment with the Nevada State
Assembly and University of Nevada, Las
Vegas; HEIDI SEEVERS GANSERT, an
individual engaging in dual employment with
the Nevada State Senate and University of
Nevada Reno; GLEN LEAVITT, an
individual engaging in dual employment with
the Nevada State Assembly and Regional
Transportation Commission; BRITTNEY
MILLER, an individual engaging in dual
employment with the Nevada State Assembly
and Clark County School District; DINA
NEAL, an individual engaging in dual
employment with the Nevada State Assembly
and Nevada State College; JAMES
OHRENSCHALL, an individual engaging in
dual employment with the Nevada State

Case No.: A-20-817757-C

Dept. No.: 24

**OMNIBUS ORDER GRANTING
MOTIONS TO DISMISS**

Senate and Clark County Public Defender;
MELANIE SCHEIBLE an individual
engaging in dual employment with the
Nevada State Senate and Clark County
District Attorney; TERESA BENITEZ-
THOMPSON,
an individual engaging in dual
employment with the Nevada State Assembly
and University of Nevada, Reno; JILL
TOLLES, an individual engaging in dual
employment with the Nevada State Assembly
and University of Nevada, Reno; and
SELENA TORRES, an individual engaging
in dual employment with the Nevada State
Assembly and Clark County School District,

Defendants.

In this action, Plaintiff Nevada Policy Research Institute (“NPRI”) has alleged that the individual Defendants are persons simultaneously holding elected offices in the Nevada Legislature and paid positions with the executive branch of the Nevada State Government or with local governments in violation of the separation-of-powers provision in Article 3, Section 1 of the Nevada Constitution. Defendants filed Motions to Dismiss as follows: Motion to Dismiss filed by Defendant Brittney Miller on September 18, 2020; Motion to Dismiss filed by Defendants Osvaldo Fumo, Heidi Seevers Gansert, and Dina Neal on September 28, 2020; Motion to Dismiss filed by Defendant Jason Frierson on October 5, 2020; and, Motion to Dismiss filed by Defendant Nicole Cannizzaro on October 19, 2020 (collectively, the “Motions to Dismiss”). Each of the defendants that filed a motion to dismiss also filed a joinder to the other Motions to Dismiss.

The Court having read and considered the pleadings and briefs filed by the parties, and for good cause appearing finds as follows:

Pursuant to EDCR 2.23 (c) and (d), this matter was decided on the briefs and pleadings filed by the parties without oral argument because the Court deems oral argument unnecessary.

Standing is the controlling issue here and while other issues are discussed, standing is the determinative issue above all else. Here, NPRI simply lacks standing to bring this suit. It is an organization rather than a particularly-aggrieved individual harmed by any alleged dual employment by any defendant. It is quite clear that NPRI does not allege any particularized harm beyond that of any

1 ordinary taxpayer, and that is not enough to give standing sufficient for NPRI to maintain this suit. *See*
2 *Katz v. Incline Village General Improvement District*, 414 P.3d 300, 2018 WL 1129140 (unpublished
3 decision), Nev. S. Ct. Case No. 70440 (Feb. 26, 2018) (“This court recently reaffirmed the general rule
4 that a taxpayer lacks standing when he or she has not suffered a special or peculiar injury different
5 from that sustained by the general public.”).

6 NPRI’s Opposition does not make persuasive arguments regarding standing, suggesting that an
7 evidentiary hearing would need to be conducted but not offering any theory as to how such a hearing
8 would demonstrate particularized harm or otherwise lead to a finding that it has standing to pursue this
9 case against Defendants.

10 Neither is the Court persuaded that NPRI comes within the recent *Schwartz* public-interest
11 exception to Nevada’s standing doctrine. *See Schwartz v. Lopez*, 132 Nev. 732, 743, 382 P.3d 886, 894
12 (2016) (recognizing “an exception to [the] injury requirement in certain cases involving issues of public
13 importance.”). To establish standing under the public-interest exception: (1) the case must involve an
14 issue of significant public importance; (2) the case must involve a challenge to a legislative expenditure
15 or appropriation on the basis that it violates a specific provision of the Nevada Constitution; and (3)
16 the plaintiff must be an “appropriate” party, meaning that there is no one else in a better position who
17 will likely bring an action and that the plaintiff is capable of fully advocating his or her position in
18 court. *Id.*

19 Even granting, *arguendo*, that this matter is one of public importance, NPRI is not directly
20 challenging a legislative appropriation or expenditure that can be enjoined in this action. In *Schwartz*,
21 the challenged legislative expenditure at issue involved multi-million dollar educational expenditures
22 projected over decades, alleged to be unconstitutionally diverted from appropriate state education
23 funds, which persuaded the Nevada Supreme Court that parents of children in Nevada’s public school
24 system had standing to maintain suit under the public-interest exception without meeting the
25 particularized-injury requirement. It was the legislative expenditure, and the entirety of the
26 circumstances, that established the public-interest exception in *Schwartz* and exempted the parents
27 from meeting the particularized-injury requirement.

28 Here, at least in response to Defendant Miller’s motion, NPRI avers that her *per diem* or

1 legislative salary is the challenged “legislative appropriation” satisfying that prong of a *Schwartz*
2 analysis. But the present suit is about “dual employment” as a violation of Nevada’s separation-of-
3 powers provision, not about legislative pay; NPRI is not suing the paymasters of legislators to enjoin
4 such payments for the services of legislators; and NPRI blows hot and cold on whether or not it is suing
5 the Defendants as legislators at all, appearing to prefer to cast this action as against executive branch
6 and local government employees when convenient, and against legislators when not. Indeed, NPRI
7 seeks, unsuccessfully, to create a wholly-new and separate category of defendant here, sued neither in
8 his or her official capacity as legislator nor as public employee, in an attempt to disqualify institutional
9 attorneys from representing Defendants, a maneuver that the Court rejected in its order denying NPRI’s
10 motion to disqualify the attorneys for the Nevada State Higher Education System.

11 Further, NPRI cannot demonstrate that it is the “appropriate” party here, beyond its general
12 policy disagreement with legislators holding positions of public employment with the state executive
13 branch or with local governments. Historically, in the numerous suits NPRI has either brought or
14 assisted in bringing on this subject, it has demonstrated that it has been able to enlist individuals who
15 might provide a more colorable claim of particularized harm, but NPRI has simply opted not to do so
16 in this case to enhance the possibility of finding that counsel represents someone with actual standing.
17 NPRI even states in its papers that it has individual members ready and willing to seek the employment
18 positions of Defendants, demonstrating that it is not the sole and appropriate party to bring this suit,
19 especially given the direction provided by the Nevada Supreme Court in *Heller v. Legislature*, 120
20 Nev. 456, 472-473, 93 P.3d 746, 757 (2004), that an appropriate action raising the “dual service issue”
21 under Nevada’s separation-of-powers provision “could be sought by someone with a legally protectible
22 interest, such as a person seeking the executive branch position held by the legislator.” *Id.* (internal
23 quotation and citation omitted).

24 Meeting neither the basic elements of standing in Nevada nor at least two of the three prongs
25 of the analysis in *Schwartz*, NPRI clearly lacks standing to bring this suit.

26 ///

27 ///

28 ///

ORDER

IT IS HEREBY ORDERED that the Motions to Dismiss are **GRANTED**.

IT IS FURTHER ORDERED that the Joinders of the other Defendants are also **GRANTED**.

IT IS HEREBY FURTHER ORDERED that the hearing on this matter set for November 19,
Dated this 8th day of December, 2020
2020 is hereby **VACATED**.

Approved as to form and content by:

FOX ROTHSCHILD LLP

Refused to Sign Order

DEANNA L. FORBUSH, ESQ.
Nevada Bar No. 06646
COLEEN E. MCCARTY, ESQ.
Nevada Bar No. 13186
1980 Festival Plaza Drive, Suite 700
Las Vegas Nevada 89135

*Attorneys for Plaintiff,
Nevada Policy Research Institute*

**ASSISTANT GENERAL COUNSEL
UNIVERSITY OF NEVADA, RENO**

/s/ Gary A. Cardinal

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Nevada Bar No. 00076
1664 North Virginia Street/MS 0550
Reno, Nevada 89557

*Attorneys for Defendants,
Osvaldo Fumo, Heidi Seevers Gansert,
and Dina Neal*

\\

\\

\\

\\

**GENERAL COUNSEL NEVADA STATE
COLLEGE E08 FB5 9880 C605
Jim Crockett
District Court Judge**

/s/ Berna L. Rhodes-Ford

BERNA L. RHODES-FORD, ESQ.
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Henderson, Nevada 89002

*Attorneys for Defendants,
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**WOLF RIFKIN, SHAPIRO,
SCHULMAN & RABKIN, LLP**

/s/ Bradley Schrager

BRADLEY SCHRAGER, ESQ.
Nevada Bar No. 13078
3556 E. Russell Road, Second Floor
Las Vegas, Nevada 89120

*Attorneys for Defendants,
Brittney Miller and Selena Torres*

1 **LEGISLATIVE COUNSEL BUREAU,**
2 **LEGAL DIVISION**

3 /s/ Kevin C. Powers
4 KEVIN C. POWERS, ESQ.
5 Nevada Bar No. 6781
6 401 S. Carson St.
7 Carson City, Nevada 89701

8 *Attorneys for Intervenor-Defendant*
9 *Legislature of the State of Nevada*

10 *Respectfully submitted by:*

11 **WILEY PETERSEN**

12 JONATHAN D. BLUM, ESQ.
13 Nevada Bar No. 09515
14 1050 Indigo Dr., Suite 200B
15 Las Vegas, Nevada 89145
16 Telephone No. (702) 910-3329
17 Fax: (702) 553-3467
18 jblum@wileypetersenlaw.com

19 *Attorneys for Defendants,*
20 *Jason Frierson and Nicole Cannizzaro*

From: Gary A Cardinal <gcardinal@unr.edu>
Sent: Monday, December 7, 2020 9:39 AM
To: 'jblum@wileypetersenlaw.com'; 'Bradley Schrager'; 'Powers, Kevin'; dforbush@foxrothschild.com; cmccarty@foxrothschild.com; 'Daniel Bravo'; 'Nita Armendariz'; 'Berna Rhodes-Ford'
Cc: ibautista@wileypetersenlaw.com
Subject: RE: A-20-817757-C Nevada Policy Research Institute vs. Nicole Cannizzaro, et al. 00618- Order on Motions to Dismiss

Jon,
You have permission to attach my signature.
Thank you,
Gary

GARY A. CARDINAL

Assistant General Counsel
University of Nevada, Reno
1664 North Virginia Street
Mail Stop 0550
Reno, NV 89557
Tel: (775) 784-3495
Fax: (775) 327-2202
gcardinal@unr.edu

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Cc: ibautista@wileypetersenlaw.com
Subject: A-20-817757-C Nevada Policy Research Institute vs. Nicole Cannizzaro, et al. 00618- Order on Motions to Dismiss

Counsel,
I have incorporated the requested changes in the attached order. Please let me know if I can affix your e-signatures.

Deanna and Colleen, I understand you will not be signing, but if you can respond confirming the same, that would be helpful.

I plan to submit this today.

Thanks,

Jon

Jonathan D. Blum, Esq.



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Cc: ibautista@wileypetersenlaw.com
Subject: RE: A-20-817757-C Nevada Policy Research Institute vs. Nicole Cannizzaro, et al. 00618- Order on Motions to Dismiss

Please affix ours.

Bradley S. Schrager
Areas of Practice: Politics & Government – Appeals & Writs – Wage & Labor
Wolf, Rifkin, Shapiro, Schulman & Rabkin LLP
3556 E. Russell Rd, Las Vegas, Nevada 89120
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From: jblum@wileypetersenlaw.com [mailto:jblum@wileypetersenlaw.com]
Sent: Monday, December 07, 2020 9:37 AM
To: Bradley Schrager; 'Powers, Kevin'; dforbush@foxrothschild.com; cmccarty@foxrothschild.com; Daniel Bravo; 'Nita Armendariz'; gcardinal@unr.edu; 'Berna Rhodes-Ford'
Cc: ibautista@wileypetersenlaw.com
Subject: A-20-817757-C Nevada Policy Research Institute vs. Nicole Cannizzaro, et al. 00618- Order on Motions to Dismiss

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From: Powers, Kevin <kpowers@lcb.state.nv.us>

Sent: Monday, December 7, 2020 11:24 AM

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Cc: ibautista@wileypetersenlaw.com

Subject: RE: A-20-817757-C Nevada Policy Research Institute vs. Nicole Cannizzaro, et al. 00618- Order on Motions to Dismiss

LCB Legal has reviewed the proposed Omnibus Order Granting Motions to Dismiss, and I agree to the use of the my electronic signature for the proposed order.

Thanks.

Kevin C. Powers

General Counsel

Nevada Legislative Counsel Bureau, Legal Division

401 S. Carson Street

Carson City, NV 89701-4747

(775) 684-6830

(775) 684-6761-Fax

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Sent: Monday, December 07, 2020 9:37 AM

To: 'Bradley Schrager' <BSchrager@wrslawyers.com>; Powers, Kevin <kpowers@lcb.state.nv.us>; dforbush@foxrothschild.com; cmccarty@foxrothschild.com; 'Daniel Bravo' <DBravo@wrslawyers.com>; 'Nita Armendariz' <Nita.Armendariz@nsc.edu>; gcardinal@unr.edu; 'Berna Rhodes-Ford' <Berna.Rhodes-Ford@nsc.edu>

Cc: ibautista@wileypetersenlaw.com

Subject: A-20-817757-C Nevada Policy Research Institute vs. Nicole Cannizzaro, et al. 00618- Order on Motions to Dismiss

Counsel,

I have incorporated the requested changes in the attached order. Please let me know if I can affix your e-signatures.

Deanna and Colleen, I understand you will not be signing, but if you can respond confirming the same, that would be helpful.

I plan to submit this today.

Thanks,
Jon

Jonathan D. Blum, Esq.



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From: Berna Rhodes-Ford <Berna.Rhodes-Ford@nsc.edu>
Sent: Monday, December 7, 2020 2:41 PM
To: jblum@wileypetersenlaw.com
Cc: Bradley Schragger; Powers, Kevin; dforbush@foxrothschild.com; cmccarty@foxrothschild.com; Daniel Bravo; Nita Armendariz; gcardinal@unr.edu; ibautista@wileypetersenlaw.com
Subject: Re: A-20-817757-C Nevada Policy Research Institute vs. Nicole Cannizzaro, et al. 00618- Order on Motions to Dismiss

You may affix my e-signature.

Berna L. Rhodes-Ford
office [702.992.2378](tel:702.992.2378)
Berna.Rhodes-Ford@nsc.edu

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On Dec 7, 2020, at 9:37 AM, jblum@wileypetersenlaw.com wrote:

Counsel,
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Deanna and Colleen, I understand you will not be signing, but if you can respond confirming the same, that would be helpful.

I plan to submit this today.

Thanks,
Jon

Jonathan D. Blum, Esq.

<image001.jpg>
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Sent: Monday, December 7, 2020 11:43 AM
To: jblum@wileypetersenlaw.com; 'Bradley Schrager'; 'Powers, Kevin'; Forbush, Deanna L.; 'Daniel Bravo'; 'Nita Armendariz'; gcardinal@unr.edu; 'Berna Rhodes-Ford'
Cc: ibautista@wileypetersenlaw.com; Martinez, Natasha
Subject: RE: [EXT] A-20-817757-C Nevada Policy Research Institute vs. Nicole Cannizzaro, et al. 00618- Order on Motions to Dismiss

Jon,

As set forth in our communications to you and in the letter to chambers, dated December 4, 2020, we have respectfully requested that the Court hold all proposed orders in this matter until the Court resolves the pending Motion for Clarification on or before December 17, 2020 and NPRI has the opportunity thereafter to provide input to complete the necessary orders. NPRI seeks to include the Court's clarifications in each order ultimately entered by the Court as a result of its November 18, 2020 Minute Order.

Colleen McCarty

From: jblum@wileypetersenlaw.com <jblum@wileypetersenlaw.com>
Sent: Monday, December 7, 2020 9:37 AM
To: 'Bradley Schrager' <BSchrager@wrslawyers.com>; 'Powers, Kevin' <kpowers@lcb.state.nv.us>; Forbush, Deanna L. <DForbush@foxrothschild.com>; McCarty, Colleen E. <CMcCarty@foxrothschild.com>; 'Daniel Bravo' <DBravo@wrslawyers.com>; 'Nita Armendariz' <Nita.Armendariz@nsc.edu>; gcardinal@unr.edu; 'Berna Rhodes-Ford' <Berna.Rhodes-Ford@nsc.edu>
Cc: ibautista@wileypetersenlaw.com
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Counsel,

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Jon

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1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

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5
6 Nevada Policy Research
Institute, Plaintiff(s)

CASE NO: A-20-817757-C

7 vs.

DEPT. NO. Department 24

8
9 Nicole Cannizzaro, Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

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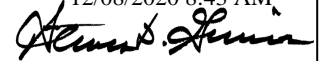
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CLERK OF THE COURT

OGM

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Attorneys for Intervenor-Defendant Legislature of the State of Nevada

**DISTRICT COURT
CLARK COUNTY, NEVADA**

NEVADA POLICY RESEARCH INSTITUTE, a
Nevada domestic nonprofit corporation,

Plaintiff,

vs.

**Case No. A-20-817757-C
Dept. No. 24**

NICOLE J. CANNIZZARO, an individual engaging
in dual employment with the Nevada State Senate
and Clark County District Attorney; KASINA
DOUGLASS-BOONE, an individual engaging in
dual employment with the Nevada State Assembly
and Clark County School District; JASON
FRIERSON, an individual engaging in dual
employment with the Nevada State Assembly and
Clark County Public Defender; OSVALDO FUMO,
an individual engaging in dual employment with the
Nevada State Assembly and University of Nevada,
Las Vegas; HEIDI SEEVERS GANSERT, an
individual engaging in dual employment with the
Nevada State Senate and University of Nevada,
Reno; GLEN LEAVITT, an individual engaging in
dual employment with the Nevada State Assembly
and Regional Transportation Commission;
BRITTNEY MILLER, an individual engaging in
dual employment with the Nevada State Assembly
and Clark County School District; DINA NEAL, an
individual engaging in dual employment with the
Nevada State Assembly and Nevada State College;
JAMES OHRENSCHALL, an individual engaging
in dual employment with the Nevada State Senate
and Clark County Public Defender; MELANIE
SCHEIBLE, an individual engaging in dual
employment with the Nevada State Senate and Clark
County District Attorney; TERESA BENITEZ-

**ORDER GRANTING NEVADA
LEGISLATURE'S MOTION TO
INTERVENE AS DEFENDANT**

1 THOMPSON, an individual engaging in dual
2 employment with the Nevada State Assembly and
3 University of Nevada, Reno; JILL TOLLES, an
4 individual engaging in dual employment with the
5 Nevada State Assembly and University of Nevada,
6 Reno; and SELENA TORRES, an individual
engaging in dual employment with the Nevada State
Assembly and Clark County School District,
Defendants.

7 INTRODUCTION

8 In this action, Plaintiff Nevada Policy Research Institute (NPRI) has alleged that the individual
9 Legislator-Defendants are persons simultaneously holding elected offices in the Nevada Legislature
10 (Legislature) and paid positions with the executive branch of the Nevada State Government or with local
11 governments in violation of the separation-of-powers provision in Article 3, Section 1 of the Nevada
12 Constitution. The Legislature filed a motion to intervene as a defendant under NRCP 24 and
13 NRS 218F.720. NPRI filed an opposition, and the Legislature filed a reply. The Court concludes that
14 the Legislature is entitled to intervene as a matter of right. In addition, the Court concludes that, even if
15 the Legislature was only entitled to seek permissive intervention, the Court chooses to exercise its
16 discretion to find that the Legislature is allowed to intervene permissively. Therefore, the Court grants
17 the Legislature's motion to intervene as a defendant.

18 DISCUSSION

19 **1. Intervention as a matter of right under NRCP 24(a)(1) and NRS 218F.720(2)(b).**

20 The Legislature contends that it is entitled to intervention as a matter of right under
21 NRCP 24(a)(1), which provides that, on timely motion, the Court must permit anyone to intervene who
22 "is given an unconditional right to intervene by a state or federal statute." When the movant establishes
23 that it is given an unconditional right to intervene by statute, "there is no room for the operation of a
24 court's discretion," and "the right to intervene is absolute and unconditional." *Bhd. of R.R. Trainmen v.*

1 *Balt. & Ohio R.R.*, 331 U.S. 519, 531 (1947).

2 The Legislature contends that NRS 218F.720 gives it an unconditional right to intervene in this
3 action. The statute provides in relevant part:

4 2. If a party to any action or proceeding before any court, agency or officer:

5 (a) Alleges that the Legislature, by its actions or failure to act, has violated the Constitution, treaties or laws of the United States or the Constitution or laws of this State; or

6 (b) Challenges, contests or raises as an issue, either in law or in equity, in whole or in part, or facially or as applied, the meaning, intent, purpose, scope, applicability, validity, enforceability or constitutionality of any law, resolution, initiative, referendum or other legislative or constitutional measure, including, without limitation, on grounds that it is ambiguous, unclear, uncertain, imprecise, indefinite or vague, is preempted by federal law or is otherwise inapplicable, invalid, unenforceable or unconstitutional,

7 ➤ the Legislature may elect to intervene in the action or proceeding by filing a motion or request to intervene in the form required by the rules, laws or regulations applicable to the action or proceeding. The motion or request to intervene must be accompanied by an appropriate pleading, brief or dispositive motion setting forth the Legislature's arguments, claims, objections or defenses, in law or fact, or by a motion or request to file such a pleading, brief or dispositive motion at a later time.

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12 3. Notwithstanding any other law to the contrary, upon the filing of a motion or request to intervene pursuant to subsection 2, the Legislature has an unconditional right and standing to intervene in the action or proceeding and to present its arguments, claims, objections or defenses, in law or fact, whether or not the Legislature's interests are adequately represented by existing parties and whether or not the State or any agency, officer or employee of the State is an existing party. If the Legislature intervenes in the action or proceeding, the Legislature has all the rights of a party.

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14
15
16 The Legislature contends that NRS 218F.720(2)(b) gives it an unconditional right to intervene in
17 this action in order to defend against NPRI's constitutional challenge because it involves allegations
18 concerning the meaning, intent, purpose, scope, applicability and enforceability of the separation-of-
19 powers provision with regard to members of the Legislature who hold positions of public employment
20 with the state executive branch or with local governments. The Court agrees.

21 In its amended complaint, NPRI has alleged that "[t]here is an actual controversy between [NPRI],
22 acting in the public interest, and [the Legislator-Defendants] and each of them, as to the *meaning* of the
23 Separation of Powers requirement of Nevada Const. Art. 3, §1, ¶1 and its *application* to [the Legislator-
24 Defendants] and their conduct." *Am. Compl.* ¶ 23 (emphasis added). Based on NPRI's allegations, the

1 Court finds that NRS 218F.720(2)(b) gives the Legislature an unconditional right to intervene in this
2 action in order to defend against NPRI's constitutional challenge.

3 NPRI argues that NRS 218F.720(2)(b) is not applicable because NPRI is seeking to enforce the
4 separation-of-powers provision and is not challenging it on any grounds. To support its argument, NPRI
5 contends that the statute would grant the Legislature an unconditional right to intervene only if NPRI
6 had challenged the separation-of-powers provision "on grounds that it is ambiguous, unclear, uncertain,
7 imprecise, indefinite or vague, is preempted by federal law or is otherwise inapplicable, invalid,
8 unenforceable or unconstitutional." NRS 218F.720(2)(b). The Court disagrees with NPRI's
9 interpretation of NRS 218F.720(2)(b) because such an interpretation would disregard the plain meaning
10 of the statutory language by ignoring the plain meaning of the words "including, without limitation,"
11 which are expressly set forth in the statute.

12 Based on the plain meaning of the statutory language, NRS 218F.720(2)(b) contains a broadly
13 worded grant of authority which gives the Legislature an unconditional right to intervene whenever a
14 party "[c]hallenges, contests or raises as an issue, either in law or in equity, in whole or in part, or
15 facially or as applied, the *meaning, intent, purpose, scope, applicability, validity, enforceability* or
16 constitutionality of any law, resolution, initiative, referendum or other legislative or constitutional
17 measure." NRS 218F.720(2)(b) (emphasis added). Following the statute's broadly worded grant of
18 authority, the statute also contains an illustrative and nonexhaustive list of examples of such statutory or
19 constitutional challenges that would grant the Legislature an unconditional right to intervene, "*including,*
20 *without limitation,* on grounds that it is ambiguous, unclear, uncertain, imprecise, indefinite or vague, is
21 preempted by federal law or is otherwise inapplicable, invalid, unenforceable or unconstitutional."
22 NRS 218F.720(2)(b) (emphasis added).

23 Under the rules of statutory construction, when words such as "including, without limitation," and
24 "including, but not limited to," are used in a statutory provision, they are not words of limitation.

1 Instead, they are words of enlargement which are intended to convey that the statutory provision
2 contains an illustrative and nonexhaustive list of examples that is not intended to be exclusive. *See Am.*
3 *Sur. Co. of N.Y. v. Marotta*, 287 U.S. 513, 517 (1933) (stating that in “statutes and other writings,
4 ‘include’ is frequently, if not generally, used as a word of extension or enlargement rather than as one of
5 limitation or enumeration.”); *Fed. Land Bank of St. Paul v. Bismarck Lumber Co.*, 314 U.S. 95, 100
6 (1941) (stating that “the term ‘including’ is not one of all-embracing definition, but connotes simply an
7 illustrative application of the general principle.”); *People v. Williams*, 108 Cal. Rptr. 3d 772, 775 (Cal.
8 Ct. App. 2010); *Colbert v. Cleveland*, 790 N.E.2d 781, 784 (Ohio 2003); *In re Forfeiture of \$5,264*, 439
9 N.W.2d 246, 252 (Mich. 1989).

10 Thus, the Court disagrees with NPRI’s interpretation of NRS 218F.720(2)(b) because such an
11 interpretation would disregard the plain meaning of the statutory language by ignoring the plain meaning
12 of the words “including, without limitation,” which are expressly set forth in the statute. The Court
13 finds that the “including, without limitation,” provision places no limitation on the Legislature’s broad
14 authority to intervene as of right under the statute. Instead, this provision merely serves as an
15 illustrative—but not exhaustive—list of examples which describe some—but not all—of the
16 circumstances under which the Legislature may exercise its broad authority to intervene as of right
17 under the statute. Accordingly, the Court concludes that NRS 218F.720(2)(b) gives the Legislature an
18 unconditional right to intervene in this action in order to defend against NPRI’s constitutional challenge
19 because it involves allegations concerning the meaning, intent, purpose, scope, applicability and
20 enforceability of the separation-of-powers provision with regard to members of the Legislature who hold
21 positions of public employment with the state executive branch or with local governments.

22 **2. Intervention as a matter of right under NRCP 24(a)(1) and NRS 218F.720(2)(a).**

23 The Legislature contends that NRS 218F.720(2)(a) gives it an unconditional right to intervene in
24 this action in order to defend against NPRI’s constitutional challenge because it involves allegations that

1 the Legislature has violated the Nevada Constitution through its appropriation of public money in
2 violation of the separation-of-powers provision with regard to members of the Legislature who hold
3 positions of public employment with the state executive branch or with local governments. The Court
4 agrees.

5 In its amended complaint, NPRI has alleged that “*legislative expenditures or appropriations and*
6 *taxpayer monies* will be paid to [the Legislator-Defendants] in violation of Nevada Const. Art. 3, §1, ¶1,
7 and irrevocable and irreparable harm will occur to the rights provided under this provision of the Nevada
8 Constitution.” *Am. Compl.* ¶ 28 (emphasis added). Based on NPRI’s allegations, the Court finds that
9 NRS 218F.720(2)(a) gives the Legislature an unconditional right to intervene in this action in order to
10 defend against NPRI’s constitutional challenge.

11 In its opposition, NPRI acknowledges that “[t]he Court may take judicial notice that legislators are
12 compensated by Legislative expenditure, per statutory requirement.” *NPRI’s Opp’n at 6*. However,
13 NPRI argues that it “is in no way challenging the Legislature’s carrying out of or compliance with these
14 [statutory] requirements.” *Id.* Even though NPRI’s amended complaint includes allegations of the
15 unconstitutional payment of “legislative expenditures or appropriations and taxpayer monies” to the
16 Legislator-Defendants, NPRI’s amended complaint is silent with regard to the governmental body that
17 authorizes the payment of those “legislative expenditures or appropriations and taxpayer monies” to the
18 Legislator-Defendants. Nevertheless, under Nevada law, the Legislature is the only governmental body
19 whose actions can authorize the payment of those “legislative expenditures or appropriations and
20 taxpayer monies” to the Legislator-Defendants. Nev. Const. art. 4, § 19; NRS 218A.150; *State ex rel.*
21 *Davis v. Eggers*, 29 Nev. 469, 484-85, 91 P. 819, 824 (1907) (explaining that “all appropriations must be
22 within the legislative will.”). Therefore, given that the Legislature is the only governmental body which
23 authorizes the appropriation of public money that NPRI alleges is being paid to the Legislator-
24 Defendants in violation of the separation-of-powers provision, the Court concludes that

1 NRS 218F.720(2)(a) gives the Legislature an unconditional right to intervene in this action because it
2 involves allegations that the Legislature has violated the Nevada Constitution through its appropriation
3 of public money with regard to members of the Legislature who hold positions of public employment
4 with the state executive branch or with local governments.

5 **3. Intervention as a matter of right under NRCP 24(a)(2).**

6 The Legislature contends that it is entitled to intervention as a matter of right under
7 NRCP 24(a)(2), which provides that, on timely motion, the Court must permit anyone to intervene who
8 “claims an interest relating to the property or transaction that is the subject of the action, and is so
9 situated that disposing of the action may as a practical matter impair or impede the movant’s ability to
10 protect its interest, unless existing parties adequately represent that interest.” To qualify for intervention
11 as of right under NRCP 24(a)(2), the movant must establish that: (1) the movant has sufficient interests
12 in the subject matter of the litigation; (2) the movant’s ability to protect those interests could be impaired
13 if the movant is not permitted to intervene; (3) the movant’s interests may not be adequately represented
14 by the existing parties; and (4) the motion to intervene is timely. *Am. Home Assurance Co. v. Eighth*
15 *Jud. Dist. Ct.*, 122 Nev. 1229, 1238, 147 P.3d 1120, 1126 (2006). The Court finds that the Legislature
16 has established the requirements for intervention as a matter of right under NRCP 24(a)(2).

17 First, the Court finds that when the Legislature filed its motion to intervene, this action had not
18 progressed beyond its initial and preliminary stages. Therefore, because the Legislature sought
19 intervention during the earliest stages of this action, the Court determines that the Legislature’s motion
20 to intervene was timely and that its intervention will not delay the proceedings, complicate management
21 of the case or cause any prejudice to the existing parties.

22 Next, the Court finds that the Legislature has substantial institutional interests in the subject matter
23 of this action. The Legislature has substantial institutional interests in the meaning, intent, purpose,
24 scope, applicability and enforceability of the separation-of-powers provision because that constitutional

1 provision governs the powers of the legislative branch and the Legislature's administration of its
2 constitutional functions and the conduct of its members, including the Legislator-Defendants. *See*
3 *Heller v. Legislature*, 120 Nev. 456, 93 P.3d 746 (2004); *Comm'n on Ethics v. Hardy*, 125 Nev. 285,
4 212 P.3d 1098 (2009). The Legislature also has substantial institutional interests in defending the
5 validity of its legislative actions in exercising the constitutional power of appropriation, including the
6 appropriation of public money for the payment of legislative compensation to the Legislator-Defendants.
7 *See State of Nev. Employees Ass'n v. Daines*, 108 Nev. 15, 21, 824 P.2d 276, 279 (1992) (explaining that
8 "it is well established that the power of controlling the public purse lies within legislative, not executive
9 authority."). The Legislature also has substantial institutional interests in ensuring that the broadest
10 spectrum of the citizenry is represented in the Legislature's membership in order to promote the public
11 policy of this State that:

12 State Legislators serve as "*citizen Legislators*" who have other occupations and business
13 interests, who are expected to have particular philosophies and perspectives that are
14 necessarily influenced by the life experiences of the Legislator, including, without
15 limitation, professional, family and business experiences, and who are expected to
16 contribute those philosophies and perspectives to the debate over issues with which the
17 Legislature is confronted.

18 NRS 281A.020(2)(c) (emphasis added).

19 Finally, the Court finds that the Legislature's ability to protect its institutional interests in this
20 action could be impaired if the Legislature is not permitted to intervene and that its institutional interests
21 may not be adequately represented by the existing parties. Because the Legislature's institutional
22 interests are unique to the Legislature as the constitutional body charged with the legislative and policy-
23 making power of this State, the individual Legislator-Defendants are not in a position to adequately
24 represent the separate and distinct institutional interests of the Legislature that are at stake in this action.
Under such circumstances, the Court determines that the Legislature's separate and distinct institutional
interests are not adequately represented by the existing parties. As a result, the Court concludes that the

1 Legislature is entitled to intervention as a matter of right under NRCP 24(a)(2).

2 **4. Permissive intervention under NRCP 24(b).**

3 Under NRCP 24(b), on timely motion, the court may permit anyone to intervene who “has a claim
4 or defense that shares with the main action a common question of law or fact.” NRCP 24(b)(1)(B).
5 Additionally, the court may permit a governmental officer or agency to intervene if a party’s claim or
6 defense is based on “a statute or executive order administered by the officer or agency.”
7 NRCP 24(b)(2)(A). Permissive intervention under NRCP 24(b) is wholly discretionary with the district
8 court. *Hairr v. First Jud. Dist. Ct.*, 132 Nev. 180, 187, 368 P.3d 1198, 1202 (2016).

9 Under NRCP 24(b), when the intervenor is a governmental agency, permissive intervention
10 ordinarily should be granted to the agency where the legal issues in the case may have a substantial
11 impact on “the maintenance of its statutory authority and the performance of its public duties.” *SEC v.*
12 *U.S. Realty & Impr. Co.*, 310 U.S. 434, 460 (1940). Thus, where the governmental agency’s interest in
13 the case “is a public one” and it intends to raise claims or defenses concerning questions of law involved
14 in the case, permissive intervention should be granted, especially when the agency’s intervention “might
15 be helpful in [a] difficult and delicate area.” *United States v. Local 638, Enter. Ass’n of Pipefitters*, 347
16 F. Supp. 164, 166 (S.D.N.Y. 1972) (quoting *SEC v. U.S. Realty & Impr. Co.*, 310 U.S. 434, 460 (1940)).

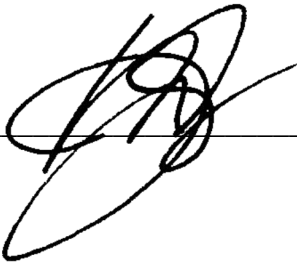
17 In this action, even assuming that the Legislature was not otherwise entitled to intervene as a
18 matter of right under NRCP 24(a)(1) and NRCP 24(a)(2), the Court chooses to exercise its discretion
19 and grants the Legislature permissive intervention under NRCP 24(b). The Court finds that the
20 Legislature’s permissive intervention under NRCP 24(b) would facilitate a more comprehensive and
21 thorough presentation of the controlling law and a better understanding of the issues, and such
22 intervention would ensure that the views of the Legislature are fairly and adequately represented and are
23 not prejudiced by this case. Therefore, even if the Legislature was only entitled to seek permissive
24 intervention in this action, the Court chooses to exercise its discretion and grants the Legislature

1 permissive intervention under NRCP 24(b).

2 **CONCLUSION**

3 For the reasons set forth herein, IT IS HEREBY ORDERED THAT the Legislature's motion to
4 intervene as a defendant is GRANTED.

Dated this 8th day of December, 2020

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6
7 

8 Order submitted by:

9 /s/ Kevin C. Powers

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Jim Crockett
District Court Judge

14 Order reviewed by:

15 /s/ Refused to Sign Order

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Powers, Kevin

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Cc: Nita Armendariz
Subject: RE: A-20-817757-C_Nevada Policy Research Institute v Cannizzaro_Proposed Order Granting Nevada Legislature's Motion to Intervene as Defendant

Approved on our end, Counsel

Bradley S. Schrager
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Cc: Nita Armendariz
Subject: A-20-817757-C_Nevada Policy Research Institute v Cannizzaro_Proposed Order Granting Nevada Legislature's Motion to Intervene as Defendant

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Counsel:

Please review the attached proposed Order Granting Nevada Legislature's Motion to Intervene as Defendant.

Please let me know whether you have any proposed revisions and whether you agree to the use of your electronic signature on the proposed order.

Thanks.

Kevin C. Powers
General Counsel
Nevada Legislative Counsel Bureau, Legal Division
401 S. Carson Street
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Powers, Kevin

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bschrager@wrslawyers.com; dbravo@wrslawyers.com; jblum@wileypetersenlaw.com;
Nita Armendariz
Subject: Re: A-20-817757-C_Nevada Policy Research Institute v Cannizzaro_Proposed Order
Granting Nevada Legislature's Motion to Intervene as Defendant

Approved.

Berna L. Rhodes-Ford
office [702.992.2378](tel:702.992.2378)
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Counsel:

Please review the attached proposed Order Granting Nevada Legislature's Motion to Intervene as Defendant.

Please let me know whether you have any proposed revisions and whether you agree to the use of your electronic signature on the proposed order.

Thanks.

Kevin C. Powers
General Counsel
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Powers, Kevin

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To: Powers, Kevin; dforbush@foxrothschild.com; cmccarty@foxrothschild.com; bschrager@wrslawyers.com; dbravo@wrslawyers.com; 'Berna Rhodes-Ford'
Cc: 'Nita Armendariz'; ibautista@wileypetersenlaw.com
Subject: RE: A-20-817757-C_Nevada Policy Research Institute v Cannizzaro_Proposed Order Granting Nevada Legislature's Motion to Intervene as Defendant 00618

You may affix my e-signature. Thanks.

Jonathan D. Blum, Esq.



1050 Indigo Drive, Suite 200B
Las Vegas, Nevada 89145
Office 702.910.3329 | Mobile 702.443.0677
jblum@wileypetersenlaw.com
www.wileypetersenlaw.com



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From: Powers, Kevin <kpowers@lcb.state.nv.us>
Sent: Wednesday, December 2, 2020 11:32 PM
To: dforbush@foxrothschild.com; cmccarty@foxrothschild.com; bschrager@wrslawyers.com; dbravo@wrslawyers.com; jblum@wileypetersenlaw.com; Berna Rhodes-Ford <Berna.Rhodes-Ford@nsc.edu>
Cc: Nita Armendariz <Nita.Armendariz@nsc.edu>
Subject: A-20-817757-C_Nevada Policy Research Institute v Cannizzaro_Proposed Order Granting Nevada Legislature's Motion to Intervene as Defendant

Counsel:

Please review the attached proposed Order Granting Nevada Legislature's Motion to Intervene as Defendant.

Please let me know whether you have any proposed revisions and whether you agree to the use of your electronic signature on the proposed order.

Thanks.

Kevin C. Powers

General Counsel

Nevada Legislative Counsel Bureau, Legal Division

401 S. Carson Street

Carson City, NV 89701-4747

(775) 684-6830

(775) 684-6761-Fax

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ATTORNEYS AT LAW

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Tel (702) 262-6899; Fax (702) 597-5503
www.foxrothschild.com

Colleen E. McCarty
Direct: (702) 699-7151
Email: CMcCarty@foxrothschild.com

December 4, 2020

VIA EMAIL TRANSMISSION
Dept24LC@clarkcountycourts.us

Marvin Simeon
Law Clerk to the Honorable Jim Crockett
Eighth Judicial District Court, Dept. XXIV
200 Lewis Avenue
Las Vegas, Nevada 89155

Re: *Nevada Policy Research Institute v. Nicole Cannizzaro, et al.*, Case No. A-20-817757-C
Request to Hold Processing of Orders from November 18, 2020 Minute Order

Dear Mr. Simeon:

Following the Court's entry of the OST on NPRI's Motion for Clarification, opposing counsel for the NSHE Defendants, the Nevada Legislature, and the individual Defendants, Nicole Cannizzaro and Jason Frierson, respectively, prepared and forwarded to my attention for review draft orders from the Court's Minute Order entered on November 18, 2020. While NPRI is the party with the most to gain from the expedited entry of these orders and the opportunity they will provide to seek appellate review in advance of the 2021 Legislative Session, I have respectfully requested that each opposing counsel wait to submit his or her proposed order until the Court resolves the pending Motion for Clarification on or before December 17, 2020 and I have the opportunity to provide input to complete the necessary orders. Opposing counsel, however, have declined this courtesy, in agreement with the position articulated by Mr. Johnathan D. Blum, Esq., which is the reason for this correspondence. The relevant emails are enclosed herewith as **Exhibit 1**.

I would note, again, that each proposed order draft was submitted to me for my consideration after service of NPRI's Motion for Clarification, and this was either on or after the 14-day period for submission of proposed orders to Chambers pursuant to EDCR 7.21, which period ran yesterday, December 2, 2020. That said, the reason NPRI respectfully requests that any order hereafter submitted to Chambers be held for consideration is to first allow the Court to clarify its Minute Order as requested. All parties, and quite possibly the successor Judge on this case, will benefit from having the clearest possible record. And, it is both inefficient and costly to my client to be asked to discuss draft orders now, when additional information for inclusion in

December 4, 2020

Page 2

some, if not all, of the orders will be forthcoming from the Court within the next two weeks at the latest.

Finally, to the extent counsel for the NSHE Defendants and/or the Nevada Legislature would suggest that clarification of the Court's standing determination does not directly impact their clients' order, NPRI respectfully submits this does not override the efficiency of completing each order simultaneously, rather than on a piecemeal basis. Also, although not specifically included in the Court's Minute Order, the NSHE Defendants argued lack of standing as a basis for issuing an order in their favor, the same as those Defendants seeking dismissal. And, the Nevada Legislature, by its own admission, understands this case "involves extremely important questions of constitutional law" (*see* Nevada Legislature's Motion to Intervene as Defendant at 16:22-23), which goes directly to the first criteria for application of the public importance exception. For these reasons, I will likely seek to include the Court's clarifications in each order ultimately entered by the Court as a result of the November 18, 2020 Minute Order.

Should you wish further explanation of the specific objections my client and I have to the form of orders I received and am anticipating will be submitted with or without my signature by opposing counsel, I will be happy to provide this to you immediately upon request. Again, however, it is my hope to avoid the unnecessary additional expense to my client of further reviewing and preparing competing orders in advance of the December 17, 2020 hearing.

Please do not hesitate to contact me directly at (702) 702-262-6899 if you have any questions or need any additional information. Thank you in advance for your kind consideration

Sincerely,

FOX ROTHSCHILD LLP

/s/ Colleen E. McCarty

Colleen E. McCarty

CEM/nm

cc: Jonathan D. Blum, Esq. (jblum@wileypetersenlaw.com)
Gary A. Cardinal, Esq. (gcardinal@unr.edu)
Kevin C. Powers, Esq. (kpowers@lcb.state.nv.us)
Berna L. Rhodes-Ford, Esq. (berna.rhodes-ford@nsc.edu)
Bradley Schrager, Esq. (bschrager@wrslawyers.com)

EXHIBIT 1

From: jblum@wileypetersenlaw.com <jblum@wileypetersenlaw.com>

Sent: Thursday, December 3, 2020 9:00 PM

To: McCarty, Colleen E. <CMcCarty@foxrothschild.com>; 'Berna Rhodes-Ford' <Berna.Rhodes-Ford@nsc.edu>; 'Gary A Cardinal' <gcardinal@unr.edu>; 'Bradley Schrager' <BSchrager@wrslawyers.com>; DBravo@wrslawyers.com; 'Powers, Kevin' <kpowers@lcb.state.nv.us>; Forbush, Deanna L. <DForbush@foxrothschild.com>

Cc: Martinez, Natasha <NMartinez@foxrothschild.com>; ibautista@wileypetersenlaw.com

Subject: [EXT] RE: NPRI v. Cannnizzaro et al. 00618

Colleen,

From my perspective the draft orders were not submitted earlier due to the intervening holiday, and the language of the minute order. The status check for the filing of the orders was set for Dec. 17, indicating a longer timeframe allowed by the Court, specifically permitted under EDCR 7.21. My position is that, per the minute order and local rules we can't simply fail to submit an order because there is another pending motion that may potentially affect that order. The motion for clarification should have been filed after a final order on the motions were entered, and is, in my opinion, premature. (I recognize the issue of Judge Crocket's departure from the bench as an issue, but requiring another round of briefing before the Judge has an opportunity to sign an order on the original motions causes additional fees for all of us.)

I'll be off the grid through the weekend, so I'll review the proposed changes on Monday. I will then submit the proposed order with any parties' signatures that are in agreement. Submitting your own competing order, if that's what you choose to do, may obviate the need for the motion for clarification as Judge Crockett can sign or revise whichever version he deems most accurate.

Thanks,
Jon

Jonathan D. Blum, Esq.



1050 Indigo Drive, Suite 200B

Las Vegas, Nevada 89145

Office 702.910.3329 | Mobile 702.443.0677

jblum@wileypetersenlaw.com

www.wileypetersenlaw.com



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From: McCarty, Colleen E. <CMcCarty@foxrothschild.com>
Sent: Thursday, December 3, 2020 6:54 PM
To: 'Berna Rhodes-Ford' <Berna.Rhodes-Ford@nsc.edu>; Gary A Cardinal <gcardinal@unr.edu>; jblum@wileypetersenlaw.com; Bradley Schrager <BSchrager@wrslawyers.com>; DBravo@wrslawyers.com; Powers, Kevin <kpowers@lcb.state.nv.us>; Forbush, Deanna L. <DForbush@foxrothschild.com>
Cc: Martinez, Natasha <NMartinez@foxrothschild.com>
Subject: NPRI v. Cannizzaro et al.

Good evening Counsel,

I am in receipt of each of your proposed orders, and I do have suggested edits to each. However, as each was submitted to me on or after the deadline for submission to the Court under EDCR 7.21, and the Court's ruling on NPRI's Motion for Clarification is two weeks away or less, I am asking for the courtesy of waiting to provide input on these orders until after the Court's ruling.

The Omnibus Order Granting Motions to Dismiss proposed by Mr. Blum will obviously have the most direct impact by any clarification provided by the Court, but I will also be seeking to include discussion of the standing argument in Ms. Rhodes-Ford's proposed Order Denying Plaintiff's Motion to Disqualify Official Attorneys on behalf of the NSHE Defendants, as standing was raised in the underlying briefing. And, while Mr. Power's proposed Order Granting Nevada Legislature's Motion to Intervene as Defendant may not be directly impacted by the Court's expected clarification, it is unnecessarily costly to my client for me to have to address these orders on a piecemeal basis.

As the deadline for submission of these orders has already passed, and it is NPRI that would most benefit from the expedited entry of the orders and the opportunity to seek appellate review in advance of the 2021 Legislative Session, I trust you will each be amenable to extending the requested courtesy of waiting to review and, to the extent necessary, submit competing orders related to the Court's November 18, 2020 Minute Order.

Thank you in advance for your consideration.

Colleen

Colleen E. McCarty
Attorney
Fox Rothschild LLP
One Summerlin
1980 Festival Plaza Drive, Suite 700
Las Vegas, NV 89135
(702) 699-5171 - direct
(702) 597-5503 - fax
CMcCarty@foxrothschild.com
www.foxrothschild.com

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From: Berna Rhodes-Ford <Berna.Rhodes-Ford@nsc.edu>
Sent: Thursday, December 3, 2020 11:16 PM
To: Bradley Schrager <BSchrager@wrslawyers.com>
Cc: Powers, Kevin <kpowers@lcb.state.nv.us>; jblum@wileypetersenlaw.com; McCarty, Colleen E. <CMcCarty@foxrothschild.com>; Gary A Cardinal <gcardinal@unr.edu>; Daniel Bravo <DBravo@wrslawyers.com>; Forbush, Deanna L. <DForbush@foxrothschild.com>; Martinez, Natasha <NMartinez@foxrothschild.com>; ibautista@wileypetersenlaw.com
Subject: [EXT] Re: NPRI v. Cannnizzaro et al. 00618

I am in agreement as well.

Berna L. Rhodes-Ford
office [702.992.2378](tel:702.992.2378)
Berna.Rhodes-Ford@nsc.edu

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On Dec 3, 2020, at 9:56 PM, Bradley Schrager <BSchrager@wrslawyers.com> wrote:

I concur

Bradley Schrager
Wolf Rifkin Shapiro Schulman & Rabkin

On Dec 3, 2020, at 9:17 PM, Powers, Kevin <kpowers@lcb.state.nv.us> wrote:

CAUTION:EXTERNAL EMAIL

LCB Legal agrees with Mr. Blum's legal analysis, procedural approach, and timeline as set forth in his email below. Therefore, LCB Legal will follow all the same with regard to its proposed Order Granting Nevada Legislature's Motion to Intervene as Defendant.

Thanks.

Kevin C. Powers

General Counsel

Nevada Legislative Counsel Bureau, Legal Division

401 S. Carson Street

Carson City, NV 89701-4747

(775) 684-6830

(775) 684-6761-Fax

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Sent: Thursday, December 3, 2020 9:00 PM

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Cc: 'Martinez, Natasha' <NMartinez@foxrothschild.com>; ibautista@wileypetersenlaw.com

Subject: RE: NPRI v. Cannizzaro et al. 00618

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Thanks,
Jon

Jonathan D. Blum, Esq.

<image001.jpg>

1050 Indigo Drive, Suite 200B

Las Vegas, Nevada 89145
Office 702.910.3329 | Mobile 702.443.0677
jblum@wileypetersenlaw.com
www.wileypetersenlaw.com

<image002.png>

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Cc: Martinez, Natasha <NMartinez@foxrothschild.com>
Subject: NPRI v. Cannizzaro et al.

Good evening Counsel,

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Thank you in advance for your consideration.

Colleen

Colleen E. McCarty

Attorney

Fox Rothschild LLP

One Summerlin

1980 Festival Plaza Drive, Suite 700

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1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Nevada Policy Research
Institute, Plaintiff(s)

CASE NO: A-20-817757-C

7 vs.

DEPT. NO. Department 24

8
9 Nicole Cannizzaro, Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District
13 Court. The foregoing Order Granting Motion was served via the court's electronic eFile
system to all recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 12/8/2020

15 Bradley Schrager bschrager@wrslawyers.com

16 Dannielle Fresquez dfresquez@wrslawyers.com

17 Daniel Bravo dbravo@wrslawyers.com

18 Christie Rehfeld crehfeld@wrslawyers.com

19 Kevin Powers kpowers@lcb.state.nv.us

20 Deanna Forbush dforbush@foxrothschild.com

21 Colleen McCarty cmccarty@foxrothschild.com

22 Natasha Martinez nmartinez@foxrothschild.com

23 Ivette Bautista ibautista@wileypetersenlaw.com

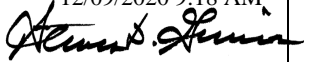
24 Jonathan Blum jblum@wileypetersenlaw.com

25 Chastity Dugenia cdugenia@wileypetersenlaw.com

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Berna Rhodes-Ford	Berna.Rhodes-Ford@nsc.edu
Gary Cardinal	gcardinal@unr.edu


CLERK OF THE COURT

ORDR

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Nevada Bar No. 7879
General Counsel
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1300 Nevada State Dr., RSC 374
Henderson, Nevada 89002
Tel: (702) 992-2378
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Gary A. Cardinal
Nevada Bar No. 76
Assistant General Counsel
University of Nevada, Reno
1664 North Virginia Street/MS 0550
Reno, Nevada 89557-0550
Tel: (775) 784-3495
Fax: (775) 327-2202
gcardinal@unr.edu

*Attorneys for Defendants
Osvaldo Fumo, Heidi Seevers Gansert,
and Dina Neal*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

NEVADA POLICY RESEARCH INSTITUTE,
a Nevada domestic nonprofit corporation,

Case No.: A-20-817757-C

Plaintiff,

Dept. No.: 24

v.

NICOLE J. CANNIZZARO, an individual
engaging in dual employment with the Nevada
State Senate and Clark County District Attorney;
KASINA DOUGLAS-BOONE, an individual
engaging in dual employment with the Nevada
State Assembly and Clark County School
District; JASON FRIERSON, an individual
engaging in dual employment with the Nevada
State Assembly and Clark County Public
Defender; OSVALDO FUMO, an individual
engaging in dual employment with the Nevada
State Assembly and University of Nevada, Las

**ORDER DENYING PLAINTIFF'S
MOTION TO DISQUALIFY
OFFICIAL ATTORNEYS**

1 Vegas; HEIDI SEEVERS GANSERT, an
2 individual engaging in dual employment with
3 the Nevada State Senate and University of
4 Nevada Reno; GLEN LEAVITT, an individual
5 engaging in dual employment with the Nevada
6 State Assembly and Regional Transportation
7 Commission; BRITTNEY MILLER, an
8 individual engaging in dual employment with
9 the Nevada State Assembly and Clark County
10 School District; DINA NEAL, an individual
11 engaging in dual employment with the Nevada
12 State Assembly and Nevada State College;
13 JAMES OHRENSCHALL, an individual
14 engaging in dual employment with the Nevada
15 State Senate and Clark County Public Defender;
16 MELANIE SCHEIBLE, an individual engaging
17 in dual employment with the Nevada State
18 Senate and Clark County District Attorney;
19 TERESA BENITEZ-THOMPSON, an
20 individual engaging in dual employment with
21 the Nevada State Assembly and University of
22 Nevada, Reno; JILL TOLLES, an individual
23 engaging in dual employment with the Nevada
24 State Assembly and University of Nevada,
25 Reno; and SELINA TORRES, an individual
26 engaging in dual employment with the Nevada
27 State Assembly and Clark County School
28 District,

Defendants.

**ORDER DENYING PLAINTIFF'S MOTION TO DISQUALIFY OFFICIAL
ATTORNEYS**

Having duly considered Plaintiff Nevada Policy Research Institute's ("NPRI") Motion to Disqualify the Official Attorneys from representing Defendants Osvaldo Fumo, Heidi Seevers Gansert and Dina Neal (the "NSHE Defendants"), the Opposition filed by the NSHE Defendants and NPRI's Reply, the Court finds that the Official Attorneys are duly authorized legal counsel who are not prohibited from representing the NSHE Defendants.

// //

// //

// //

Accordingly, IT IS HEREBY ORDERED that NPRI's Motion to Disqualify the Official
Attorneys is DENIED.

Dated this 9th day of December, 2020



Respectfully submitted this 8th day of December, 2020

369 4DE F4A1 5A64
Jim Crockett
District Court Judge

/s/ Berna L. Rhodes-Ford

BERNA L. RHODES-FORD
Nevada Bar No. 7879
General Counsel
Nevada State College
1300 Nevada State Dr., RSC 374
Henderson, Nevada 89002
Tel: (702) 992-2378
Fax: (702) 974-0750
berna.rhodes-ford@nsc.edu

*Attorneys for Defendants Osvaldo Fumo,
Heidi Seevers Gansert, and Dina Neal*

/s/ Gary A. Cardinal

GARY A. CARDINAL
Nevada Bar No. 76
Assistant General Counsel
University of Nevada, Reno
1664 North Virginia Street/MS 0550
Reno, Nevada 89557-0550
Tel: (775) 784-3495
Fax: (775) 327-2202
gcardinal@unr.edu

*Attorneys for Defendants Osvaldo Fumo,
Heidi Seevers Gansert, and Dina Neal*

Order reviewed by:

Deanna L. Forbush, Esq.
FOX ROTHSCHILD LLP
Email: dforbush@foxrothschild.com
Attorneys for Plaintiff

Colleen E. McCarty, Esq.
FOX ROTHSCHILD LLP
Email: cmccarty@foxrothschild.com
Attorneys for Plaintiff

/s/ Bradley Schrager

Bradley Schrager, Esq.
**WOLF, RIFKIN, SHAPIRO,
SCHULMAN & RABKIN, LLP**
Email: bschrager@wrslawyers.com
*Attorneys for Defendants Brittney Miller
and Selena Torres*

/s/ Daniel Bravo

Daniel Bravo, Esq.
**WOLF, RIFKIN, SHAPIRO,
SCHULMAN & RABKIN, LLP** Email:
dbravo@wrslawyers.com *Attorneys for
Defendants Brittney Miller and Selena
Torres*

1 /s/ Jonathan D. Blum

2 Jonathan D. Blum, Esq.

3 **WILEY PETERSEN**

4 Email: jblum@wileypetersenlaw.com

5 *Attorneys for Defendants Jason Frierson*

6 *and Nicole Cannizzaro*

/s/ Kevin C. Powers

 Kevin C. Powers

LEGISLATIVE COUNSEL

BUREAU, LEGAL DIVISION

 Email: kpowers@lcb.state.nv.us

Attorneys for Intervenor-Defendant

Legislature of the State of Nevada

RE: Draft Order on Motion to Disqualify

Bradley Schrager <BSchrager@wrslawyers.com>

Thu 12/3/2020 5:24 AM

To: 'Powers, Kevin' <kpowers@lcb.state.nv.us>; Berna Rhodes-Ford <Berna.Rhodes-Ford@nsc.edu>; dforbush@foxrothschild.com <dforbush@foxrothschild.com>; cmccarty@foxrothschild.com <cmccarty@foxrothschild.com>; Daniel Bravo <DBravo@wrslawyers.com>; jblum@wileypetersenlaw.com <jblum@wileypetersenlaw.com>
Cc: Nita Armendariz <Nita.Armendariz@nsc.edu>

Concur on use of e-signature for us, Counsel

Bradley S. Schrager

Areas of Practice: Politics & Government – Appeals & Writs – Wage & Labor

Wolf, Rifkin, Shapiro, Schulman & Rabkin LLP

3556 E. Russell Rd, Las Vegas, Nevada 89120

702.639.5102

bschrager@wrslawyers.com

This correspondence is intended for the individual or entity to whom it is addressed, and may be protected by privilege.

From: Powers, Kevin [mailto:kpowers@lcb.state.nv.us]**Sent:** Wednesday, December 02, 2020 11:32 PM**To:** Berna Rhodes-Ford; dforbush@foxrothschild.com; cmccarty@foxrothschild.com; Bradley Schrager; Daniel Bravo; jblum@wileypetersenlaw.com**Cc:** Nita Armendariz**Subject:** RE: Draft Order on Motion to Disqualify

CAUTION:EXTERNAL EMAIL

I have reviewed the proposed Order Denying Plaintiff's Motion to Disqualify Official Attorneys, and I agree to the use of the my electronic signature, with the following technical revisions.

As part of my electronic signature block on the proposed order:

1. Please revise to read “**LEGISLATIVE COUNSEL BUREAU, LEGAL DIVISION**”
2. Please delete “*Opposed Intervenor*” and replace with:

*Attorneys for Intervenor-Defendant
Legislature of the State of Nevada*

Kevin C. Powers

General Counsel

Nevada Legislative Counsel Bureau, Legal Division

401 S. Carson Street

Carson City, NV 89701-4747

(775) 684-6830
(775) 684-6761-Fax

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From: Berna Rhodes-Ford <Berna.Rhodes-Ford@nsc.edu>

Sent: Wednesday, December 2, 2020 4:16 PM

To: dforbush@foxrothschild.com; cmccarty@foxrothschild.com; bschrager@wrslawyers.com; dbravo@wrslawyers.com; jblum@wileypetersenlaw.com; Powers, Kevin <kpowers@lcb.state.nv.us>

Cc: Nita Armendariz <Nita.Armendariz@nsc.edu>

Subject: Draft Order on Motion to Disqualify

Good afternoon, counsel. Please review the attached draft order on the Motion to Disqualify Attorneys. If you have no revisions to the draft order, please let me know if I can add your electronic signature to the draft order.

Thank you.

Berna L. Rhodes-Ford
General Counsel

BE CONNECTED OFFICE 702.992.2378 | FAX 702.974.0750 | Berna.Rhodes-Ford@nsc.edu

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Fwd: NPRI v. Cannizzaro et al.

Berna Rhodes-Ford <Berna.Rhodes-Ford@nsc.edu>

Tue 12/8/2020 4:46 PM

To: Nita Armendariz <Nita.Armendariz@nsc.edu>

Berna L. Rhodes-FordOFFICE **702.992.2378**Berna.Rhodes-Ford@nsc.edu

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Begin forwarded message:

From: "McCarty, Colleen E." <CMcCarty@foxrothschild.com>**Date:** December 3, 2020 at 6:54:01 PM PST**To:** Berna Rhodes-Ford <Berna.Rhodes-Ford@nsc.edu>, Gary A Cardinal <gcardinal@unr.edu>, jblum@wileypetersenlaw.com, Bradley Schrager <BSchrager@wrslawyers.com>, dbravo@wrslawyers.com, "Powers, Kevin" <kpowers@lcb.state.nv.us>, "Forbush, Deanna L." <DForbush@foxrothschild.com>**Cc:** "Martinez, Natasha" <NMartinez@foxrothschild.com>**Subject:** NPRI v. Cannizzaro et al.

Good evening Counsel,

I am in receipt of each of your proposed orders, and I do have suggested edits to each. However, as each was submitted to me on or after the deadline for submission to the Court under EDCR 7.21, and the Court's ruling on NPRI's Motion for Clarification is two weeks away or less, I am asking for the courtesy of waiting to provide input on these orders until after the Court's ruling.

The Omnibus Order Granting Motions to Dismiss proposed by Mr. Blum will obviously have the most direct impact by any clarification provided by the Court, but I will also be seeking to include discussion of the standing argument in Ms. Rhodes-Ford's proposed Order Denying Plaintiff's Motion to Disqualify Official Attorneys on behalf of the NSHE Defendants, as standing was raised in the underlying briefing. And, while Mr. Power's proposed Order Granting Nevada Legislature's Motion to Intervene as Defendant may not be directly impacted by the Court's expected clarification, it is unnecessarily costly to my client for me to have to address these orders on a piecemeal basis.

As the deadline for submission of these orders has already passed, and it is NPRI that would most benefit from the expedited entry of the orders and the opportunity to seek appellate review in advance of the 2021 Legislative Session, I trust you will each be amenable to extending the

requested courtesy of waiting to review and, to the extent necessary, submit competing orders related to the Court's November 18, 2020 Minute Order.

Thank you in advance for your consideration.

Colleen

Colleen E. McCarty

Attorney

Fox Rothschild LLP

One Summerlin

1980 Festival Plaza Drive, Suite 700

Las Vegas, NV 89135

(702) 699-5171 - direct

(702) 597-5503 - fax

CMcCarty@foxrothschild.com

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ATTORNEYS AT LAW

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Colleen E. McCarty
Direct: (702) 699-7151
Email: CEMcCarty@foxrothschild.com

December 4, 2020

VIA EMAIL TRANSMISSION
Dept24LC@clarkcountycourts.us

Marvin Simeon
Law Clerk to the Honorable Jim Crockett
Eighth Judicial District Court, Dept. XXIV
200 Lewis Avenue
Las Vegas, Nevada 89155

Re: *Nevada Policy Research Institute v. Nicole Cannizzaro, et al.*, Case No. A-20-817757-C
Request to Hold Processing of Orders from November 18, 2020 Minute Order

Dear Mr. Simeon:

Following the Court's entry of the OST on NPRI's Motion for Clarification, opposing counsel for the NSHE Defendants, the Nevada Legislature, and the individual Defendants, Nicole Cannizzaro and Jason Frierson, respectively, prepared and forwarded to my attention for review draft orders from the Court's Minute Order entered on November 18, 2020. While NPRI is the party with the most to gain from the expedited entry of these orders and the opportunity they will provide to seek appellate review in advance of the 2021 Legislative Session, I have respectfully requested that each opposing counsel wait to submit his or her proposed order until the Court resolves the pending Motion for Clarification on or before December 17, 2020 and I have the opportunity to provide input to complete the necessary orders. Opposing counsel, however, have declined this courtesy, in agreement with the position articulated by Mr. Johnathan D. Blum, Esq., which is the reason for this correspondence. The relevant emails are enclosed herewith as **Exhibit 1**.

I would note, again, that each proposed order draft was submitted to me for my consideration after service of NPRI's Motion for Clarification, and this was either on or after the 14-day period for submission of proposed orders to Chambers pursuant to EDCR 7.21, which period ran yesterday, December 2, 2020. That said, the reason NPRI respectfully requests that any order hereafter submitted to Chambers be held for consideration is to first allow the Court to clarify its Minute Order as requested. All parties, and quite possibly the successor Judge on this case, will benefit from having the clearest possible record. And, it is both inefficient and costly to my client to be asked to discuss draft orders now, when additional information for inclusion in

December 4, 2020

Page 2

some, if not all, of the orders will be forthcoming from the Court within the next two weeks at the latest.

Finally, to the extent counsel for the NSHE Defendants and/or the Nevada Legislature would suggest that clarification of the Court's standing determination does not directly impact their clients' order, NPRI respectfully submits this does not override the efficiency of completing each order simultaneously, rather than on a piecemeal basis. Also, although not specifically included in the Court's Minute Order, the NSHE Defendants argued lack of standing as a basis for issuing an order in their favor, the same as those Defendants seeking dismissal. And, the Nevada Legislature, by its own admission, understands this case "involves extremely important questions of constitutional law" (*see* Nevada Legislature's Motion to Intervene as Defendant at 16:22-23), which goes directly to the first criteria for application of the public importance exception. For these reasons, I will likely seek to include the Court's clarifications in each order ultimately entered by the Court as a result of the November 18, 2020 Minute Order.

Should you wish further explanation of the specific objections my client and I have to the form of orders I received and am anticipating will be submitted with or without my signature by opposing counsel, I will be happy to provide this to you immediately upon request. Again, however, it is my hope to avoid the unnecessary additional expense to my client of further reviewing and preparing competing orders in advance of the December 17, 2020 hearing.

Please do not hesitate to contact me directly at (702) 702-262-6899 if you have any questions or need any additional information. Thank you in advance for your kind consideration

Sincerely,

FOX ROTHSCHILD LLP

/s/ Colleen E. McCarty

Colleen E. McCarty

CEM/nm

cc: Jonathan D. Blum, Esq. (jblum@wileypetersenlaw.com)
Gary A. Cardinal, Esq. (gcardinal@unr.edu)
Kevin C. Powers, Esq. (kpowers@lcb.state.nv.us)
Berna L. Rhodes-Ford, Esq. (berna.rhodes-ford@nsc.edu)
Bradley Schrager, Esq. (bschrager@wrslawyers.com)

EXHIBIT 1

From: jblum@wileypetersenlaw.com <jblum@wileypetersenlaw.com>

Sent: Thursday, December 3, 2020 9:00 PM

To: McCarty, Colleen E. <CMcCarty@foxrothschild.com>; 'Berna Rhodes-Ford' <Berna.Rhodes-Ford@nsc.edu>; 'Gary A Cardinal' <gcardinal@unr.edu>; 'Bradley Schrager' <BSchrager@wrslawyers.com>; DBravo@wrslawyers.com; 'Powers, Kevin' <kpowers@lcb.state.nv.us>; Forbush, Deanna L. <DForbush@foxrothschild.com>

Cc: Martinez, Natasha <NMartinez@foxrothschild.com>; ibautista@wileypetersenlaw.com

Subject: [EXT] RE: NPRI v. Cannnizzaro et al. 00618

Colleen,

From my perspective the draft orders were not submitted earlier due to the intervening holiday, and the language of the minute order. The status check for the filing of the orders was set for Dec. 17, indicating a longer timeframe allowed by the Court, specifically permitted under EDCR 7.21. My position is that, per the minute order and local rules we can't simply fail to submit an order because there is another pending motion that may potentially affect that order. The motion for clarification should have been filed after a final order on the motions were entered, and is, in my opinion, premature. (I recognize the issue of Judge Crockett's departure from the bench as an issue, but requiring another round of briefing before the Judge has an opportunity to sign an order on the original motions causes additional fees for all of us.)

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Thanks,
Jon

Jonathan D. Blum, Esq.



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Las Vegas, Nevada 89145

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jblum@wileypetersenlaw.com

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From: McCarty, Colleen E. <CMcCarty@foxrothschild.com>

Sent: Thursday, December 3, 2020 6:54 PM

To: 'Berna Rhodes-Ford' <Berna.Rhodes-Ford@nsc.edu>; Gary A Cardinal <gcardinal@unr.edu>; jblum@wileypetersenlaw.com; Bradley Schrager <BSchrager@wrslawyers.com>; DBravo@wrslawyers.com; Powers, Kevin <kpowers@lcb.state.nv.us>; Forbush, Deanna L. <DForbush@foxrothschild.com>

Cc: Martinez, Natasha <NMartinez@foxrothschild.com>

Subject: NPRI v. Cannizzaro et al.

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Thank you in advance for your consideration.

Colleen

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Attorney

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Sent: Thursday, December 3, 2020 11:16 PM
To: Bradley Schrager <BSchrager@wrslawyers.com>
Cc: Powers, Kevin <kpowers@lcb.state.nv.us>; jblum@wileypetersenlaw.com; McCarty, Colleen E. <CMcCarty@foxrothschild.com>; Gary A Cardinal <gcardinal@unr.edu>; Daniel Bravo <DBravo@wrslawyers.com>; Forbush, Deanna L. <DForbush@foxrothschild.com>; Martinez, Natasha <NMartinez@foxrothschild.com>; ibautista@wileypetersenlaw.com
Subject: [EXT] Re: NPRI v. Cannnizzaro et al. 00618

I am in agreement as well.

Berna L. Rhodes-Ford
office [702.992.2378](tel:702.992.2378)
Berna.Rhodes-Ford@nsc.edu

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On Dec 3, 2020, at 9:56 PM, Bradley Schrager <BSchrager@wrslawyers.com> wrote:

I concur

Bradley Schrager
Wolf Rifkin Shapiro Schulman & Rabkin

On Dec 3, 2020, at 9:17 PM, Powers, Kevin <kpowers@lcb.state.nv.us> wrote:

CAUTION:EXTERNAL EMAIL

LCB Legal agrees with Mr. Blum's legal analysis, procedural approach, and timeline as set forth in his email below. Therefore, LCB Legal will follow all the same with regard to its proposed Order Granting Nevada Legislature's Motion to Intervene as Defendant.

Thanks.

Kevin C. Powers

General Counsel

Nevada Legislative Counsel Bureau, Legal Division

401 S. Carson Street

Carson City, NV 89701-4747

(775) 684-6830

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Cc: 'Martinez, Natasha' <NMartinez@foxrothschild.com>; ibautista@wileypetersenlaw.com

Subject: RE: NPRI v. Cannizzaro et al. 00618

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Jon

Jonathan D. Blum, Esq.

<image001.jpg>

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Las Vegas, Nevada 89145
Office 702.910.3329 | Mobile 702.443.0677
jblum@wileypetersenlaw.com
www.wileypetersenlaw.com

<image002.png>

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Cc: Martinez, Natasha <NMartinez@foxrothschild.com>
Subject: NPRI v. Cannizzaro et al.

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Attorney

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RE: Draft Order on Motion to Disqualify 00618

jblum@wileypetersenlaw.com <jblum@wileypetersenlaw.com>

Wed 12/2/2020 5:27 PM

To: Berna Rhodes-Ford <Berna.Rhodes-Ford@nsc.edu>; dforbush@foxrothschild.com <dforbush@foxrothschild.com>; cmccarty@foxrothschild.com <cmccarty@foxrothschild.com>; bschrager@wrslawyers.com <bschrager@wrslawyers.com>; dbravo@wrslawyers.com <dbravo@wrslawyers.com>; kpowers@lcb.state.nv.us <kpowers@lcb.state.nv.us>

Cc: Nita Armendariz <Nita.Armendariz@nsc.edu>; ibautista@wileypetersenlaw.com <ibautista@wileypetersenlaw.com>

Thanks Berna, you may affix my e-signature.

Jonathan D. Blum, Esq.



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Las Vegas, Nevada 89145
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jblum@wileypetersenlaw.com
www.wileypetersenlaw.com



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Cc: Nita Armendariz <Nita.Armendariz@nsc.edu>

Subject: Draft Order on Motion to Disqualify

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Thank you.

Berna L. Rhodes-Ford
General Counsel

BE CONNECTED OFFICE 702.992.2378 | FAX 702.974.0750 | Berna.Rhodes-Ford@nsc.edu

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1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Nevada Policy Research
Institute, Plaintiff(s)

CASE NO: A-20-817757-C

7 vs.

DEPT. NO. Department 24

8
9 Nicole Cannizzaro, Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District
13 Court. The foregoing Order was served via the court's electronic eFile system to all
recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 12/9/2020

15 Bradley Schrager bschrager@wrslawyers.com

16 Dannielle Fresquez dfresquez@wrslawyers.com

17 Daniel Bravo dbravo@wrslawyers.com

18 Christie Rehfeld crehfeld@wrslawyers.com

19 Kevin Powers kpowers@lcb.state.nv.us

20 Deanna Forbush dforbush@foxrothschild.com

21 Colleen McCarty cmccarty@foxrothschild.com

22 Natasha Martinez nmartinez@foxrothschild.com

23 Ivette Bautista ibautista@wileypetersenlaw.com

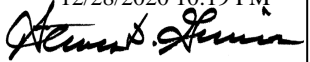
24 Jonathan Blum jblum@wileypetersenlaw.com

25 Chastity Dugenia cdugenia@wileypetersenlaw.com

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Berna Rhodes-Ford	Berna.Rhodes-Ford@nsc.edu
Gary Cardinal	gcardinal@unr.edu


CLERK OF THE COURT

ORDR

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LEGISLATIVE COUNSEL BUREAU, LEGAL DIVISION
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Email: kpowers@lcb.state.nv.us
Attorneys for Intervenor-Defendant Legislature of the State of Nevada

**DISTRICT COURT
CLARK COUNTY, NEVADA**

NEVADA POLICY RESEARCH INSTITUTE, a
Nevada domestic nonprofit corporation,

Plaintiff,

vs.

**Case No. A-20-817757-C
Dept. No. 24**

NICOLE J. CANNIZZARO, an individual engaging in dual employment with the Nevada State Senate and Clark County District Attorney; KASINA DOUGLASS-BOONE, an individual engaging in dual employment with the Nevada State Assembly and Clark County School District; JASON FRIERSON, an individual engaging in dual employment with the Nevada State Assembly and Clark County Public Defender; OSVALDO FUMO, an individual engaging in dual employment with the Nevada State Assembly and University of Nevada, Las Vegas; HEIDI SEEVERS GANSERT, an individual engaging in dual employment with the Nevada State Senate and University of Nevada, Reno; GLEN LEAVITT, an individual engaging in dual employment with the Nevada State Assembly and Regional Transportation Commission; BRITTNEY MILLER, an individual engaging in dual employment with the Nevada State Assembly and Clark County School District; DINA NEAL, an individual engaging in dual employment with the Nevada State Assembly and Nevada State College; JAMES OHRENSCHALL, an individual engaging in dual employment with the Nevada State Senate and Clark County Public Defender; MELANIE SCHEIBLE, an individual engaging in dual employment with the Nevada State Senate and Clark County District Attorney; TERESA BENITEZ-

**ORDER DENYING PLAINTIFF'S
MOTION FOR CLARIFICATION,
GRANTING JOINT COUNTERMOTION
TO DISMISS ALL REMAINING
DEFENDANTS BASED ON PLAINTIFF'S
LACK OF STANDING, AND ENTERING
FINAL JUDGMENT IN FAVOR OF ALL
DEFENDANTS BASED ON PLAINTIFF'S
LACK OF STANDING**

1 THOMPSON, an individual engaging in dual
2 employment with the Nevada State Assembly and
3 University of Nevada, Reno; JILL TOLLES, an
4 individual engaging in dual employment with the
5 Nevada State Assembly and University of Nevada,
6 Reno; and SELENA TORRES, an individual
7 engaging in dual employment with the Nevada State
8 Assembly and Clark County School District,

9
10 Defendants, and

11 THE LEGISLATURE OF THE STATE OF
12 NEVADA,

13 Intervenor-Defendant.
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BACKGROUND

1 In this action, Plaintiff Nevada Policy Research Institute (“NPRI”) has alleged that the individual
2 Defendants are persons simultaneously holding elected offices in the Nevada Legislature and paid
3 positions with the executive branch of the Nevada State Government or with local governments in
4 violation of the separation-of-powers provision in Article 3, Section 1 of the Nevada Constitution.
5 NPRI is represented by Deanna L. Forbush, Esq. and Colleen E. McCarty, Esq., of Fox Rothschild LLP.

6 On December 8, 2020, the Court entered an Order Granting Nevada Legislature’s Motion to
7 Intervene as an Intervenor-Defendant (the “Legislature”). The Legislature is represented by Kevin C.
8 Powers, General Counsel, Legislative Counsel Bureau, Legal Division, under NRS 218F.720.
9 Additionally, on December 8, 2020, the Court entered an Omnibus Order Granting Motions to Dismiss
10 in favor of the following individual Defendants based on NPRI’s lack of standing: (1) Defendants
11 Brittney Miller and Selena Torres,¹ who are represented by Bradley Schrager, Esq., and Daniel Bravo,
12 Esq., of Wolf, Rifkin, Shapiro, Schulman & Rabkin LLP; (2) Defendants Jason Frierson and Nicole
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¹ Although Defendant Selena Torres did not file a separate Motion to Dismiss, she filed Joinders to the
other Defendants’ Motions to Dismiss. In the Court’s Omnibus Order Granting Motions to Dismiss,
the Court granted all Joinders to the other Defendants’ Motions to Dismiss.

1 Cannizzaro, who are represented by Jonathan D. Blum, Esq., of Wiley Petersen; and (3) Defendants
2 Osvaldo Fumo, Heidi Seevers Gansert, and Dina Neal (the Nevada System of Higher Education or
3 “NSHE” Defendants), who are represented by Berna L. Rhodes-Ford, General Counsel, Nevada State
4 College, and Gary A. Cardinal, Assistant General Counsel, University of Nevada, Reno. On
5 December 9, 2020, the Court entered an Order Denying NPRI’s Motion to Disqualify Official Attorneys
6 from representing the NSHE Defendants.

7 In addition to the individual Defendants dismissed by the Court’s Omnibus Order Granting
8 Motions to Dismiss, the following individual Defendants were voluntarily dismissed by NPRI, without
9 prejudice, pursuant to NRCP 41(a)(1) during the course of this litigation: (1) Defendant Teresa Benitz-
10 Thompson on September 17, 2020; (2) Defendant Kasina Douglass-Boone on September 28, 2020; and
11 (3) Defendants Osvaldo Fumo and Jill Tolles on November 16, 2020. NPRI voluntarily dismissed these
12 Defendants based on representations from their respective counsel that they were no longer engaging in
13 the dual employment as alleged by NPRI in its Amended Complaint.

14 However, with regard to Defendant Jill Tolles, upon notification from her counsel that she would
15 be entering into a new contract with her state employer, NPRI and all other parties entered into, and the
16 Court approved, a Stipulation and Order on December 16, 2020, which: (1) vacated the voluntary
17 dismissal of Defendant Jill Tolles and reinstated her as a Defendant with all defenses reserved, including
18 her right to argue that she is not an employee of NSHE or the University of Nevada, Reno; and
19 (2) provided that the Court’s Omnibus Order Granting Motions to Dismiss and the Court’s Order
20 Denying NPRI’s Motion to Disqualify Official Attorneys from representing the NSHE Defendants shall
21 apply equally to Defendant Jill Tolles, such that all parties are bound thereby without the need to re-
22 litigate the motions decided therein. Defendant Jill Tolles is represented by counsel for the NSHE
23 Defendants.

24 //

1 The remaining individual Defendants are Glen Leavitt, James Ohrenschall, and Melanie Scheible.
2 On November 4, 2020, the Court entered: (1) an Order Granting NPRI's Motion for Enlargement of
3 Time to Serve the Amended Complaint on Defendants Glen Leavitt, James Ohrenschall, and Melanie
4 Scheible; and (2) an Order to Serve by Publication Defendants Glen Leavitt, James Ohrenschall, and
5 Melanie Scheible. On December 9, 2020, NPRI filed an Acceptance of Service in which Jonathan D.
6 Blum, Esq., of Wiley Petersen, accepted service of the Summons and Amended Complaint on behalf of
7 Defendant Melanie Scheible. On December 14, 2020, NPRI stated in its Limited Reply in Support of its
8 Motion for Clarification that Defendants Glen Leavitt and James Ohrenschall were officially served by
9 publication effective December 10, 2020.

10 **PENDING MOTION AND COUNTERMOTION**

11 Presently pending before the Court are the following motion and countermotion and their
12 supporting documents: (1) NPRI's Motion for the Court's Clarification of its Decision to Grant
13 Defendants' Motions to Dismiss Based on NPRI's Lack of Standing ("NPRI's Motion for
14 Clarification"), which includes a request for the Court to grant NRCP 54(b) certification whereby the
15 Court finds that there is no just reason for delay and directs entry of a final judgment in order to
16 facilitate timely and meaningful appellate review; (2) Defendants' and Legislature's Joint Opposition to
17 NPRI's Motion for the Court's Clarification of its Decision to Grant Defendants' Motions to Dismiss
18 Based on NPRI's Lack of Standing and Joint Countermotion to Dismiss All Remaining Defendants
19 Based on NPRI's Lack of Standing ("Joint Countermotion to Dismiss"); and (3) NPRI's Notice of Non-
20 Opposition to Joint Countermotion to Dismiss and Limited Reply in Support of its Motion for
21 Clarification.

22 Pursuant to EDCR 2.23(c) and (d), the Court decided the pending motion and countermotion on
23 the written submissions filed by the parties without oral argument because the Court deems oral
24 argument unnecessary. Having considered the written submissions filed by the parties, and for good

1 cause shown, the Court: (1) denies NPRI's Motion for Clarification; (2) grants the Joint Countermotion
2 to Dismiss and hereby dismisses all remaining Defendants based on NPRI's lack of standing; and
3 (3) denies NPRI's request for NRCP 54(b) certification as moot because, by dismissing all Defendants
4 based on NPRI's lack of standing, the Court is entering a final judgment which adjudicates all the claims
5 against all the parties based on NPRI's lack of standing and which thereby renders NRCP 54(b)
6 certification unnecessary. Consequently, having dismissed all Defendants based on NPRI's lack of
7 standing, the Court enters a final judgment in favor of all Defendants based on NPRI's lack of standing,
8 and the Court does not address the merits of NPRI's constitutional claims.

9 **DISCUSSION**

10 **1. NPRI's Motion for Clarification.**

11 On November 18, 2020, the Court entered a Minute Order which directed counsel for the
12 prevailing parties to prepare for the Court's review and approval a proposed order granting Defendants'
13 Motions to Dismiss based on NPRI's lack of standing. On December 1, 2020, before counsel for the
14 prevailing parties had submitted a proposed order for the Court's review and approval, NPRI filed its
15 Motion for Clarification of the Court's decision granting Defendants' Motions to Dismiss based on
16 NPRI's lack of standing. When NPRI filed its Motion for Clarification on December 1, 2020, there was
17 no written order that the Court had signed and filed yet. Thus, at that time, NPRI's Motion for
18 Clarification was premature because the Court could not clarify an order that did not exist yet.

19 On December 2, 2020, counsel for Defendants Jason Frierson and Nicole Cannizzaro submitted a
20 proposed Omnibus Order Granting Motions to Dismiss, without commentary from NPRI. NPRI instead
21 emailed a Letter to the Court on December 4, 2020, which NPRI also copied to counsel for all other
22 parties, requesting that the Court hold off processing the proposed order until the hearing on the Motion
23 for Clarification ("NPRI's December 4 Letter"). NPRI's December 4 Letter has been "Left Side" filed
24 into this case.

1 On December 8, 2020, the Court signed and filed Defendants' proposed Omnibus Order Granting
2 Motions to Dismiss based on NPRI's lack of standing. On December 14, 2020, NPRI filed its Limited
3 Reply in Support of its Motion for Clarification. In NPRI's Reply, NPRI asks for the Court to provide
4 clarification of precisely why NPRI lacks standing to bring this lawsuit, arguing that the record remains
5 unclear as to how NPRI either: (1) lacks its own particularized harm to establish standing; or (2) fails to
6 meet the public-importance exception to standing under *Schwartz v. Lopez*, 132 Nev. 732, 743, 382 P.3d
7 886, 894 (2016).

8 On December 15, 2020, the Court entered a Minute Order denying NPRI's Motion for
9 Clarification, stating that:

10 Although Plaintiff styles this motion as a Motion for Clarification of the Court's Decision,
11 there is no order that has been signed and filed yet and thus the motion is premature since
12 one cannot clarify what does not exist. Plaintiff's Reply brief does not provide any
additional justification or authority for clarification. Motion for Clarification must be
DENIED.

13 Based on the Court's December 15 Minute Order, NPRI believed that the Court denied its Motion
14 for Clarification on the basis that no order from the November 18, 2020, hearing had yet been signed
15 and filed yet, even though all orders had been signed and filed on either December 8 or December 9,
16 2020. Accordingly, on December 16, 2020, NPRI emailed a Letter to the Court ("NPRI's December 16
17 Letter"), which NPRI also copied to counsel for all other parties, requesting that the record be corrected
18 and that the Court either place the Motion for Clarification back on calendar or provide the basis for the
19 denial of NPRI's Motion for Clarification. NPRI's December 16 Letter has been "Left Side" filed into
20 this case.

21 Having considered NPRI's Reply and NPRI's December 16 Letter, the Court finds that NPRI does
22 not provide any additional justification or authority for clarification, and the Court is of the view that the
23 issue of standing needs no further clarification and is entirely dispositive of the arguments raised by
24 NPRI. Therefore, the Court denies NPRI's Motion for Clarification.

1 **2. Joint Countermotion to Dismiss All Remaining Defendants.**

2 As discussed previously, the remaining individual Defendants are Glen Leavitt, James
3 Ohrenschall, and Melanie Scheible. In Nevada, a person named as a codefendant in a complaint is not
4 treated as a party to the case unless the person has been served with process or has entered a voluntary
5 appearance. *Rae v. All Am. Life & Cas. Co.*, 95 Nev. 920, 922, 605 P.2d 196, 197 (1979); *Valley Bank*
6 *of Nev. v. Ginsburg*, 110 Nev. 440, 447, 874 P.2d 729, 734 (1994); *Albert D. Massi, Ltd. v. Bellmyre*,
7 111 Nev. 1520, 1521, 908 P.2d 705, 706 (1995).

8 Based on the record in this case, NPRI filed an Acceptance of Service on December 9, 2020, in
9 which Jonathan D. Blum, Esq., of Wiley Petersen, accepted service of the Summons and Amended
10 Complaint on behalf of Defendant Melanie Scheible. Additionally, on December 14, 2020, NPRI stated
11 in its Limited Reply in Support of its Motion for Clarification that Defendants Glen Leavitt and James
12 Ohrenschall were officially served by publication effective December 10, 2020. Therefore, because the
13 remaining individual Defendants Glen Leavitt, James Ohrenschall, and Melanie Scheible have been
14 served with process, the Court finds that they are parties to this case, regardless of whether they have
15 appeared in this action.

16 The Joint Countermotion to Dismiss asks the Court to dismiss all remaining Defendants based on
17 NPRI's lack of standing and argues that NPRI lacks standing to bring its constitutional claims against all
18 remaining Defendants, regardless of whether they have appeared in this action. In NPRI's Non-
19 Opposition to the Joint Countermotion to Dismiss, NPRI does not oppose the Court's entry of a final
20 judgment as to all remaining Defendants based on NPRI's lack of standing in order to facilitate timely
21 and meaningful appellate review.

22 The Court finds that the Joint Countermotion to Dismiss is most persuasive. As argued in the
23 Joint Countermotion to Dismiss, when a plaintiff files a complaint for declaratory and injunctive relief,
24 the Court may not exercise subject-matter jurisdiction over the plaintiff's claims unless the plaintiff has

1 standing to bring the claims. *Doe v. Bryan*, 102 Nev. 523, 524-26, 728 P.2d 443, 444-45 (1986). When
2 the plaintiff lacks standing to bring its claims, the defendant is entitled to dismissal for lack of subject-
3 matter jurisdiction as a matter of law. *Id.* (affirming district court’s dismissal of plaintiffs’ constitutional
4 claims because plaintiffs lacked standing to bring those claims); NRCP 12(h)(3) (“If the court
5 determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.”).

6 Furthermore, when the plaintiff pleads a claim against multiple defendants and one of the
7 defendants proves that the claim fails as a matter of law—such as for the lack of standing—the natural
8 consequence is that the claim fails as a matter of law as to all defendants named in the claim, even if
9 some of the defendants do not answer or defend against the claim. *See In re Forsyth’s Estate*, 45 Nev.
10 385, 392, 204 P. 887, 889-90 (1922) (explaining the “well-known and general rule to the effect that,
11 where several persons are joined as defendants, one or more of whom made default, and the others
12 defend successfully upon a ground not personal to themselves, but which goes to destroy the very basis
13 of the action, their success in maintaining such defense inures to the benefit of all.”). The reason for this
14 rule is that when a claim fails as a matter of law, it is legally unsustainable, and the plaintiff cannot
15 prosecute the claim against any defendant, regardless of whether the defendant has appeared in the
16 action. *See Sutherland v. Gross*, 105 Nev. 192, 198, 772 P.2d 1287, 1291 (1989) (stating that “when the
17 defenses interposed by the answering co-defendant call into question the validity of plaintiff’s entire
18 cause of action and when such defenses prove successful, the defenses inure to the benefit of the
19 defaulting co-defendant. Consequently, the plaintiff cannot take judgment against the defendant in
20 default.” (citations omitted)); *Paul v. Pool*, 96 Nev. 130, 132, 605 P.2d 635, 636 (1980) (“The answer of
21 a co-defendant inures to the benefit of a defaulting defendant where there exists, as here, a common
22 defense as to both of them.”).

23 As determined by the Court in its Omnibus Order Granting Motions to Dismiss, standing is the
24 controlling issue here, and while other issues are discussed, standing is the determinative issue above all

1 else. In its Omnibus Order, the Court concluded that NPRI clearly lacks standing to bring its
2 constitutional claims against Defendants who filed Motions to Dismiss or Joinders thereto. The Court
3 finds that its conclusion that NPRI clearly lacks standing to bring its constitutional claims applies
4 equally to all remaining Defendants as well. Therefore, the Court grants the Joint Countermotion to
5 Dismiss and hereby dismisses all remaining Defendants based on NPRI's lack of standing.
6 Consequently, having dismissed all Defendants based on NPRI's lack of standing, the Court enters a
7 final judgment in favor of all Defendants based on NPRI's lack of standing, and the Court does not
8 address the merits of NPRI's constitutional claims.

9 **3. NRCP 54(b) certification.**

10 As a general rule, a party is not entitled to appeal from any order or other decision, however
11 designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the
12 parties. NRCP 54(b); *Wilmurth v. State*, 79 Nev. 490, 491-92, 387 P.2d 251, 251 (1963). However,
13 NRCP 54(b) contains an exception to the general rule, stating that "the court may direct entry of a final
14 judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines
15 that there is no just reason for delay." NRCP 54(b); *Crescent v. White*, 91 Nev. 209, 210, 533 P.2d 159,
16 160 (1975) (explaining that "a judgment or order that fails to adjudicate all the claims and the rights and
17 liabilities of the parties is not appealable, absent the express determination that there is no just reason for
18 delay, as required by NRCP 54(b).").

19 In this case, NPRI's request for NRCP 54(b) certification is denied as moot because, by dismissing
20 all Defendants based on NPRI's lack of standing, the Court is entering a final judgment which
21 adjudicates all the claims against all the parties based on NPRI's lack of standing and which thereby
22 renders NRCP 54(b) certification unnecessary.

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2. IT IS HEREBY FURTHER ORDERED that Defendants' and Legislature's Joint Countermotion to Dismiss All Remaining Defendants Based on NPRI's Lack of Standing is GRANTED.

3. IT IS HEREBY FURTHER ORDERED that NPRI's request for NRCP 54(b) certification is DENIED as moot because, by dismissing all Defendants based on NPRI's lack of standing, the Court is entering a final judgment which adjudicates all the claims against all the parties based on NPRI's lack of standing and which thereby renders NRCP 54(b) certification unnecessary.

4. IT IS HEREBY FURTHER ORDERED that a FINAL JUDGMENT is entered in favor of all Defendants based on NPRI's lack of standing.

Dated this 28th day of December, 2020

Dated this 28th day of December, 2020



Order submitted by:

/s/ Kevin C. Powers
KEVIN C. POWERS, General Counsel
 Nevada Bar No. 6781
 LEGISLATIVE COUNSEL BUREAU, LEGAL DIVISION
 401 S. Carson St.
 Carson City, NV 89701
 Tel: (775) 684-6830; Fax: (775) 684-6761
 Email: kpowers@lcb.state.nv.us
Attorneys for Intervenor-Defendant Legislature of Nevada

D49 621 CDB2 0D29
Jim Crockett
District Court Judge

//
//
//

Order reviewed by:

/s/ Colleen E. McCarty

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FOX ROTHSCHILD LLP

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/s/ Berna L. Rhodes-Ford

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Heidi Seevers Gansert, Dina Neal and Jill Tolles*

/s/ Jonathan D. Blum

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WILEY PETERSEN

jblum@wileypetersenlaw.com

*Attorneys for Defendants Jason Frierson,
Nicole Cannizzaro and Melanie Scheible*

Powers, Kevin

From: Berna Rhodes-Ford <Berna.Rhodes-Ford@nsc.edu>
Sent: Wednesday, December 23, 2020 5:23 PM
To: Powers, Kevin
Cc: McCarty, Colleen E.; Forbush, Deanna L.; Bradley Schrage; Daniel Bravo; jblum@wileypetersenlaw.com; Gary A Cardinal
Subject: Re: A-20-817757-C, NPRI v Cannizzaro: Proposed Order and Final Judgment

I authorize use of my electronic signature on the revised proposed order.

Berna L. Rhodes-Ford
office [702.992.2378](tel:702.992.2378)
Berna.Rhodes-Ford@nsc.edu

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On Dec 23, 2020, at 5:04 PM, Powers, Kevin <kpowers@lcb.state.nv.us> wrote:

Plaintiff's Counsel:

In response to NPRI's suggested revisions to the proposed order, Counsel for all Defendants have prepared and approved the attached revised proposed order and final judgment in this matter.

The revised proposed order includes most—but not all—of NPRI's suggested revisions. The revised proposed order also includes some additional revisions from Defendants in response to NPRI's suggested revisions that are included in the revised proposed order.

Counsel for all Defendants do not intend to make any additional revisions to the revised proposed order. Therefore, please review the revised proposed order, and please reply to this email as to whether you authorize the use of your electronic signature on the revised proposed order.

If you do not so authorize, then LCB Legal will submit the revised proposed order to the Court, and NPRI may submit a competing proposed order if it so desires.

Finally, in order to submit the revised proposed order with the required email verification, **Counsel for all Defendants**, please reply to this email in order to authorize the use of your electronic signature on the revised proposed order.

Thanks.

Kevin C. Powers

General Counsel

Nevada Legislative Counsel Bureau, Legal Division

401 S. Carson Street

Carson City, NV 89701-4747

(775) 684-6830

(775) 684-6761-Fax

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From: McCarty, Colleen E. <CMcCarty@foxrothschild.com>**Sent:** Tuesday, December 22, 2020 12:11 PM**To:** Powers, Kevin <kpowers@lcb.state.nv.us>; Forbush, Deanna L. <DForbush@foxrothschild.com>**Cc:** 'Bradley Schrager' <BSchrager@wrslawyers.com>; 'Daniel Bravo' <DBravo@wrslawyers.com>; 'jblum@wileypetersenlaw.com' <jblum@wileypetersenlaw.com>; Gary A Cardinal <gcardinal@unr.edu>; 'Berna Rhodes-Ford' <Berna.Rhodes-Ford@nsc.edu>**Subject:** RE: A-20-817757-C, NPRI v Cannizzaro: Proposed Order and Final Judgment

Mr. Powers,

Attached please find NPRI's suggested revisions to the draft order. We believe they add some additional context and complete the record and also, as NPRI did not oppose the motion to dismiss, remove some superfluous language.

Should you have any questions or wish to discuss the track changes, please do not hesitate to reach out.

Colleen

From: Powers, Kevin <kpowers@lcb.state.nv.us>**Sent:** Friday, December 18, 2020 5:10 PM**To:** Forbush, Deanna L. <DForbush@foxrothschild.com>; McCarty, Colleen E.

<CMcCarty@foxrothschild.com>

Cc: 'Bradley Schrager' <BSchrager@wrslawyers.com>; 'Daniel Bravo' <DBravo@wrslawyers.com>;

'jblum@wileypetersenlaw.com' <jblum@wileypetersenlaw.com>; Gary A Cardinal <gcardinal@unr.edu>;

'Berna Rhodes-Ford' <Berna.Rhodes-Ford@nsc.edu>

Subject: [EXT] A-20-817757-C, NPRI v Cannizzaro: Proposed Order and Final Judgment

Plaintiff's Counsel:

Counsel for all Defendants have prepared and approved the attached proposed order and final judgment in this matter based on the Court's minute orders on December 15 and 16, 2020. Please review the proposed order and final judgment and let us know whether you have any suggested revisions.

Counsel for all Defendants would like to submit the proposed order and final judgment to the Court as early as possible next week before the holiday.

Thank you for your prompt consideration of this matter.

Kevin C. Powers

General Counsel
Nevada Legislative Counsel Bureau, Legal Division
401 S. Carson Street
Carson City, NV 89701-4747
(775) 684-6830
(775) 684-6761-Fax

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<2020_12-23_01_A-20-817757-C_Proposed Order Denying Motion for Clarification, Granting Countermotion to Dismiss Remaining Defs and Entering Final Judgment.doc>

Powers, Kevin

From: Bradley Schrager <BSchrager@wrslawyers.com>
Sent: Thursday, December 24, 2020 7:30 AM
To: Powers, Kevin
Cc: McCarty, Colleen E.; Forbush, Deanna L.; Daniel Bravo; jblum@wileypetersenlaw.com; Gary A Cardinal; Berna Rhodes-Ford
Subject: Re: A-20-817757-C, NPRI v Cannizzaro: Proposed Order and Final Judgment

Signature authorized on behalf of my clients

Bradley Schrager
Wolf Rifkin Shapiro Schulman & Rabkin

On Dec 23, 2020, at 5:04 PM, Powers, Kevin <kpowers@lcb.state.nv.us> wrote:

CAUTION:EXTERNAL EMAIL

Plaintiff's Counsel:

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The revised proposed order includes most—but not all—of NPRI's suggested revisions. The revised proposed order also includes some additional revisions from Defendants in response to NPRI's suggested revisions that are included in the revised proposed order.

Counsel for all Defendants do not intend to make any additional revisions to the revised proposed order. Therefore, please review the revised proposed order, and please reply to this email as to whether you authorize the use of your electronic signature on the revised proposed order.

If you do not so authorize, then LCB Legal will submit the revised proposed order to the Court, and NPRI may submit a competing proposed order if it so desires.

Finally, in order to submit the revised proposed order with the required email verification, **Counsel for all Defendants**, please reply to this email in order to authorize the use of your electronic signature on the revised proposed order.

Thanks.

Kevin C. Powers
General Counsel
Nevada Legislative Counsel Bureau, Legal Division
401 S. Carson Street
Carson City, NV 89701-4747
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From: McCarty, Colleen E. <CMcCarty@foxrothschild.com>

Sent: Tuesday, December 22, 2020 12:11 PM

To: Powers, Kevin <kpowers@lcb.state.nv.us>; Forbush, Deanna L. <DForbush@foxrothschild.com>

Cc: 'Bradley Schrager' <BSchrager@wrsllawyers.com>; 'Daniel Bravo' <DBravo@wrsllawyers.com>; 'jblum@wileypetersenlaw.com' <jblum@wileypetersenlaw.com>; Gary A Cardinal <gcardinal@unr.edu>; 'Berna Rhodes-Ford' <Berna.Rhodes-Ford@nsc.edu>

Subject: RE: A-20-817757-C, NPRI v Cannizzaro: Proposed Order and Final Judgment

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Sent: Friday, December 18, 2020 5:10 PM

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Subject: [EXT] A-20-817757-C, NPRI v Cannizzaro: Proposed Order and Final Judgment

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Nevada Legislative Counsel Bureau, Legal Division

401 S. Carson Street

Carson City, NV 89701-4747

(775) 684-6830

(775) 684-6761-Fax

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<2020_12-23_01_A-20-817757-C_Proposed Order Denying Motion for Clarification, Granting Countermotion to Dismiss Remaining Defs and Entering Final Judgment.doc>

Powers, Kevin

From: jblum@wileypetersenlaw.com
Sent: Thursday, December 24, 2020 8:12 AM
To: Powers, Kevin; 'McCarty, Colleen E.'; 'Forbush, Deanna L.'
Cc: 'Bradley Schrager'; 'Daniel Bravo'; 'Gary A Cardinal'; 'Berna Rhodes-Ford';
ibautista@wileypetersenlaw.com
Subject: RE: A-20-817757-C, NPRI v Cannizzaro: Proposed Order and Final Judgment 00618

Thanks, Kevin.

Missing one word in caption:

**ORDER DENYING PLAINTIFF'S MOTION FOR CLARIFICATION, GRANTING JOINT
COUNTERMOTION TO DISMISS ALL REMAINING DEFENDANTS BASED ON PLAINTIFF'S
LACK OF STANDING, AND ENTERING FINAL JUDGMENT IN FAVOR **OF** ALL DEFENDANTS
BASED ON PLAINTIFF'S LACK OF STANDING**

You may affix my e-signature.

Happy Holidays to all,
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To: 'jblum@wileypetersenlaw.com'; Powers, Kevin; 'McCarty, Colleen E.'; 'Forbush, Deanna L.'
Cc: 'Bradley Schrager'; 'Daniel Bravo'; 'Berna Rhodes-Ford';
ibautista@wileypetersenlaw.com
Subject: RE: A-20-817757-C, NPRI v Cannizzaro: Proposed Order and Final Judgment 00618

You may affix my e-signature. Thank you.

GARY A. CARDINAL

Assistant General Counsel
University of Nevada, Reno
1664 North Virginia Street
Mail Stop 0550
Reno, NV 89557
Tel: (775) 784-3495
Fax: (775) 327-2202
gcardinal@unr.edu

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1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Nevada Policy Research
Institute, Plaintiff(s)

CASE NO: A-20-817757-C

7 vs.

DEPT. NO. Department 24

8
9 Nicole Cannizzaro, Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District
13 Court. The foregoing Order was served via the court's electronic eFile system to all
recipients registered for e-Service on the above entitled case as listed below:

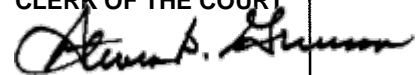
14 Service Date: 12/28/2020

15 Bradley Schrager	bschrager@wrslawyers.com
16 Dannielle Fresquez	dfresquez@wrslawyers.com
17 Daniel Bravo	dbravo@wrslawyers.com
18 Christie Rehfeld	crehfeld@wrslawyers.com
19 Kevin Powers	kpowers@lcb.state.nv.us
20 Deanna Forbush	dforbush@foxrothschild.com
21 Doreen Loffredo	dloffredo@foxrothschild.com
22 Colleen McCarty	cmccarty@foxrothschild.com
23 Natasha Martinez	nmartinez@foxrothschild.com
24 Ivette Bautista	ibautista@wileypetersenlaw.com
25 Jonathan Blum	jblum@wileypetersenlaw.com

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Chastity Dugenia	cdugenia@wileypetersenlaw.com
Berna Rhodes-Ford	Berna.Rhodes-Ford@nsc.edu
Gary Cardinal	gcardinal@unr.edu



NEO

JONATHAN D. BLUM, ESQ.

Nevada Bar No. 09515

WILEY PETERSEN

1050 Indigo Dr., Suite 200B

Las Vegas, Nevada 89145

Telephone No. (702) 910-3329

Fax: (702) 553-3467

jblum@wileypetersenlaw.com

Attorney for Defendants,

Jason Frierson and Nicole Cannizzaro

DISTRICT COURT

COUNTY OF CLARK, NEVADA

NEVADA POLICY RESEARCH INSTITUTE,
a Nevada domestic nonprofit corporation,

Plaintiff,

vs.

NICOLE J. CANNIZZARO, an individual
engaging in dual employment with the
Nevada State Senate and Clark County
District Attorney; KASINA
DOUGLASSBOONE,
an individual engaging in dual
employment with the Nevada State Assembly
and Clark County School District; JASON
FRIERSON, an individual engaging in dual
employment with the Nevada State Assembly
and Clark County Public Defender;
OSVALDO FUMO, an individual engaging
in dual employment with the Nevada State
Assembly and University of Nevada, Las
Vegas; HEIDI SEEVERS GANSERT, an
individual engaging in dual employment with
the Nevada State Senate and University of
Nevada Reno; GLEN LEAVITT, an
individual engaging in dual employment with
the Nevada State Assembly and. Regional
Transportation Commission; BRITTNEY
MILLER, an individual engaging in dual
employment with the Nevada State Assembly
and Clark County School District; DINA
NEAL, an individual engaging in dual
employment with the Nevada State Assembly
and Nevada State College; JAMES
OHRENSCHALL, an individual engaging in
dual employment with the Nevada State

CASE No.: A-20-817757-C

DEPT. No.: 24

**NOTICE OF ENTRY OF OMNIBUS
ORDER GRANTING MOTIONS TO
DISMISS**

Senate and Clark County Public Defender;
MELANIE SCHEIBLE an individual
engaging in dual employment with the
Nevada State Senate and Clark County
District Attorney; TERESA
BENITEZTHOMPSON,
an individual engaging in dual
employment with the Nevada State Assembly
and University of Nevada, Reno; JILL
TOLLES, an individual engaging in dual
employment with the Nevada State Assembly
and University of Nevada, Reno; and
SELENA TORRES, an individual engaging
in dual employment with the Nevada State
Assembly and Clark County School District,

Defendants.

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that an Omnibus Order
Granting Motions to Dismiss was entered in the above-entitled matter on the 8th day of December
2020, a copy of which is attached hereto.

DATED this 8 of December 2020.

WILEY PETERSEN

JONATHAN D. BLUM, ESQ.
Nevada Bar No. 09515
1050 Indigo Dr., Suite 200B
Las Vegas, Nevada 89145
Telephone No. (702) 910-3329
Facsimile: (702) 553-3467
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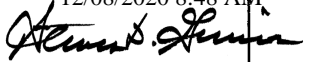
*Attorney for Defendants,
Jason Frierson and Nicole Cannizzaro*

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an employee of WILEY PETERSEN, and the 8th day of December
3 2020, I caused to be served a true and correct copy of the foregoing **NOTICE OF ENTRY OF**
4 **OMNIBUS ORDER GRANTING MOTIONS TO DISMISS** in the following manner:

5 (ELECTRONIC SERVICE) Pursuant to Administrative Order 14-2, the above-referenced
6 document was electronically filed on the date hereof and served through the Notice of Electronic Filing
7 automatically generated by the Court's facilities to those parties listed on the Court's Master Service
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9
10
11 /s/ *Ivette Bautista*
12 An Employee of WILEY PETERSEN
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25
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27
28


CLERK OF THE COURT

ORDR

JONATHAN D. BLUM, ESQ.
Nevada Bar No. 09515

WILEY PETERSEN

1050 Indigo Dr., Suite 200B
Las Vegas, Nevada 89145
Telephone No. (702) 910-3329
Fax: (702) 553-3467
jblum@wileypetersenlaw.com

*Attorney for Defendants,
Jason Frierson and Nicole Cannizzaro*

DISTRICT COURT

CLARK COUNTY, NEVADA

NEVADA POLICY RESEARCH INSTITUTE,
a Nevada domestic nonprofit corporation,

Plaintiff,

vs.

NICOLE J. CANNIZZARO, an individual
engaging in dual employment with the
Nevada State Senate and Clark County
District Attorney; KASINA DOUGLASS-
BOONE,
an individual engaging in dual
employment with the Nevada State Assembly
and Clark County School District; JASON
FRIERSON, an individual engaging in dual
employment with the Nevada State Assembly
and Clark County Public Defender;
OSVALDO FUMO, an individual engaging
in dual employment with the Nevada State
Assembly and University of Nevada, Las
Vegas; HEIDI SEEVERS GANSERT, an
individual engaging in dual employment with
the Nevada State Senate and University of
Nevada Reno; GLEN LEAVITT, an
individual engaging in dual employment with
the Nevada State Assembly and Regional
Transportation Commission; BRITTNEY
MILLER, an individual engaging in dual
employment with the Nevada State Assembly
and Clark County School District; DINA
NEAL, an individual engaging in dual
employment with the Nevada State Assembly
and Nevada State College; JAMES
OHRENSCHALL, an individual engaging in
dual employment with the Nevada State

Case No.: A-20-817757-C

Dept. No.: 24

**OMNIBUS ORDER GRANTING
MOTIONS TO DISMISS**

Senate and Clark County Public Defender;
MELANIE SCHEIBLE an individual
engaging in dual employment with the
Nevada State Senate and Clark County
District Attorney; TERESA BENITEZ-
THOMPSON,
an individual engaging in dual
employment with the Nevada State Assembly
and University of Nevada, Reno; JILL
TOLLES, an individual engaging in dual
employment with the Nevada State Assembly
and University of Nevada, Reno; and
SELENA TORRES, an individual engaging
in dual employment with the Nevada State
Assembly and Clark County School District,

Defendants.

In this action, Plaintiff Nevada Policy Research Institute (“NPRI”) has alleged that the individual Defendants are persons simultaneously holding elected offices in the Nevada Legislature and paid positions with the executive branch of the Nevada State Government or with local governments in violation of the separation-of-powers provision in Article 3, Section 1 of the Nevada Constitution. Defendants filed Motions to Dismiss as follows: Motion to Dismiss filed by Defendant Brittney Miller on September 18, 2020; Motion to Dismiss filed by Defendants Osvaldo Fumo, Heidi Seevers Gansert, and Dina Neal on September 28, 2020; Motion to Dismiss filed by Defendant Jason Frierson on October 5, 2020; and, Motion to Dismiss filed by Defendant Nicole Cannizzaro on October 19, 2020 (collectively, the “Motions to Dismiss”). Each of the defendants that filed a motion to dismiss also filed a joinder to the other Motions to Dismiss.

The Court having read and considered the pleadings and briefs filed by the parties, and for good cause appearing finds as follows:

Pursuant to EDCR 2.23 (c) and (d), this matter was decided on the briefs and pleadings filed by the parties without oral argument because the Court deems oral argument unnecessary.

Standing is the controlling issue here and while other issues are discussed, standing is the determinative issue above all else. Here, NPRI simply lacks standing to bring this suit. It is an organization rather than a particularly-aggrieved individual harmed by any alleged dual employment by any defendant. It is quite clear that NPRI does not allege any particularized harm beyond that of any

1 ordinary taxpayer, and that is not enough to give standing sufficient for NPRI to maintain this suit. *See*
2 *Katz v. Incline Village General Improvement District*, 414 P.3d 300, 2018 WL 1129140 (unpublished
3 decision), Nev. S. Ct. Case No. 70440 (Feb. 26, 2018) (“This court recently reaffirmed the general rule
4 that a taxpayer lacks standing when he or she has not suffered a special or peculiar injury different
5 from that sustained by the general public.”).

6 NPRI’s Opposition does not make persuasive arguments regarding standing, suggesting that an
7 evidentiary hearing would need to be conducted but not offering any theory as to how such a hearing
8 would demonstrate particularized harm or otherwise lead to a finding that it has standing to pursue this
9 case against Defendants.

10 Neither is the Court persuaded that NPRI comes within the recent *Schwartz* public-interest
11 exception to Nevada’s standing doctrine. *See Schwartz v. Lopez*, 132 Nev. 732, 743, 382 P.3d 886, 894
12 (2016) (recognizing “an exception to [the] injury requirement in certain cases involving issues of public
13 importance.”). To establish standing under the public-interest exception: (1) the case must involve an
14 issue of significant public importance; (2) the case must involve a challenge to a legislative expenditure
15 or appropriation on the basis that it violates a specific provision of the Nevada Constitution; and (3)
16 the plaintiff must be an “appropriate” party, meaning that there is no one else in a better position who
17 will likely bring an action and that the plaintiff is capable of fully advocating his or her position in
18 court. *Id.*

19 Even granting, *arguendo*, that this matter is one of public importance, NPRI is not directly
20 challenging a legislative appropriation or expenditure that can be enjoined in this action. In *Schwartz*,
21 the challenged legislative expenditure at issue involved multi-million dollar educational expenditures
22 projected over decades, alleged to be unconstitutionally diverted from appropriate state education
23 funds, which persuaded the Nevada Supreme Court that parents of children in Nevada’s public school
24 system had standing to maintain suit under the public-interest exception without meeting the
25 particularized-injury requirement. It was the legislative expenditure, and the entirety of the
26 circumstances, that established the public-interest exception in *Schwartz* and exempted the parents
27 from meeting the particularized-injury requirement.

28 Here, at least in response to Defendant Miller’s motion, NPRI avers that her *per diem* or

1 legislative salary is the challenged “legislative appropriation” satisfying that prong of a *Schwartz*
2 analysis. But the present suit is about “dual employment” as a violation of Nevada’s separation-of-
3 powers provision, not about legislative pay; NPRI is not suing the paymasters of legislators to enjoin
4 such payments for the services of legislators; and NPRI blows hot and cold on whether or not it is suing
5 the Defendants as legislators at all, appearing to prefer to cast this action as against executive branch
6 and local government employees when convenient, and against legislators when not. Indeed, NPRI
7 seeks, unsuccessfully, to create a wholly-new and separate category of defendant here, sued neither in
8 his or her official capacity as legislator nor as public employee, in an attempt to disqualify institutional
9 attorneys from representing Defendants, a maneuver that the Court rejected in its order denying NPRI’s
10 motion to disqualify the attorneys for the Nevada State Higher Education System.

11 Further, NPRI cannot demonstrate that it is the “appropriate” party here, beyond its general
12 policy disagreement with legislators holding positions of public employment with the state executive
13 branch or with local governments. Historically, in the numerous suits NPRI has either brought or
14 assisted in bringing on this subject, it has demonstrated that it has been able to enlist individuals who
15 might provide a more colorable claim of particularized harm, but NPRI has simply opted not to do so
16 in this case to enhance the possibility of finding that counsel represents someone with actual standing.
17 NPRI even states in its papers that it has individual members ready and willing to seek the employment
18 positions of Defendants, demonstrating that it is not the sole and appropriate party to bring this suit,
19 especially given the direction provided by the Nevada Supreme Court in *Heller v. Legislature*, 120
20 Nev. 456, 472-473, 93 P.3d 746, 757 (2004), that an appropriate action raising the “dual service issue”
21 under Nevada’s separation-of-powers provision “could be sought by someone with a legally protectible
22 interest, such as a person seeking the executive branch position held by the legislator.” *Id.* (internal
23 quotation and citation omitted).

24 Meeting neither the basic elements of standing in Nevada nor at least two of the three prongs
25 of the analysis in *Schwartz*, NPRI clearly lacks standing to bring this suit.

26 ///

27 ///

28 ///

ORDER

IT IS HEREBY ORDERED that the Motions to Dismiss are **GRANTED**.

IT IS FURTHER ORDERED that the Joinders of the other Defendants are also **GRANTED**.

IT IS HEREBY FURTHER ORDERED that the hearing on this matter set for November 19,
Dated this 8th day of December, 2020
2020 is hereby **VACATED**.

Approved as to form and content by:

FOX ROTHSCHILD LLP

Refused to Sign Order
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Nevada Bar No. 06646
COLEEN E. MCCARTY, ESQ.
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Las Vegas Nevada 89135

*Attorneys for Plaintiff,
Nevada Policy Research Institute*

**ASSISTANT GENERAL COUNSEL
UNIVERSITY OF NEVADA, RENO**

/s/ Gary A. Cardinal
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1664 North Virginia Street/MS 0550
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*Attorneys for Defendants,
Osvaldo Fumo, Heidi Seevers Gansert,
and Dina Neal*

\\

\\

\\

\\

**GENERAL COUNSEL NEVADA STATE
COLLEGE E08 FB5 9880 C605
Jim Crockett
District Court Judge**

/s/ Berna L. Rhodes-Ford
BERNA L. RHODES-FORD, ESQ.
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Henderson, Nevada 89002

*Attorneys for Defendants,
Osvaldo Fumo, Heidi Seevers Gansert,
and Dina Neal*

**WOLF RIFKIN, SHAPIRO,
SCHULMAN & RABKIN, LLP**

/s/ Bradley Schrager
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Nevada Bar No. 13078
3556 E. Russell Road, Second Floor
Las Vegas, Nevada 89120

*Attorneys for Defendants,
Brittney Miller and Selena Torres*

1 **LEGISLATIVE COUNSEL BUREAU,**
2 **LEGAL DIVISION**

3 /s/ Kevin C. Powers
4 KEVIN C. POWERS, ESQ.
5 Nevada Bar No. 6781
6 401 S. Carson St.
7 Carson City, Nevada 89701

8 *Attorneys for Intervenor-Defendant*
9 *Legislature of the State of Nevada*

10 *Respectfully submitted by:*

11 **WILEY PETERSEN**

12 JONATHAN D. BLUM, ESQ.
13 Nevada Bar No. 09515
14 1050 Indigo Dr., Suite 200B
15 Las Vegas, Nevada 89145
16 Telephone No. (702) 910-3329
17 Fax: (702) 553-3467
18 jblum@wileypetersenlaw.com

19 *Attorneys for Defendants,*
20 *Jason Frierson and Nicole Cannizzaro*

From: Gary A Cardinal <gcardinal@unr.edu>
Sent: Monday, December 7, 2020 9:39 AM
To: 'jblum@wileypetersenlaw.com'; 'Bradley Schrager'; 'Powers, Kevin'; dforbush@foxrothschild.com; cmccarty@foxrothschild.com; 'Daniel Bravo'; 'Nita Armendariz'; 'Berna Rhodes-Ford'
Cc: ibautista@wileypetersenlaw.com
Subject: RE: A-20-817757-C Nevada Policy Research Institute vs. Nicole Cannizzaro, et al. 00618- Order on Motions to Dismiss

Jon,
You have permission to attach my signature.
Thank you,
Gary

GARY A. CARDINAL

Assistant General Counsel
University of Nevada, Reno
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Reno, NV 89557
Tel: (775) 784-3495
Fax: (775) 327-2202
gcardinal@unr.edu

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Cc: ibautista@wileypetersenlaw.com
Subject: A-20-817757-C Nevada Policy Research Institute vs. Nicole Cannizzaro, et al. 00618- Order on Motions to Dismiss

Counsel,
I have incorporated the requested changes in the attached order. Please let me know if I can affix your e-signatures.

Deanna and Colleen, I understand you will not be signing, but if you can respond confirming the same, that would be helpful.

I plan to submit this today.

Thanks,

Jon

Jonathan D. Blum, Esq.



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Cc: ibautista@wileypetersenlaw.com
Subject: RE: A-20-817757-C Nevada Policy Research Institute vs. Nicole Cannizzaro, et al. 00618- Order on Motions to Dismiss

Please affix ours.

Bradley S. Schrager
Areas of Practice: Politics & Government – Appeals & Writs – Wage & Labor
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3556 E. Russell Rd, Las Vegas, Nevada 89120
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From: jblum@wileypetersenlaw.com [mailto:jblum@wileypetersenlaw.com]
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From: Powers, Kevin <kpowers@lcb.state.nv.us>

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Cc: ibautista@wileypetersenlaw.com

Subject: RE: A-20-817757-C Nevada Policy Research Institute vs. Nicole Cannizzaro, et al. 00618- Order on Motions to Dismiss

LCB Legal has reviewed the proposed Omnibus Order Granting Motions to Dismiss, and I agree to the use of the my electronic signature for the proposed order.

Thanks.

Kevin C. Powers

General Counsel

Nevada Legislative Counsel Bureau, Legal Division

401 S. Carson Street

Carson City, NV 89701-4747

(775) 684-6830

(775) 684-6761-Fax

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Cc: ibautista@wileypetersenlaw.com

Subject: A-20-817757-C Nevada Policy Research Institute vs. Nicole Cannizzaro, et al. 00618- Order on Motions to Dismiss

Counsel,

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Deanna and Colleen, I understand you will not be signing, but if you can respond confirming the same, that would be helpful.

I plan to submit this today.

Thanks,
Jon

Jonathan D. Blum, Esq.



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From: Berna Rhodes-Ford <Berna.Rhodes-Ford@nsc.edu>
Sent: Monday, December 7, 2020 2:41 PM
To: jblum@wileypetersenlaw.com
Cc: Bradley Schragger; Powers, Kevin; dforbush@foxrothschild.com; cmccarty@foxrothschild.com; Daniel Bravo; Nita Armendariz; gcardinal@unr.edu; ibautista@wileypetersenlaw.com
Subject: Re: A-20-817757-C Nevada Policy Research Institute vs. Nicole Cannizzaro, et al. 00618- Order on Motions to Dismiss

You may affix my e-signature.

Berna L. Rhodes-Ford
office [702.992.2378](tel:702.992.2378)
Berna.Rhodes-Ford@nsc.edu

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I plan to submit this today.

Thanks,
Jon

Jonathan D. Blum, Esq.

<image001.jpg>
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Cc: ibautista@wileypetersenlaw.com; Martinez, Natasha
Subject: RE: [EXT] A-20-817757-C Nevada Policy Research Institute vs. Nicole Cannizzaro, et al. 00618- Order on Motions to Dismiss

Jon,

As set forth in our communications to you and in the letter to chambers, dated December 4, 2020, we have respectfully requested that the Court hold all proposed orders in this matter until the Court resolves the pending Motion for Clarification on or before December 17, 2020 and NPRI has the opportunity thereafter to provide input to complete the necessary orders. NPRI seeks to include the Court's clarifications in each order ultimately entered by the Court as a result of its November 18, 2020 Minute Order.

Colleen McCarty

From: jblum@wileypetersenlaw.com <jblum@wileypetersenlaw.com>
Sent: Monday, December 7, 2020 9:37 AM
To: 'Bradley Schrager' <BSchrager@wrslawyers.com>; 'Powers, Kevin' <kpowers@lcb.state.nv.us>; Forbush, Deanna L. <DForbush@foxrothschild.com>; McCarty, Colleen E. <CMcCarty@foxrothschild.com>; 'Daniel Bravo' <DBravo@wrslawyers.com>; 'Nita Armendariz' <Nita.Armendariz@nsc.edu>; gcardinal@unr.edu; 'Berna Rhodes-Ford' <Berna.Rhodes-Ford@nsc.edu>
Cc: ibautista@wileypetersenlaw.com
Subject: [EXT] A-20-817757-C Nevada Policy Research Institute vs. Nicole Cannizzaro, et al. 00618- Order on Motions to Dismiss

Counsel,

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1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Nevada Policy Research
Institute, Plaintiff(s)

CASE NO: A-20-817757-C

7 vs.

DEPT. NO. Department 24

8
9 Nicole Cannizzaro, Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District
13 Court. The foregoing Order was served via the court's electronic eFile system to all
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21 Colleen McCarty cmccarty@foxrothschild.com

22 Natasha Martinez nmartinez@foxrothschild.com

23 Ivette Bautista ibautista@wileypetersenlaw.com

24 Jonathan Blum jblum@wileypetersenlaw.com

25 Chastity Dugenia cdugenia@wileypetersenlaw.com

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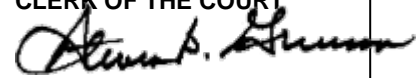
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NEOJ

KEVIN C. POWERS, General Counsel

Nevada Bar No. 6781

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Email: kpowers@lcb.state.nv.us

Attorneys for Intervenor-Defendant Legislature of the State of Nevada

**DISTRICT COURT
CLARK COUNTY, NEVADA**

NEVADA POLICY RESEARCH INSTITUTE, a
Nevada domestic nonprofit corporation,

Plaintiff,

vs.

**Case No. A-20-817757-C
Dept. No. 24**

NICOLE J. CANNIZZARO, an individual engaging in dual employment with the Nevada State Senate and Clark County District Attorney; KASINA DOUGLASS-BOONE, an individual engaging in dual employment with the Nevada State Assembly and Clark County School District; JASON FRIERSON, an individual engaging in dual employment with the Nevada State Assembly and Clark County Public Defender; OSVALDO FUMO, an individual engaging in dual employment with the Nevada State Assembly and University of Nevada, Las Vegas; HEIDI SEEVERS GANSERT, an individual engaging in dual employment with the Nevada State Senate and University of Nevada, Reno; GLEN LEAVITT, an individual engaging in dual employment with the Nevada State Assembly and Regional Transportation Commission; BRITTNEY MILLER, an individual engaging in dual employment with the Nevada State Assembly and Clark County School District; DINA NEAL, an individual engaging in dual employment with the Nevada State Assembly and Nevada State College; JAMES OHRENSCHALL, an individual engaging in dual employment with the Nevada State Senate and Clark County Public Defender; MELANIE SCHEIBLE, an individual engaging in dual employment with the Nevada State Senate and Clark County District Attorney; TERESA BENITEZ-

**NOTICE OF ENTRY OF ORDER
GRANTING NEVADA LEGISLATURE'S
MOTION TO INTERVENE AS
DEFENDANT**

1 THOMPSON, an individual engaging in dual
2 employment with the Nevada State Assembly and
3 University of Nevada, Reno; JILL TOLLES, an
4 individual engaging in dual employment with the
5 Nevada State Assembly and University of Nevada,
6 Reno; and SELENA TORRES, an individual
engaging in dual employment with the Nevada State
Assembly and Clark County School District,
Defendants.

7 **NOTICE OF ENTRY OF ORDER**

8 **TO ALL PARTIES AND THEIR COUNSEL**, please take notice that: (1) an Order Granting
9 Nevada Legislature's Motion to Intervene as Defendant was approved and signed by the Court on
10 December 8, 2020, and electronically filed with the Clerk on that same date; and (2) a copy of the Order
11 is attached hereto.

12 DATED: This 8th day of December, 2020.

13 Respectfully submitted,

14 By: /s/ Kevin C. Powers

KEVIN C. POWERS

General Counsel

Nevada Bar No. 6781

LEGISLATIVE COUNSEL BUREAU, LEGAL DIVISION

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Legislature of the State of Nevada

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Nevada Legislative Counsel Bureau, Legal Division, and that on the 8th day of December, 2020, pursuant to NRCP 5(b) and NEFCR 9, I served a true and correct copy of the Notice of Entry of Order Granting Nevada Legislature's Motion to Intervene as Defendant, by means of the Eighth Judicial District Court's electronic filing system, directed to:

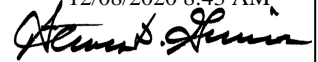
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/s/ Kevin C. Powers
An Employee of the Legislative Counsel Bureau


CLERK OF THE COURT

OGM

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

NEVADA POLICY RESEARCH INSTITUTE, a
Nevada domestic nonprofit corporation,

Plaintiff,

vs.

**Case No. A-20-817757-C
Dept. No. 24**

NICOLE J. CANNIZZARO, an individual engaging
in dual employment with the Nevada State Senate
and Clark County District Attorney; KASINA
DOUGLASS-BOONE, an individual engaging in
dual employment with the Nevada State Assembly
and Clark County School District; JASON
FRIERSON, an individual engaging in dual
employment with the Nevada State Assembly and
Clark County Public Defender; OSVALDO FUMO,
an individual engaging in dual employment with the
Nevada State Assembly and University of Nevada,
Las Vegas; HEIDI SEEVERS GANSERT, an
individual engaging in dual employment with the
Nevada State Senate and University of Nevada,
Reno; GLEN LEAVITT, an individual engaging in
dual employment with the Nevada State Assembly
and Regional Transportation Commission;
BRITTNEY MILLER, an individual engaging in
dual employment with the Nevada State Assembly
and Clark County School District; DINA NEAL, an
individual engaging in dual employment with the
Nevada State Assembly and Nevada State College;
JAMES OHRENSCHALL, an individual engaging
in dual employment with the Nevada State Senate
and Clark County Public Defender; MELANIE
SCHEIBLE, an individual engaging in dual
employment with the Nevada State Senate and Clark
County District Attorney; TERESA BENITEZ-

**ORDER GRANTING NEVADA
LEGISLATURE'S MOTION TO
INTERVENE AS DEFENDANT**

1 THOMPSON, an individual engaging in dual
2 employment with the Nevada State Assembly and
3 University of Nevada, Reno; JILL TOLLES, an
4 individual engaging in dual employment with the
5 Nevada State Assembly and University of Nevada,
6 Reno; and SELENA TORRES, an individual
engaging in dual employment with the Nevada State
Assembly and Clark County School District,
Defendants.

7 INTRODUCTION

8 In this action, Plaintiff Nevada Policy Research Institute (NPRI) has alleged that the individual
9 Legislator-Defendants are persons simultaneously holding elected offices in the Nevada Legislature
10 (Legislature) and paid positions with the executive branch of the Nevada State Government or with local
11 governments in violation of the separation-of-powers provision in Article 3, Section 1 of the Nevada
12 Constitution. The Legislature filed a motion to intervene as a defendant under NRCP 24 and
13 NRS 218F.720. NPRI filed an opposition, and the Legislature filed a reply. The Court concludes that
14 the Legislature is entitled to intervene as a matter of right. In addition, the Court concludes that, even if
15 the Legislature was only entitled to seek permissive intervention, the Court chooses to exercise its
16 discretion to find that the Legislature is allowed to intervene permissively. Therefore, the Court grants
17 the Legislature's motion to intervene as a defendant.

18 DISCUSSION

19 **1. Intervention as a matter of right under NRCP 24(a)(1) and NRS 218F.720(2)(b).**

20 The Legislature contends that it is entitled to intervention as a matter of right under
21 NRCP 24(a)(1), which provides that, on timely motion, the Court must permit anyone to intervene who
22 "is given an unconditional right to intervene by a state or federal statute." When the movant establishes
23 that it is given an unconditional right to intervene by statute, "there is no room for the operation of a
24 court's discretion," and "the right to intervene is absolute and unconditional." *Bhd. of R.R. Trainmen v.*

1 *Balt. & Ohio R.R.*, 331 U.S. 519, 531 (1947).

2 The Legislature contends that NRS 218F.720 gives it an unconditional right to intervene in this
3 action. The statute provides in relevant part:

4 2. If a party to any action or proceeding before any court, agency or officer:

5 (a) Alleges that the Legislature, by its actions or failure to act, has violated the Constitution, treaties or laws of the United States or the Constitution or laws of this State; or

6 (b) Challenges, contests or raises as an issue, either in law or in equity, in whole or in part, or facially or as applied, the meaning, intent, purpose, scope, applicability, validity, enforceability or constitutionality of any law, resolution, initiative, referendum or other legislative or constitutional measure, including, without limitation, on grounds that it is ambiguous, unclear, uncertain, imprecise, indefinite or vague, is preempted by federal law or is otherwise inapplicable, invalid, unenforceable or unconstitutional,

7 ➤ the Legislature may elect to intervene in the action or proceeding by filing a motion or request to intervene in the form required by the rules, laws or regulations applicable to the action or proceeding. The motion or request to intervene must be accompanied by an appropriate pleading, brief or dispositive motion setting forth the Legislature's arguments, claims, objections or defenses, in law or fact, or by a motion or request to file such a pleading, brief or dispositive motion at a later time.

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12 3. Notwithstanding any other law to the contrary, upon the filing of a motion or request to intervene pursuant to subsection 2, the Legislature has an unconditional right and standing to intervene in the action or proceeding and to present its arguments, claims, objections or defenses, in law or fact, whether or not the Legislature's interests are adequately represented by existing parties and whether or not the State or any agency, officer or employee of the State is an existing party. If the Legislature intervenes in the action or proceeding, the Legislature has all the rights of a party.

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16 The Legislature contends that NRS 218F.720(2)(b) gives it an unconditional right to intervene in
17 this action in order to defend against NPRI's constitutional challenge because it involves allegations
18 concerning the meaning, intent, purpose, scope, applicability and enforceability of the separation-of-
19 powers provision with regard to members of the Legislature who hold positions of public employment
20 with the state executive branch or with local governments. The Court agrees.

21 In its amended complaint, NPRI has alleged that "[t]here is an actual controversy between [NPRI],
22 acting in the public interest, and [the Legislator-Defendants] and each of them, as to the *meaning* of the
23 Separation of Powers requirement of Nevada Const. Art. 3, §1, ¶1 and its *application* to [the Legislator-
24 Defendants] and their conduct." *Am. Compl.* ¶ 23 (emphasis added). Based on NPRI's allegations, the

1 Court finds that NRS 218F.720(2)(b) gives the Legislature an unconditional right to intervene in this
2 action in order to defend against NPRI's constitutional challenge.

3 NPRI argues that NRS 218F.720(2)(b) is not applicable because NPRI is seeking to enforce the
4 separation-of-powers provision and is not challenging it on any grounds. To support its argument, NPRI
5 contends that the statute would grant the Legislature an unconditional right to intervene only if NPRI
6 had challenged the separation-of-powers provision "on grounds that it is ambiguous, unclear, uncertain,
7 imprecise, indefinite or vague, is preempted by federal law or is otherwise inapplicable, invalid,
8 unenforceable or unconstitutional." NRS 218F.720(2)(b). The Court disagrees with NPRI's
9 interpretation of NRS 218F.720(2)(b) because such an interpretation would disregard the plain meaning
10 of the statutory language by ignoring the plain meaning of the words "including, without limitation,"
11 which are expressly set forth in the statute.

12 Based on the plain meaning of the statutory language, NRS 218F.720(2)(b) contains a broadly
13 worded grant of authority which gives the Legislature an unconditional right to intervene whenever a
14 party "[c]hallenges, contests or raises as an issue, either in law or in equity, in whole or in part, or
15 facially or as applied, the *meaning, intent, purpose, scope, applicability, validity, enforceability* or
16 constitutionality of any law, resolution, initiative, referendum or other legislative or constitutional
17 measure." NRS 218F.720(2)(b) (emphasis added). Following the statute's broadly worded grant of
18 authority, the statute also contains an illustrative and nonexhaustive list of examples of such statutory or
19 constitutional challenges that would grant the Legislature an unconditional right to intervene, "*including,*
20 *without limitation,* on grounds that it is ambiguous, unclear, uncertain, imprecise, indefinite or vague, is
21 preempted by federal law or is otherwise inapplicable, invalid, unenforceable or unconstitutional."
22 NRS 218F.720(2)(b) (emphasis added).

23 Under the rules of statutory construction, when words such as "including, without limitation," and
24 "including, but not limited to," are used in a statutory provision, they are not words of limitation.

1 Instead, they are words of enlargement which are intended to convey that the statutory provision
2 contains an illustrative and nonexhaustive list of examples that is not intended to be exclusive. *See Am.*
3 *Sur. Co. of N.Y. v. Marotta*, 287 U.S. 513, 517 (1933) (stating that in “statutes and other writings,
4 ‘include’ is frequently, if not generally, used as a word of extension or enlargement rather than as one of
5 limitation or enumeration.”); *Fed. Land Bank of St. Paul v. Bismarck Lumber Co.*, 314 U.S. 95, 100
6 (1941) (stating that “the term ‘including’ is not one of all-embracing definition, but connotes simply an
7 illustrative application of the general principle.”); *People v. Williams*, 108 Cal. Rptr. 3d 772, 775 (Cal.
8 Ct. App. 2010); *Colbert v. Cleveland*, 790 N.E.2d 781, 784 (Ohio 2003); *In re Forfeiture of \$5,264*, 439
9 N.W.2d 246, 252 (Mich. 1989).

10 Thus, the Court disagrees with NPRI’s interpretation of NRS 218F.720(2)(b) because such an
11 interpretation would disregard the plain meaning of the statutory language by ignoring the plain meaning
12 of the words “including, without limitation,” which are expressly set forth in the statute. The Court
13 finds that the “including, without limitation,” provision places no limitation on the Legislature’s broad
14 authority to intervene as of right under the statute. Instead, this provision merely serves as an
15 illustrative—but not exhaustive—list of examples which describe some—but not all—of the
16 circumstances under which the Legislature may exercise its broad authority to intervene as of right
17 under the statute. Accordingly, the Court concludes that NRS 218F.720(2)(b) gives the Legislature an
18 unconditional right to intervene in this action in order to defend against NPRI’s constitutional challenge
19 because it involves allegations concerning the meaning, intent, purpose, scope, applicability and
20 enforceability of the separation-of-powers provision with regard to members of the Legislature who hold
21 positions of public employment with the state executive branch or with local governments.

22 **2. Intervention as a matter of right under NRCP 24(a)(1) and NRS 218F.720(2)(a).**

23 The Legislature contends that NRS 218F.720(2)(a) gives it an unconditional right to intervene in
24 this action in order to defend against NPRI’s constitutional challenge because it involves allegations that

1 the Legislature has violated the Nevada Constitution through its appropriation of public money in
2 violation of the separation-of-powers provision with regard to members of the Legislature who hold
3 positions of public employment with the state executive branch or with local governments. The Court
4 agrees.

5 In its amended complaint, NPRI has alleged that “*legislative expenditures or appropriations and*
6 *taxpayer monies* will be paid to [the Legislator-Defendants] in violation of Nevada Const. Art. 3, §1, ¶1,
7 and irrevocable and irreparable harm will occur to the rights provided under this provision of the Nevada
8 Constitution.” *Am. Compl.* ¶ 28 (emphasis added). Based on NPRI’s allegations, the Court finds that
9 NRS 218F.720(2)(a) gives the Legislature an unconditional right to intervene in this action in order to
10 defend against NPRI’s constitutional challenge.

11 In its opposition, NPRI acknowledges that “[t]he Court may take judicial notice that legislators are
12 compensated by Legislative expenditure, per statutory requirement.” *NPRI’s Opp’n at 6*. However,
13 NPRI argues that it “is in no way challenging the Legislature’s carrying out of or compliance with these
14 [statutory] requirements.” *Id.* Even though NPRI’s amended complaint includes allegations of the
15 unconstitutional payment of “legislative expenditures or appropriations and taxpayer monies” to the
16 Legislator-Defendants, NPRI’s amended complaint is silent with regard to the governmental body that
17 authorizes the payment of those “legislative expenditures or appropriations and taxpayer monies” to the
18 Legislator-Defendants. Nevertheless, under Nevada law, the Legislature is the only governmental body
19 whose actions can authorize the payment of those “legislative expenditures or appropriations and
20 taxpayer monies” to the Legislator-Defendants. Nev. Const. art. 4, § 19; NRS 218A.150; *State ex rel.*
21 *Davis v. Eggers*, 29 Nev. 469, 484-85, 91 P. 819, 824 (1907) (explaining that “all appropriations must be
22 within the legislative will.”). Therefore, given that the Legislature is the only governmental body which
23 authorizes the appropriation of public money that NPRI alleges is being paid to the Legislator-
24 Defendants in violation of the separation-of-powers provision, the Court concludes that

1 NRS 218F.720(2)(a) gives the Legislature an unconditional right to intervene in this action because it
2 involves allegations that the Legislature has violated the Nevada Constitution through its appropriation
3 of public money with regard to members of the Legislature who hold positions of public employment
4 with the state executive branch or with local governments.

5 **3. Intervention as a matter of right under NRCP 24(a)(2).**

6 The Legislature contends that it is entitled to intervention as a matter of right under
7 NRCP 24(a)(2), which provides that, on timely motion, the Court must permit anyone to intervene who
8 “claims an interest relating to the property or transaction that is the subject of the action, and is so
9 situated that disposing of the action may as a practical matter impair or impede the movant’s ability to
10 protect its interest, unless existing parties adequately represent that interest.” To qualify for intervention
11 as of right under NRCP 24(a)(2), the movant must establish that: (1) the movant has sufficient interests
12 in the subject matter of the litigation; (2) the movant’s ability to protect those interests could be impaired
13 if the movant is not permitted to intervene; (3) the movant’s interests may not be adequately represented
14 by the existing parties; and (4) the motion to intervene is timely. *Am. Home Assurance Co. v. Eighth*
15 *Jud. Dist. Ct.*, 122 Nev. 1229, 1238, 147 P.3d 1120, 1126 (2006). The Court finds that the Legislature
16 has established the requirements for intervention as a matter of right under NRCP 24(a)(2).

17 First, the Court finds that when the Legislature filed its motion to intervene, this action had not
18 progressed beyond its initial and preliminary stages. Therefore, because the Legislature sought
19 intervention during the earliest stages of this action, the Court determines that the Legislature’s motion
20 to intervene was timely and that its intervention will not delay the proceedings, complicate management
21 of the case or cause any prejudice to the existing parties.

22 Next, the Court finds that the Legislature has substantial institutional interests in the subject matter
23 of this action. The Legislature has substantial institutional interests in the meaning, intent, purpose,
24 scope, applicability and enforceability of the separation-of-powers provision because that constitutional

1 provision governs the powers of the legislative branch and the Legislature's administration of its
2 constitutional functions and the conduct of its members, including the Legislator-Defendants. *See*
3 *Heller v. Legislature*, 120 Nev. 456, 93 P.3d 746 (2004); *Comm'n on Ethics v. Hardy*, 125 Nev. 285,
4 212 P.3d 1098 (2009). The Legislature also has substantial institutional interests in defending the
5 validity of its legislative actions in exercising the constitutional power of appropriation, including the
6 appropriation of public money for the payment of legislative compensation to the Legislator-Defendants.
7 *See State of Nev. Employees Ass'n v. Daines*, 108 Nev. 15, 21, 824 P.2d 276, 279 (1992) (explaining that
8 "it is well established that the power of controlling the public purse lies within legislative, not executive
9 authority."). The Legislature also has substantial institutional interests in ensuring that the broadest
10 spectrum of the citizenry is represented in the Legislature's membership in order to promote the public
11 policy of this State that:

12 State Legislators serve as "*citizen Legislators*" who have other occupations and business
13 interests, who are expected to have particular philosophies and perspectives that are
14 necessarily influenced by the life experiences of the Legislator, including, without
15 limitation, professional, family and business experiences, and who are expected to
16 contribute those philosophies and perspectives to the debate over issues with which the
17 Legislature is confronted.

18 NRS 281A.020(2)(c) (emphasis added).

19 Finally, the Court finds that the Legislature's ability to protect its institutional interests in this
20 action could be impaired if the Legislature is not permitted to intervene and that its institutional interests
21 may not be adequately represented by the existing parties. Because the Legislature's institutional
22 interests are unique to the Legislature as the constitutional body charged with the legislative and policy-
23 making power of this State, the individual Legislator-Defendants are not in a position to adequately
24 represent the separate and distinct institutional interests of the Legislature that are at stake in this action.
Under such circumstances, the Court determines that the Legislature's separate and distinct institutional
interests are not adequately represented by the existing parties. As a result, the Court concludes that the

Legislature is entitled to intervention as a matter of right under NRCP 24(a)(2).

4. Permissive intervention under NRCP 24(b).

Under NRCP 24(b), on timely motion, the court may permit anyone to intervene who “has a claim or defense that shares with the main action a common question of law or fact.” NRCP 24(b)(1)(B). Additionally, the court may permit a governmental officer or agency to intervene if a party’s claim or defense is based on “a statute or executive order administered by the officer or agency.” NRCP 24(b)(2)(A). Permissive intervention under NRCP 24(b) is wholly discretionary with the district court. *Hairr v. First Jud. Dist. Ct.*, 132 Nev. 180, 187, 368 P.3d 1198, 1202 (2016).

Under NRCP 24(b), when the intervenor is a governmental agency, permissive intervention ordinarily should be granted to the agency where the legal issues in the case may have a substantial impact on “the maintenance of its statutory authority and the performance of its public duties.” *SEC v. U.S. Realty & Impr. Co.*, 310 U.S. 434, 460 (1940). Thus, where the governmental agency’s interest in the case “is a public one” and it intends to raise claims or defenses concerning questions of law involved in the case, permissive intervention should be granted, especially when the agency’s intervention “might be helpful in [a] difficult and delicate area.” *United States v. Local 638, Enter. Ass’n of Pipefitters*, 347 F. Supp. 164, 166 (S.D.N.Y. 1972) (quoting *SEC v. U.S. Realty & Impr. Co.*, 310 U.S. 434, 460 (1940)).

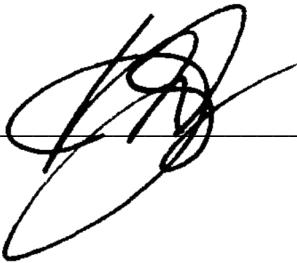
In this action, even assuming that the Legislature was not otherwise entitled to intervene as a matter of right under NRCP 24(a)(1) and NRCP 24(a)(2), the Court chooses to exercise its discretion and grants the Legislature permissive intervention under NRCP 24(b). The Court finds that the Legislature’s permissive intervention under NRCP 24(b) would facilitate a more comprehensive and thorough presentation of the controlling law and a better understanding of the issues, and such intervention would ensure that the views of the Legislature are fairly and adequately represented and are not prejudiced by this case. Therefore, even if the Legislature was only entitled to seek permissive intervention in this action, the Court chooses to exercise its discretion and grants the Legislature

1 permissive intervention under NRCP 24(b).

2 **CONCLUSION**

3 For the reasons set forth herein, IT IS HEREBY ORDERED THAT the Legislature's motion to
4 intervene as a defendant is GRANTED.

Dated this 8th day of December, 2020

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7 

8 Order submitted by:

9 /s/ Kevin C. Powers

10 **KEVIN C. POWERS**, General Counsel
Nevada Bar No. 6781
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13 *Attorneys for Intervenor-Defendant Legislature of the State of Nevada*

91A D5B BDAD D58C
Jim Crockett
District Court Judge

14 Order reviewed by:

15 /s/ Refused to Sign Order

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Powers, Kevin

From: Bradley Schrager <BSchrager@wrslawyers.com>
Sent: Thursday, December 3, 2020 5:25 AM
To: Powers, Kevin; dforbush@foxrothschild.com; cmccarty@foxrothschild.com; Daniel Bravo; jblum@wileypetersenlaw.com; Berna Rhodes-Ford
Cc: Nita Armendariz
Subject: RE: A-20-817757-C_Nevada Policy Research Institute v Cannizzaro_Proposed Order Granting Nevada Legislature's Motion to Intervene as Defendant

Approved on our end, Counsel

Bradley S. Schrager

Areas of Practice: Politics & Government – Appeals & Writs – Wage & Labor

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This correspondence is intended for the individual or entity to whom it is addressed, and may be protected by privilege.

From: Powers, Kevin [mailto:kpowers@lcb.state.nv.us]
Sent: Wednesday, December 02, 2020 11:32 PM
To: dforbush@foxrothschild.com; cmccarty@foxrothschild.com; Bradley Schrager; Daniel Bravo; jblum@wileypetersenlaw.com; Berna Rhodes-Ford
Cc: Nita Armendariz
Subject: A-20-817757-C_Nevada Policy Research Institute v Cannizzaro_Proposed Order Granting Nevada Legislature's Motion to Intervene as Defendant

CAUTION:EXTERNAL EMAIL

Counsel:

Please review the attached proposed Order Granting Nevada Legislature's Motion to Intervene as Defendant.

Please let me know whether you have any proposed revisions and whether you agree to the use of your electronic signature on the proposed order.

Thanks.

Kevin C. Powers

General Counsel

Nevada Legislative Counsel Bureau, Legal Division

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Powers, Kevin

From: Berna Rhodes-Ford <Berna.Rhodes-Ford@nsc.edu>
Sent: Thursday, December 3, 2020 6:45 AM
To: Powers, Kevin
Cc: dforbush@foxrothschild.com; cmccarty@foxrothschild.com;
bschrager@wrslawyers.com; dbravo@wrslawyers.com; jblum@wileypetersenlaw.com;
Nita Armendariz
Subject: Re: A-20-817757-C_Nevada Policy Research Institute v Cannizzaro_Proposed Order
Granting Nevada Legislature's Motion to Intervene as Defendant

Approved.

Berna L. Rhodes-Ford
office [702.992.2378](tel:702.992.2378)
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On Dec 2, 2020, at 11:32 PM, Powers, Kevin <kpowers@lcb.state.nv.us> wrote:

Counsel:

Please review the attached proposed Order Granting Nevada Legislature's Motion to Intervene as Defendant.

Please let me know whether you have any proposed revisions and whether you agree to the use of your electronic signature on the proposed order.

Thanks.

Kevin C. Powers
General Counsel
Nevada Legislative Counsel Bureau, Legal Division
401 S. Carson Street
Carson City, NV 89701-4747
(775) 684-6830
(775) 684-6761-Fax

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<2020_12-02_01_A-20-817757-C_Proposed Order Granting Legislature's Motion to Intervene as Defendant.pdf>

Powers, Kevin

From: jblum@wileypetersenlaw.com
Sent: Thursday, December 3, 2020 10:25 AM
To: Powers, Kevin; dforbush@foxrothschild.com; cmccarty@foxrothschild.com; bschrager@wrslawyers.com; dbravo@wrslawyers.com; 'Berna Rhodes-Ford'
Cc: 'Nita Armendariz'; ibautista@wileypetersenlaw.com
Subject: RE: A-20-817757-C_Nevada Policy Research Institute v Cannizzaro_Proposed Order Granting Nevada Legislature's Motion to Intervene as Defendant 00618

You may affix my e-signature. Thanks.

Jonathan D. Blum, Esq.



1050 Indigo Drive, Suite 200B
Las Vegas, Nevada 89145
Office 702.910.3329 | Mobile 702.443.0677
jblum@wileypetersenlaw.com
www.wileypetersenlaw.com



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From: Powers, Kevin <kpowers@lcb.state.nv.us>
Sent: Wednesday, December 2, 2020 11:32 PM
To: dforbush@foxrothschild.com; cmccarty@foxrothschild.com; bschrager@wrslawyers.com; dbravo@wrslawyers.com; jblum@wileypetersenlaw.com; Berna Rhodes-Ford <Berna.Rhodes-Ford@nsc.edu>
Cc: Nita Armendariz <Nita.Armendariz@nsc.edu>
Subject: A-20-817757-C_Nevada Policy Research Institute v Cannizzaro_Proposed Order Granting Nevada Legislature's Motion to Intervene as Defendant

Counsel:

Please review the attached proposed Order Granting Nevada Legislature's Motion to Intervene as Defendant.

Please let me know whether you have any proposed revisions and whether you agree to the use of your electronic signature on the proposed order.

Thanks.

Kevin C. Powers

General Counsel

Nevada Legislative Counsel Bureau, Legal Division

401 S. Carson Street

Carson City, NV 89701-4747

(775) 684-6830

(775) 684-6761-Fax

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Fox Rothschild LLP
ATTORNEYS AT LAW

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1980 Festival Plaza Drive, Suite 700
Las Vegas, Nevada 89135
Tel (702) 262-6899; Fax (702) 597-5503
www.foxrothschild.com

Colleen E. McCarty
Direct: (702) 699-7151
Email: CMcCarty@foxrothschild.com

December 4, 2020

VIA EMAIL TRANSMISSION
Dept24LC@clarkcountycourts.us

Marvin Simeon
Law Clerk to the Honorable Jim Crockett
Eighth Judicial District Court, Dept. XXIV
200 Lewis Avenue
Las Vegas, Nevada 89155

Re: *Nevada Policy Research Institute v. Nicole Cannizzaro, et al.*, Case No. A-20-817757-C
Request to Hold Processing of Orders from November 18, 2020 Minute Order

Dear Mr. Simeon:

Following the Court's entry of the OST on NPRI's Motion for Clarification, opposing counsel for the NSHE Defendants, the Nevada Legislature, and the individual Defendants, Nicole Cannizzaro and Jason Frierson, respectively, prepared and forwarded to my attention for review draft orders from the Court's Minute Order entered on November 18, 2020. While NPRI is the party with the most to gain from the expedited entry of these orders and the opportunity they will provide to seek appellate review in advance of the 2021 Legislative Session, I have respectfully requested that each opposing counsel wait to submit his or her proposed order until the Court resolves the pending Motion for Clarification on or before December 17, 2020 and I have the opportunity to provide input to complete the necessary orders. Opposing counsel, however, have declined this courtesy, in agreement with the position articulated by Mr. Johnathan D. Blum, Esq., which is the reason for this correspondence. The relevant emails are enclosed herewith as **Exhibit 1**.

I would note, again, that each proposed order draft was submitted to me for my consideration after service of NPRI's Motion for Clarification, and this was either on or after the 14-day period for submission of proposed orders to Chambers pursuant to EDCR 7.21, which period ran yesterday, December 2, 2020. That said, the reason NPRI respectfully requests that any order hereafter submitted to Chambers be held for consideration is to first allow the Court to clarify its Minute Order as requested. All parties, and quite possibly the successor Judge on this case, will benefit from having the clearest possible record. And, it is both inefficient and costly to my client to be asked to discuss draft orders now, when additional information for inclusion in

December 4, 2020

Page 2

some, if not all, of the orders will be forthcoming from the Court within the next two weeks at the latest.

Finally, to the extent counsel for the NSHE Defendants and/or the Nevada Legislature would suggest that clarification of the Court's standing determination does not directly impact their clients' order, NPRI respectfully submits this does not override the efficiency of completing each order simultaneously, rather than on a piecemeal basis. Also, although not specifically included in the Court's Minute Order, the NSHE Defendants argued lack of standing as a basis for issuing an order in their favor, the same as those Defendants seeking dismissal. And, the Nevada Legislature, by its own admission, understands this case "involves extremely important questions of constitutional law" (*see* Nevada Legislature's Motion to Intervene as Defendant at 16:22-23), which goes directly to the first criteria for application of the public importance exception. For these reasons, I will likely seek to include the Court's clarifications in each order ultimately entered by the Court as a result of the November 18, 2020 Minute Order.

Should you wish further explanation of the specific objections my client and I have to the form of orders I received and am anticipating will be submitted with or without my signature by opposing counsel, I will be happy to provide this to you immediately upon request. Again, however, it is my hope to avoid the unnecessary additional expense to my client of further reviewing and preparing competing orders in advance of the December 17, 2020 hearing.

Please do not hesitate to contact me directly at (702) 702-262-6899 if you have any questions or need any additional information. Thank you in advance for your kind consideration

Sincerely,

FOX ROTHSCHILD LLP

/s/ Colleen E. McCarty

Colleen E. McCarty

CEM/nm

cc: Jonathan D. Blum, Esq. (jblum@wileypetersenlaw.com)
Gary A. Cardinal, Esq. (gcardinal@unr.edu)
Kevin C. Powers, Esq. (kpowers@lcb.state.nv.us)
Berna L. Rhodes-Ford, Esq. (berna.rhodes-ford@nsc.edu)
Bradley Schrager, Esq. (bschrager@wrslawyers.com)

EXHIBIT 1

From: jblum@wileypetersenlaw.com <jblum@wileypetersenlaw.com>

Sent: Thursday, December 3, 2020 9:00 PM

To: McCarty, Colleen E. <CMcCarty@foxrothschild.com>; 'Berna Rhodes-Ford' <Berna.Rhodes-Ford@nsc.edu>; 'Gary A Cardinal' <gcardinal@unr.edu>; 'Bradley Schrager' <BSchrager@wrslawyers.com>; DBravo@wrslawyers.com; 'Powers, Kevin' <kpowers@lcb.state.nv.us>; Forbush, Deanna L. <DForbush@foxrothschild.com>

Cc: Martinez, Natasha <NMartinez@foxrothschild.com>; ibautista@wileypetersenlaw.com

Subject: [EXT] RE: NPRI v. Cannnizzaro et al. 00618

Colleen,

From my perspective the draft orders were not submitted earlier due to the intervening holiday, and the language of the minute order. The status check for the filing of the orders was set for Dec. 17, indicating a longer timeframe allowed by the Court, specifically permitted under EDCR 7.21. My position is that, per the minute order and local rules we can't simply fail to submit an order because there is another pending motion that may potentially affect that order. The motion for clarification should have been filed after a final order on the motions were entered, and is, in my opinion, premature. (I recognize the issue of Judge Crocket's departure from the bench as an issue, but requiring another round of briefing before the Judge has an opportunity to sign an order on the original motions causes additional fees for all of us.)

I'll be off the grid through the weekend, so I'll review the proposed changes on Monday. I will then submit the proposed order with any parties' signatures that are in agreement. Submitting your own competing order, if that's what you choose to do, may obviate the need for the motion for clarification as Judge Crockett can sign or revise whichever version he deems most accurate.

Thanks,
Jon

Jonathan D. Blum, Esq.



1050 Indigo Drive, Suite 200B

Las Vegas, Nevada 89145

Office 702.910.3329 | Mobile 702.443.0677

jblum@wileypetersenlaw.com

www.wileypetersenlaw.com



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From: McCarty, Colleen E. <CMcCarty@foxrothschild.com>
Sent: Thursday, December 3, 2020 6:54 PM
To: 'Berna Rhodes-Ford' <Berna.Rhodes-Ford@nsc.edu>; Gary A Cardinal <gcardinal@unr.edu>; jblum@wileypetersenlaw.com; Bradley Schrager <BSchrager@wrslawyers.com>; DBravo@wrslawyers.com; Powers, Kevin <kpowers@lcb.state.nv.us>; Forbush, Deanna L. <DForbush@foxrothschild.com>
Cc: Martinez, Natasha <NMartinez@foxrothschild.com>
Subject: NPRI v. Cannizzaro et al.

Good evening Counsel,

I am in receipt of each of your proposed orders, and I do have suggested edits to each. However, as each was submitted to me on or after the deadline for submission to the Court under EDCR 7.21, and the Court's ruling on NPRI's Motion for Clarification is two weeks away or less, I am asking for the courtesy of waiting to provide input on these orders until after the Court's ruling.

The Omnibus Order Granting Motions to Dismiss proposed by Mr. Blum will obviously have the most direct impact by any clarification provided by the Court, but I will also be seeking to include discussion of the standing argument in Ms. Rhodes-Ford's proposed Order Denying Plaintiff's Motion to Disqualify Official Attorneys on behalf of the NSHE Defendants, as standing was raised in the underlying briefing. And, while Mr. Power's proposed Order Granting Nevada Legislature's Motion to Intervene as Defendant may not be directly impacted by the Court's expected clarification, it is unnecessarily costly to my client for me to have to address these orders on a piecemeal basis.

As the deadline for submission of these orders has already passed, and it is NPRI that would most benefit from the expedited entry of the orders and the opportunity to seek appellate review in advance of the 2021 Legislative Session, I trust you will each be amenable to extending the requested courtesy of waiting to review and, to the extent necessary, submit competing orders related to the Court's November 18, 2020 Minute Order.

Thank you in advance for your consideration.

Colleen

Colleen E. McCarty
Attorney
Fox Rothschild LLP
One Summerlin
1980 Festival Plaza Drive, Suite 700
Las Vegas, NV 89135
(702) 699-5171 - direct
(702) 597-5503 - fax
CMcCarty@foxrothschild.com
www.foxrothschild.com

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From: Berna Rhodes-Ford <Berna.Rhodes-Ford@nsc.edu>
Sent: Thursday, December 3, 2020 11:16 PM
To: Bradley Schrager <BSchrager@wrslawyers.com>
Cc: Powers, Kevin <kpowers@lcb.state.nv.us>; jblum@wileypetersenlaw.com; McCarty, Colleen E. <CMcCarty@foxrothschild.com>; Gary A Cardinal <gcardinal@unr.edu>; Daniel Bravo <DBravo@wrslawyers.com>; Forbush, Deanna L. <DForbush@foxrothschild.com>; Martinez, Natasha <NMartinez@foxrothschild.com>; ibautista@wileypetersenlaw.com
Subject: [EXT] Re: NPRI v. Cannnizzaro et al. 00618

I am in agreement as well.

Berna L. Rhodes-Ford
office [702.992.2378](tel:702.992.2378)
Berna.Rhodes-Ford@nsc.edu

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On Dec 3, 2020, at 9:56 PM, Bradley Schrager <BSchrager@wrslawyers.com> wrote:

I concur

Bradley Schrager
Wolf Rifkin Shapiro Schulman & Rabkin

On Dec 3, 2020, at 9:17 PM, Powers, Kevin <kpowers@lcb.state.nv.us> wrote:

CAUTION:EXTERNAL EMAIL

LCB Legal agrees with Mr. Blum's legal analysis, procedural approach, and timeline as set forth in his email below. Therefore, LCB Legal will follow all the same with regard to its proposed Order Granting Nevada Legislature's Motion to Intervene as Defendant.

Thanks.

Kevin C. Powers

General Counsel

Nevada Legislative Counsel Bureau, Legal Division

401 S. Carson Street

Carson City, NV 89701-4747

(775) 684-6830

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From: jblum@wileypetersenlaw.com <jblum@wileypetersenlaw.com>

Sent: Thursday, December 3, 2020 9:00 PM

To: 'McCarty, Colleen E.' <CMcCarty@foxrothschild.com>; 'Berna Rhodes-Ford' <Berna.Rhodes-Ford@nsc.edu>; 'Gary A Cardinal' <gcardinal@unr.edu>; 'Bradley Schrager' <BSchrager@wrslawyers.com>; DBravo@wrslawyers.com; Powers, Kevin <kpowers@lcb.state.nv.us>; 'Forbush, Deanna L.' <DForbush@foxrothschild.com>

Cc: 'Martinez, Natasha' <NMartinez@foxrothschild.com>; ibautista@wileypetersenlaw.com

Subject: RE: NPRI v. Cannizzaro et al. 00618

Colleen,

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Thanks,
Jon

Jonathan D. Blum, Esq.

<image001.jpg>

1050 Indigo Drive, Suite 200B

Las Vegas, Nevada 89145
Office 702.910.3329 | Mobile 702.443.0677
jblum@wileypetersenlaw.com
www.wileypetersenlaw.com

<image002.png>

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To: 'Berna Rhodes-Ford' <Berna.Rhodes-Ford@nsc.edu>; Gary A Cardinal <gcardinal@unr.edu>; jblum@wileypetersenlaw.com; Bradley Schrager <BSchrager@wrslawyers.com>; DBravo@wrslawyers.com; Powers, Kevin <kpowers@lcb.state.nv.us>; Forbush, Deanna L. <DForbush@foxrothschild.com>
Cc: Martinez, Natasha <NMartinez@foxrothschild.com>
Subject: NPRI v. Cannizzaro et al.

Good evening Counsel,

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The Omnibus Order Granting Motions to Dismiss proposed by Mr. Blum will obviously have the most direct impact by any clarification provided by the Court, but I will also be seeking to include discussion of the standing argument in Ms. Rhodes-Ford's proposed Order Denying Plaintiff's Motion to Disqualify Official Attorneys on behalf of the NSHE Defendants, as standing was raised in the underlying briefing. And, while Mr. Power's proposed Order Granting Nevada Legislature's Motion to Intervene as Defendant may not be directly impacted by the Court's expected clarification, it is unnecessarily costly to my client for me to have to address these orders on a piecemeal basis.

As the deadline for submission of these orders has already passed, and it is NPRI that would most benefit from the expedited entry of the orders and the opportunity to seek appellate review in advance of the 2021 Legislative Session, I trust you will each be amenable to extending the requested courtesy of waiting to review and, to the extent necessary, submit competing orders related to the Court's November 18, 2020 Minute Order.

Thank you in advance for your consideration.

Colleen

Colleen E. McCarty

Attorney

Fox Rothschild LLP

One Summerlin

1980 Festival Plaza Drive, Suite 700

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(702) 699-5171 - direct

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1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Nevada Policy Research
Institute, Plaintiff(s)

CASE NO: A-20-817757-C

7 vs.

DEPT. NO. Department 24

8
9 Nicole Cannizzaro, Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District
13 Court. The foregoing Order Granting Motion was served via the court's electronic eFile
system to all recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 12/8/2020

15 Bradley Schrager bschrager@wrslawyers.com

16 Dannielle Fresquez dfresquez@wrslawyers.com

17 Daniel Bravo dbravo@wrslawyers.com

18 Christie Rehfeld crehfeld@wrslawyers.com

19 Kevin Powers kpowers@lcb.state.nv.us

20 Deanna Forbush dforbush@foxrothschild.com

21 Colleen McCarty cmccarty@foxrothschild.com

22 Natasha Martinez nmartinez@foxrothschild.com

23 Ivette Bautista ibautista@wileypetersenlaw.com

24 Jonathan Blum jblum@wileypetersenlaw.com

25 Chastity Dugenia cdugenia@wileypetersenlaw.com

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27
28

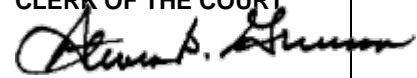
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Berna Rhodes-Ford

Berna.Rhodes-Ford@nsc.edu

Gary Cardinal

gcardinal@unr.edu



NEOJ

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1300 Nevada State Dr., RSC 374
Henderson, Nevada 89002
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Assistant General Counsel
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1664 North Virginia Street/MS 0550
Reno, Nevada 89557-0550
Tel: (775) 784-3495
Fax: (775) 327-2202
gcardinal@unr.edu

*Attorneys for Defendants
Osvaldo Fumo, Heidi Seevers Gansert,
Dina Neal and Jill Tolles*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

NEVADA POLICY RESEARCH INSTITUTE,
a Nevada domestic nonprofit corporation,

Case No.: A-20-817757-C

Plaintiff,

Dept. No.: 24

v.

NICOLE J. CANNIZZARO, an individual
engaging in dual employment with the Nevada
State Senate and Clark County District Attorney;
KASINA DOUGLAS-BOONE, an individual
engaging in dual employment with the Nevada
State Assembly and Clark County School
District; JASON FRIERSON, an individual
engaging in dual employment with the Nevada
State Assembly and Clark County Public
Defender; OSVALDO FUMO, an individual
engaging in dual employment with the Nevada
State Assembly and University of Nevada, Las

**NOTICE OF ENTRY OF
ORDER DENYING PLAINTIFF'S
MOTION TO DISQUALIFY
OFFICIAL ATTORNEYS**

1 Vegas; HEIDI SEEVERS GANSERT, an
2 individual engaging in dual employment with
3 the Nevada State Senate and University of
4 Nevada Reno; GLEN LEAVITT, an individual
5 engaging in dual employment with the Nevada
6 State Assembly and Regional Transportation
7 Commission; BRITTNEY MILLER, an
8 individual engaging in dual employment with
9 the Nevada State Assembly and Clark County
10 School District; DINA NEAL, an individual
11 engaging in dual employment with the Nevada
12 State Assembly and Nevada State College;
13 JAMES OHRENSCHALL, an individual
14 engaging in dual employment with the Nevada
15 State Senate and Clark County Public Defender;
16 MELANIE SCHEIBLE, an individual engaging
17 in dual employment with the Nevada State
18 Senate and Clark County District Attorney;
19 TERESA BENITEZ-THOMPSON, an
20 individual engaging in dual employment with
21 the Nevada State Assembly and University of
22 Nevada, Reno; JILL TOLLES, an individual
23 engaging in dual employment with the Nevada
24 State Assembly and University of Nevada,
25 Reno; and SELINA TORRES, an individual
26 engaging in dual employment with the Nevada
27 State Assembly and Clark County School
28 District,

Defendants.

PLEASE TAKE NOTICE that an Order Denying Plaintiff's Motion to Disqualify Official Attorneys was entered in the above-entitled matter on the 9th day of December, 2020, a copy of which is attached hereto.

Dated this 9th day of December, 2020

/s/ Berna L. Rhodes-Ford

BERNA L. RHODES-FORD

Nevada Bar No. 7879

General Counsel

Nevada State College

1300 Nevada State Dr., RSC 374

Henderson, Nevada 89002

Tel: (702) 992-2378

Fax: (702) 974-0750

berna.rhodes-ford@nsc.edu

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/s/ Gary A. Cardinal
GARY A. CARDINAL
Nevada Bar No. 76
Assistant General Counsel
University of Nevada, Reno
1664 North Virginia Street/MS 0550
Reno, Nevada 89557-0550
Tel: (775) 784-3495
Fax: (775) 327-2202
gcardinal@unr.edu

Attorneys for Defendants
Osvaldo Fumo, Heidi Seevers Gansert,
Dina Neal and Jill Tolles

CERTIFICATE OF SERVICE

I hereby certify that I am an employee in the Office of General Counsel for Nevada State College, located at 1300 Henderson, Nevada 89002, I am over the age of 18 years, and I am not a party to the within cause. Pursuant to NRCP 5, I further certify that on this 9th day of December, 2020, I caused the following document, **NOTICE OF ENTRY OF ORDER DENYING MOTION TO DISQUALIFY OFFICIAL ATTORNEYS**, to be served as follows:



BY ELECTRONIC SERVICE Pursuant to N.E.F.C.R. 9 and EDCR 8.05(a) and 8.05(f), to be electronically served through the Eighth Judicial District Court's electronic filing system, with the date and time of the electronic service substituted for the date and place of deposit in the mail to the attorneys listed below at the address indicated below.

Deanna L. Forbush, Esq.
FOX ROTHSCHILD LLP
Email: dforbush@foxrothschild.com
Attorneys for Plaintiff

Colleen E. McCarty, Esq.
FOX ROTHSCHILD LLP
Email: cmccarty@foxrothschild.com
Attorneys for Plaintiff

Bradley Schrager, Esq.
**WOLF, RIFKIN, SHAPIRO,
SCHULMAN & RABKIN, LLP**
Email: bschrager@wrslawyers.com
*Attorneys for Defendants Brittney Miller
and Selena Torres*

Daniel Bravo, Esq.
**WOLF, RIFKIN, SHAPIRO,
SCHULMAN & RABKIN, LLP**
Email: dbravo@wrslawyers.com
*Attorneys for Defendants Brittney Miller
and Selena Torres*

Jonathan D. Blum, Esq.
WILEY PETERSEN
Email: jblum@wileypetersenlaw.com
*Attorneys for Defendants Jason Frierson
and Nicole Cannizzaro*

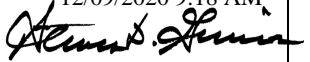
Kevin C. Powers
LEGISLATIVE COUNSEL BUREAU
Email: kpowers@lcb.state.nv.us
Attorneys for Nevada Legislature



BY MAIL I caused such envelope(s) with first class postage thereon fully prepaid to be placed in the U.S. Mail in Henderson, Nevada.

Nita Armendariz

An employee of the Office of General Counsel
Nevada State College


CLERK OF THE COURT

ORDR

Berna L. Rhodes-Ford
Nevada Bar No. 7879
General Counsel
Nevada State College
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gcardinal@unr.edu

*Attorneys for Defendants
Osvaldo Fumo, Heidi Seevers Gansert,
and Dina Neal*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

NEVADA POLICY RESEARCH INSTITUTE,
a Nevada domestic nonprofit corporation,

Case No.: A-20-817757-C

Plaintiff,

Dept. No.: 24

v.

NICOLE J. CANNIZZARO, an individual
engaging in dual employment with the Nevada
State Senate and Clark County District Attorney;
KASINA DOUGLAS-BOONE, an individual
engaging in dual employment with the Nevada
State Assembly and Clark County School
District; JASON FRIERSON, an individual
engaging in dual employment with the Nevada
State Assembly and Clark County Public
Defender; OSVALDO FUMO, an individual
engaging in dual employment with the Nevada
State Assembly and University of Nevada, Las

**ORDER DENYING PLAINTIFF'S
MOTION TO DISQUALIFY
OFFICIAL ATTORNEYS**

1 Vegas; HEIDI SEEVERS GANSERT, an
2 individual engaging in dual employment with
3 the Nevada State Senate and University of
4 Nevada Reno; GLEN LEAVITT, an individual
5 engaging in dual employment with the Nevada
6 State Assembly and Regional Transportation
7 Commission; BRITTNEY MILLER, an
8 individual engaging in dual employment with
9 the Nevada State Assembly and Clark County
10 School District; DINA NEAL, an individual
11 engaging in dual employment with the Nevada
12 State Assembly and Nevada State College;
13 JAMES OHRENSCHALL, an individual
14 engaging in dual employment with the Nevada
15 State Senate and Clark County Public Defender;
16 MELANIE SCHEIBLE, an individual engaging
17 in dual employment with the Nevada State
18 Senate and Clark County District Attorney;
19 TERESA BENITEZ-THOMPSON, an
20 individual engaging in dual employment with
21 the Nevada State Assembly and University of
22 Nevada, Reno; JILL TOLLES, an individual
23 engaging in dual employment with the Nevada
24 State Assembly and University of Nevada,
25 Reno; and SELINA TORRES, an individual
26 engaging in dual employment with the Nevada
27 State Assembly and Clark County School
28 District,

Defendants.

**ORDER DENYING PLAINTIFF'S MOTION TO DISQUALIFY OFFICIAL
ATTORNEYS**

Having duly considered Plaintiff Nevada Policy Research Institute's ("NPRI") Motion to Disqualify the Official Attorneys from representing Defendants Osvaldo Fumo, Heidi Seevers Gansert and Dina Neal (the "NSHE Defendants"), the Opposition filed by the NSHE Defendants and NPRI's Reply, the Court finds that the Official Attorneys are duly authorized legal counsel who are not prohibited from representing the NSHE Defendants.

// //

// //

// //

Accordingly, IT IS HEREBY ORDERED that NPRI's Motion to Disqualify the Official
Attorneys is DENIED.

Dated this 9th day of December, 2020



Respectfully submitted this 8th day of December, 2020

369 4DE F4A1 5A64
Jim Crockett
District Court Judge

/s/ Berna L. Rhodes-Ford

BERNA L. RHODES-FORD
Nevada Bar No. 7879
General Counsel
Nevada State College
1300 Nevada State Dr., RSC 374
Henderson, Nevada 89002
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Heidi Seevers Gansert, and Dina Neal*

/s/ Gary A. Cardinal

GARY A. CARDINAL
Nevada Bar No. 76
Assistant General Counsel
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Tel: (775) 784-3495
Fax: (775) 327-2202
gcardinal@unr.edu

*Attorneys for Defendants Osvaldo Fumo,
Heidi Seevers Gansert, and Dina Neal*

Order reviewed by:

Deanna L. Forbush, Esq.
FOX ROTHSCHILD LLP
Email: dforbush@foxrothschild.com
Attorneys for Plaintiff

Colleen E. McCarty, Esq.
FOX ROTHSCHILD LLP
Email: cmccarty@foxrothschild.com
Attorneys for Plaintiff

/s/ Bradley Schrager

Bradley Schrager, Esq.
**WOLF, RIFKIN, SHAPIRO,
SCHULMAN & RABKIN, LLP**
Email: bschrager@wrslawyers.com
*Attorneys for Defendants Brittney Miller
and Selena Torres*

/s/ Daniel Bravo

Daniel Bravo, Esq.
**WOLF, RIFKIN, SHAPIRO,
SCHULMAN & RABKIN, LLP** Email:
dbravo@wrslawyers.com *Attorneys for
Defendants Brittney Miller and Selena
Torres*

1 /s/ Jonathan D. Blum

2 Jonathan D. Blum, Esq.

3 **WILEY PETERSEN**

4 Email: jblum@wileypetersenlaw.com

5 *Attorneys for Defendants Jason Frierson*
6 *and Nicole Cannizzaro*

/s/ Kevin C. Powers

 Kevin C. Powers

LEGISLATIVE COUNSEL

BUREAU, LEGAL DIVISION

 Email: kpowers@lcb.state.nv.us

Attorneys for Intervenor-Defendant
 Legislature of the State of Nevada

RE: Draft Order on Motion to Disqualify

Bradley Schrager <BSchrager@wrslawyers.com>

Thu 12/3/2020 5:24 AM

To: 'Powers, Kevin' <kpowers@lcb.state.nv.us>; Berna Rhodes-Ford <Berna.Rhodes-Ford@nsc.edu>; dforbush@foxrothschild.com <dforbush@foxrothschild.com>; cmccarty@foxrothschild.com <cmccarty@foxrothschild.com>; Daniel Bravo <DBravo@wrslawyers.com>; jblum@wileypetersenlaw.com <jblum@wileypetersenlaw.com>
Cc: Nita Armendariz <Nita.Armendariz@nsc.edu>

Concur on use of e-signature for us, Counsel

Bradley S. Schrager**Areas of Practice: Politics & Government – Appeals & Writs – Wage & Labor****Wolf, Rifkin, Shapiro, Schulman & Rabkin LLP****3556 E. Russell Rd, Las Vegas, Nevada 89120****702.639.5102****bschrager@wrslawyers.com**

This correspondence is intended for the individual or entity to whom it is addressed, and may be protected by privilege.

From: Powers, Kevin [mailto:kpowers@lcb.state.nv.us]**Sent:** Wednesday, December 02, 2020 11:32 PM**To:** Berna Rhodes-Ford; dforbush@foxrothschild.com; cmccarty@foxrothschild.com; Bradley Schrager; Daniel Bravo; jblum@wileypetersenlaw.com**Cc:** Nita Armendariz**Subject:** RE: Draft Order on Motion to Disqualify

CAUTION:EXTERNAL EMAIL

I have reviewed the proposed Order Denying Plaintiff's Motion to Disqualify Official Attorneys, and I agree to the use of the my electronic signature, with the following technical revisions.

As part of my electronic signature block on the proposed order:

1. Please revise to read “**LEGISLATIVE COUNSEL BUREAU, LEGAL DIVISION**”
2. Please delete “*Opposed Intervenor*” and replace with:

*Attorneys for Intervenor-Defendant
Legislature of the State of Nevada*

Kevin C. Powers

General Counsel

Nevada Legislative Counsel Bureau, Legal Division

401 S. Carson Street

Carson City, NV 89701-4747

(775) 684-6830
(775) 684-6761-Fax

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From: Berna Rhodes-Ford <Berna.Rhodes-Ford@nsc.edu>

Sent: Wednesday, December 2, 2020 4:16 PM

To: dforbush@foxrothschild.com; cmccarty@foxrothschild.com; bschrager@wrslawyers.com; dbravo@wrslawyers.com; jblum@wileypetersenlaw.com; Powers, Kevin <kpowers@lcb.state.nv.us>

Cc: Nita Armendariz <Nita.Armendariz@nsc.edu>

Subject: Draft Order on Motion to Disqualify

Good afternoon, counsel. Please review the attached draft order on the Motion to Disqualify Attorneys. If you have no revisions to the draft order, please let me know if I can add your electronic signature to the draft order.

Thank you.

Berna L. Rhodes-Ford

General Counsel

BE CONNECTED OFFICE 702.992.2378 | FAX 702.974.0750 | Berna.Rhodes-Ford@nsc.edu

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Fwd: NPRI v. Cannizzaro et al.

Berna Rhodes-Ford <Berna.Rhodes-Ford@nsc.edu>

Tue 12/8/2020 4:46 PM

To: Nita Armendariz <Nita.Armendariz@nsc.edu>

Berna L. Rhodes-FordOFFICE **702.992.2378**Berna.Rhodes-Ford@nsc.edu

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Begin forwarded message:

From: "McCarty, Colleen E." <CMcCarty@foxrothschild.com>**Date:** December 3, 2020 at 6:54:01 PM PST**To:** Berna Rhodes-Ford <Berna.Rhodes-Ford@nsc.edu>, Gary A Cardinal <gcardinal@unr.edu>, jblum@wileypetersenlaw.com, Bradley Schrager <BSchrager@wrslawyers.com>, dbravo@wrslawyers.com, "Powers, Kevin" <kpowers@lcb.state.nv.us>, "Forbush, Deanna L." <DForbush@foxrothschild.com>**Cc:** "Martinez, Natasha" <NMartinez@foxrothschild.com>**Subject:** NPRI v. Cannizzaro et al.

Good evening Counsel,

I am in receipt of each of your proposed orders, and I do have suggested edits to each. However, as each was submitted to me on or after the deadline for submission to the Court under EDCR 7.21, and the Court's ruling on NPRI's Motion for Clarification is two weeks away or less, I am asking for the courtesy of waiting to provide input on these orders until after the Court's ruling.

The Omnibus Order Granting Motions to Dismiss proposed by Mr. Blum will obviously have the most direct impact by any clarification provided by the Court, but I will also be seeking to include discussion of the standing argument in Ms. Rhodes-Ford's proposed Order Denying Plaintiff's Motion to Disqualify Official Attorneys on behalf of the NSHE Defendants, as standing was raised in the underlying briefing. And, while Mr. Power's proposed Order Granting Nevada Legislature's Motion to Intervene as Defendant may not be directly impacted by the Court's expected clarification, it is unnecessarily costly to my client for me to have to address these orders on a piecemeal basis.

As the deadline for submission of these orders has already passed, and it is NPRI that would most benefit from the expedited entry of the orders and the opportunity to seek appellate review in advance of the 2021 Legislative Session, I trust you will each be amenable to extending the

requested courtesy of waiting to review and, to the extent necessary, submit competing orders related to the Court's November 18, 2020 Minute Order.

Thank you in advance for your consideration.

Colleen

Colleen E. McCarty

Attorney

Fox Rothschild LLP

One Summerlin

1980 Festival Plaza Drive, Suite 700

Las Vegas, NV 89135

(702) 699-5171 - direct

(702) 597-5503 - fax

CMcCarty@foxrothschild.com

www.foxrothschild.com

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Fox Rothschild LLP
ATTORNEYS AT LAW

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Las Vegas, Nevada 89135
Tel (702) 262-6899; Fax (702) 597-5503
www.foxrothschild.com

Colleen E. McCarty
Direct: (702) 699-7151
Email: CMcCarty@foxrothschild.com

December 4, 2020

VIA EMAIL TRANSMISSION
Dept24LC@clarkcountycourts.us

Marvin Simeon
Law Clerk to the Honorable Jim Crockett
Eighth Judicial District Court, Dept. XXIV
200 Lewis Avenue
Las Vegas, Nevada 89155

Re: *Nevada Policy Research Institute v. Nicole Cannizzaro, et al.*, Case No. A-20-817757-C
Request to Hold Processing of Orders from November 18, 2020 Minute Order

Dear Mr. Simeon:

Following the Court's entry of the OST on NPRI's Motion for Clarification, opposing counsel for the NSHE Defendants, the Nevada Legislature, and the individual Defendants, Nicole Cannizzaro and Jason Frierson, respectively, prepared and forwarded to my attention for review draft orders from the Court's Minute Order entered on November 18, 2020. While NPRI is the party with the most to gain from the expedited entry of these orders and the opportunity they will provide to seek appellate review in advance of the 2021 Legislative Session, I have respectfully requested that each opposing counsel wait to submit his or her proposed order until the Court resolves the pending Motion for Clarification on or before December 17, 2020 and I have the opportunity to provide input to complete the necessary orders. Opposing counsel, however, have declined this courtesy, in agreement with the position articulated by Mr. Johnathan D. Blum, Esq., which is the reason for this correspondence. The relevant emails are enclosed herewith as **Exhibit 1**.

I would note, again, that each proposed order draft was submitted to me for my consideration after service of NPRI's Motion for Clarification, and this was either on or after the 14-day period for submission of proposed orders to Chambers pursuant to EDCR 7.21, which period ran yesterday, December 2, 2020. That said, the reason NPRI respectfully requests that any order hereafter submitted to Chambers be held for consideration is to first allow the Court to clarify its Minute Order as requested. All parties, and quite possibly the successor Judge on this case, will benefit from having the clearest possible record. And, it is both inefficient and costly to my client to be asked to discuss draft orders now, when additional information for inclusion in

December 4, 2020

Page 2

some, if not all, of the orders will be forthcoming from the Court within the next two weeks at the latest.

Finally, to the extent counsel for the NSHE Defendants and/or the Nevada Legislature would suggest that clarification of the Court's standing determination does not directly impact their clients' order, NPRI respectfully submits this does not override the efficiency of completing each order simultaneously, rather than on a piecemeal basis. Also, although not specifically included in the Court's Minute Order, the NSHE Defendants argued lack of standing as a basis for issuing an order in their favor, the same as those Defendants seeking dismissal. And, the Nevada Legislature, by its own admission, understands this case "involves extremely important questions of constitutional law" (*see* Nevada Legislature's Motion to Intervene as Defendant at 16:22-23), which goes directly to the first criteria for application of the public importance exception. For these reasons, I will likely seek to include the Court's clarifications in each order ultimately entered by the Court as a result of the November 18, 2020 Minute Order.

Should you wish further explanation of the specific objections my client and I have to the form of orders I received and am anticipating will be submitted with or without my signature by opposing counsel, I will be happy to provide this to you immediately upon request. Again, however, it is my hope to avoid the unnecessary additional expense to my client of further reviewing and preparing competing orders in advance of the December 17, 2020 hearing.

Please do not hesitate to contact me directly at (702) 702-262-6899 if you have any questions or need any additional information. Thank you in advance for your kind consideration

Sincerely,

FOX ROTHSCHILD LLP

/s/ Colleen E. McCarty

Colleen E. McCarty

CEM/nm

cc: Jonathan D. Blum, Esq. (jblum@wileypetersenlaw.com)
Gary A. Cardinal, Esq. (gcardinal@unr.edu)
Kevin C. Powers, Esq. (kpowers@lcb.state.nv.us)
Berna L. Rhodes-Ford, Esq. (berna.rhodes-ford@nsc.edu)
Bradley Schrager, Esq. (bschrager@wrslawyers.com)

EXHIBIT 1

From: jblum@wileypetersenlaw.com <jblum@wileypetersenlaw.com>

Sent: Thursday, December 3, 2020 9:00 PM

To: McCarty, Colleen E. <CMcCarty@foxrothschild.com>; 'Berna Rhodes-Ford' <Berna.Rhodes-Ford@nsc.edu>; 'Gary A Cardinal' <gcardinal@unr.edu>; 'Bradley Schrager' <BSchrager@wrslawyers.com>; DBravo@wrslawyers.com; 'Powers, Kevin' <kpowers@lcb.state.nv.us>; Forbush, Deanna L. <DForbush@foxrothschild.com>

Cc: Martinez, Natasha <NMartinez@foxrothschild.com>; ibautista@wileypetersenlaw.com

Subject: [EXT] RE: NPRI v. Cannnizzaro et al. 00618

Colleen,

From my perspective the draft orders were not submitted earlier due to the intervening holiday, and the language of the minute order. The status check for the filing of the orders was set for Dec. 17, indicating a longer timeframe allowed by the Court, specifically permitted under EDCR 7.21. My position is that, per the minute order and local rules we can't simply fail to submit an order because there is another pending motion that may potentially affect that order. The motion for clarification should have been filed after a final order on the motions were entered, and is, in my opinion, premature. (I recognize the issue of Judge Crockett's departure from the bench as an issue, but requiring another round of briefing before the Judge has an opportunity to sign an order on the original motions causes additional fees for all of us.)

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Thanks,
Jon

Jonathan D. Blum, Esq.



1050 Indigo Drive, Suite 200B

Las Vegas, Nevada 89145

Office 702.910.3329 | Mobile 702.443.0677

jblum@wileypetersenlaw.com

www.wileypetersenlaw.com



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To: 'Berna Rhodes-Ford' <Berna.Rhodes-Ford@nsc.edu>; Gary A Cardinal <gcardinal@unr.edu>; jblum@wileypetersenlaw.com; Bradley Schrager <BSchrager@wrslawyers.com>; DBravo@wrslawyers.com; Powers, Kevin <kpowers@lcb.state.nv.us>; Forbush, Deanna L. <DForbush@foxrothschild.com>
Cc: Martinez, Natasha <NMartinez@foxrothschild.com>
Subject: NPRI v. Cannizzaro et al.

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Thank you in advance for your consideration.

Colleen

Colleen E. McCarty
Attorney
Fox Rothschild LLP
One Summerlin
1980 Festival Plaza Drive, Suite 700
Las Vegas, NV 89135
(702) 699-5171 - direct
(702) 597-5503 - fax
CMcCarty@foxrothschild.com
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Sent: Thursday, December 3, 2020 11:16 PM
To: Bradley Schrager <BSchrager@wrslawyers.com>
Cc: Powers, Kevin <kpowers@lcb.state.nv.us>; jblum@wileypetersenlaw.com; McCarty, Colleen E. <CMcCarty@foxrothschild.com>; Gary A Cardinal <gcardinal@unr.edu>; Daniel Bravo <DBravo@wrslawyers.com>; Forbush, Deanna L. <DForbush@foxrothschild.com>; Martinez, Natasha <NMartinez@foxrothschild.com>; ibautista@wileypetersenlaw.com
Subject: [EXT] Re: NPRI v. Cannnizzaro et al. 00618

I am in agreement as well.

Berna L. Rhodes-Ford
office [702.992.2378](tel:702.992.2378)
Berna.Rhodes-Ford@nsc.edu

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On Dec 3, 2020, at 9:56 PM, Bradley Schrager <BSchrager@wrslawyers.com> wrote:

I concur

Bradley Schrager
Wolf Rifkin Shapiro Schulman & Rabkin

On Dec 3, 2020, at 9:17 PM, Powers, Kevin <kpowers@lcb.state.nv.us> wrote:

CAUTION:EXTERNAL EMAIL

LCB Legal agrees with Mr. Blum's legal analysis, procedural approach, and timeline as set forth in his email below. Therefore, LCB Legal will follow all the same with regard to its proposed Order Granting Nevada Legislature's Motion to Intervene as Defendant.

Thanks.

Kevin C. Powers

General Counsel

Nevada Legislative Counsel Bureau, Legal Division

401 S. Carson Street

Carson City, NV 89701-4747

(775) 684-6830

(775) 684-6761-Fax

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Cc: 'Martinez, Natasha' <NMartinez@foxrothschild.com>; ibautista@wileypetersenlaw.com

Subject: RE: NPRI v. Cannizzaro et al. 00618

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Thanks,
Jon

Jonathan D. Blum, Esq.

<image001.jpg>

1050 Indigo Drive, Suite 200B

Las Vegas, Nevada 89145
Office 702.910.3329 | Mobile 702.443.0677
jblum@wileypetersenlaw.com
www.wileypetersenlaw.com

<image002.png>

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Cc: Martinez, Natasha <NMartinez@foxrothschild.com>
Subject: NPRI v. Cannizzaro et al.

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The Omnibus Order Granting Motions to Dismiss proposed by Mr. Blum will obviously have the most direct impact by any clarification provided by the Court, but I will also be seeking to include discussion of the standing argument in Ms. Rhodes-Ford's proposed Order Denying Plaintiff's Motion to Disqualify Official Attorneys on behalf of the NSHE Defendants, as standing was raised in the underlying briefing. And, while Mr. Power's proposed Order Granting Nevada Legislature's Motion to Intervene as Defendant may not be directly impacted by the Court's expected clarification, it is unnecessarily costly to my client for me to have to address these orders on a piecemeal basis.

As the deadline for submission of these orders has already passed, and it is NPRI that would most benefit from the expedited entry of the orders and the opportunity to seek appellate review in advance of the 2021 Legislative Session, I trust you will each be amenable to extending the requested courtesy of waiting to review and, to the extent necessary, submit competing orders related to the Court's November 18, 2020 Minute Order.

Thank you in advance for your consideration.

Colleen

Colleen E. McCarty

Attorney

Fox Rothschild LLP

One Summerlin

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Las Vegas, NV 89135

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RE: Draft Order on Motion to Disqualify 00618

jblum@wileypetersenlaw.com <jblum@wileypetersenlaw.com>

Wed 12/2/2020 5:27 PM

To: Berna Rhodes-Ford <Berna.Rhodes-Ford@nsc.edu>; dforbush@foxrothschild.com <dforbush@foxrothschild.com>; cmccarty@foxrothschild.com <cmccarty@foxrothschild.com>; bschrager@wrslawyers.com <bschrager@wrslawyers.com>; dbravo@wrslawyers.com <dbravo@wrslawyers.com>; kpowers@lcb.state.nv.us <kpowers@lcb.state.nv.us>

Cc: Nita Armendariz <Nita.Armendariz@nsc.edu>; ibautista@wileypetersenlaw.com <ibautista@wileypetersenlaw.com>

Thanks Berna, you may affix my e-signature.

Jonathan D. Blum, Esq.



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Sent: Wednesday, December 2, 2020 4:16 PM

To: dforbush@foxrothschild.com; cmccarty@foxrothschild.com; bschrager@wrslawyers.com; dbravo@wrslawyers.com; jblum@wileypetersenlaw.com; kpowers@lcb.state.nv.us

Cc: Nita Armendariz <Nita.Armendariz@nsc.edu>

Subject: Draft Order on Motion to Disqualify

Good afternoon, counsel. Please review the attached draft order on the Motion to Disqualify Attorneys. If you have no revisions to the draft order, please let me know if I can add your electronic signature to the draft order.

Thank you.

Berna L. Rhodes-Ford
General Counsel

BE CONNECTED OFFICE 702.992.2378 | FAX 702.974.0750 | Berna.Rhodes-Ford@nsc.edu

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1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

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5
6 Nevada Policy Research
Institute, Plaintiff(s)

CASE NO: A-20-817757-C

7 vs.

DEPT. NO. Department 24

8
9 Nicole Cannizzaro, Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District
13 Court. The foregoing Order was served via the court's electronic eFile system to all
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14 Service Date: 12/9/2020

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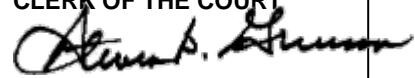
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1 **NEOJ**

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9 *Attorneys for Intervenor-Defendant Legislature of the State of Nevada*

10 **DISTRICT COURT**
11 **CLARK COUNTY, NEVADA**

12 NEVADA POLICY RESEARCH INSTITUTE, a
13 Nevada domestic nonprofit corporation,

14 Plaintiff,

15 vs.

16 **Case No. A-20-817757-C**
17 **Dept. No. 24**

18 NICOLE J. CANNIZZARO, an individual engaging
19 in dual employment with the Nevada State Senate
20 and Clark County District Attorney; KASINA
21 DOUGLASS-BOONE, an individual engaging in
22 dual employment with the Nevada State Assembly
23 and Clark County School District; JASON
24 FRIERSON, an individual engaging in dual
employment with the Nevada State Assembly and
Clark County Public Defender; OSVALDO FUMO,
an individual engaging in dual employment with the
Nevada State Assembly and University of Nevada,
Las Vegas; HEIDI SEEVERS GANSERT, an
individual engaging in dual employment with the
Nevada State Senate and University of Nevada,
Reno; GLEN LEAVITT, an individual engaging in
dual employment with the Nevada State Assembly
and Regional Transportation Commission;
BRITTNEY MILLER, an individual engaging in
dual employment with the Nevada State Assembly
and Clark County School District; DINA NEAL, an
individual engaging in dual employment with the
Nevada State Assembly and Nevada State College;
JAMES OHRENSCHALL, an individual engaging
in dual employment with the Nevada State Senate
and Clark County Public Defender; MELANIE
SCHEIBLE, an individual engaging in dual
employment with the Nevada State Senate and Clark
County District Attorney; TERESA BENITEZ-

**NOTICE OF ENTRY OF ORDER
DENYING PLAINTIFF'S MOTION FOR
CLARIFICATION, GRANTING JOINT
COUNTERMOTION TO DISMISS ALL
REMAINING DEFENDANTS BASED ON
PLAINTIFF'S LACK OF STANDING,
AND ENTERING FINAL JUDGMENT IN
FAVOR OF ALL DEFENDANTS BASED
ON PLAINTIFF'S LACK OF STANDING**

1 THOMPSON, an individual engaging in dual
2 employment with the Nevada State Assembly and
3 University of Nevada, Reno; JILL TOLLES, an
4 individual engaging in dual employment with the
5 Nevada State Assembly and University of Nevada,
6 Reno; and SELENA TORRES, an individual
7 engaging in dual employment with the Nevada State
8 Assembly and Clark County School District,

9 Defendants, and

10 THE LEGISLATURE OF THE STATE OF
11 NEVADA,

12 Intervenor-Defendant.

13 **NOTICE OF ENTRY OF ORDER**

14 **TO ALL PARTIES AND THEIR COUNSEL**, please take notice that: (1) an Order Denying
15 Plaintiff's Motion for Clarification, Granting Joint Countermotion to Dismiss All Remaining Defendants
16 Based on Plaintiff's Lack of Standing, and Entering Final Judgment in Favor of All Defendants Based
17 on Plaintiff's Lack of Standing was approved and signed by the Court on December 28, 2020, and
18 electronically filed with the Clerk on that same date; and (2) a copy of the Order is attached hereto.

19 DATED: This 28th day of December, 2020.

20 Respectfully submitted,

21 By: /s/ Kevin C. Powers

22 **KEVIN C. POWERS**

23 General Counsel

24 Nevada Bar No. 6781

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Attorneys for Intervenor-Defendant

Legislature of the State of Nevada

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Nevada Legislative Counsel Bureau, Legal Division, and that on the 28th day of December, 2020, pursuant to NRCP 5(b) and NEFCR 9, I served a true and correct copy of the Notice of Entry of Order Denying Plaintiff's Motion for Clarification, Granting Joint Countermotion to Dismiss All Remaining Defendants Based on Plaintiff's Lack of Standing, and Entering Final Judgment in Favor of All Defendants Based on Plaintiff's Lack of Standing, by means of the Eighth Judicial District Court's electronic filing system, directed to:

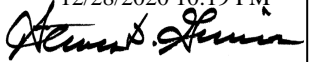
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/s/ Kevin C. Powers
An Employee of the Legislative Counsel Bureau


CLERK OF THE COURT

ORDR

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Attorneys for Intervenor-Defendant Legislature of the State of Nevada

**DISTRICT COURT
CLARK COUNTY, NEVADA**

NEVADA POLICY RESEARCH INSTITUTE, a
Nevada domestic nonprofit corporation,

Plaintiff,

vs.

**Case No. A-20-817757-C
Dept. No. 24**

NICOLE J. CANNIZZARO, an individual engaging in dual employment with the Nevada State Senate and Clark County District Attorney; KASINA DOUGLASS-BOONE, an individual engaging in dual employment with the Nevada State Assembly and Clark County School District; JASON FRIERSON, an individual engaging in dual employment with the Nevada State Assembly and Clark County Public Defender; OSVALDO FUMO, an individual engaging in dual employment with the Nevada State Assembly and University of Nevada, Las Vegas; HEIDI SEEVERS GANSERT, an individual engaging in dual employment with the Nevada State Senate and University of Nevada, Reno; GLEN LEAVITT, an individual engaging in dual employment with the Nevada State Assembly and Regional Transportation Commission; BRITTNEY MILLER, an individual engaging in dual employment with the Nevada State Assembly and Clark County School District; DINA NEAL, an individual engaging in dual employment with the Nevada State Assembly and Nevada State College; JAMES OHRENSCHALL, an individual engaging in dual employment with the Nevada State Senate and Clark County Public Defender; MELANIE SCHEIBLE, an individual engaging in dual employment with the Nevada State Senate and Clark County District Attorney; TERESA BENITEZ-

**ORDER DENYING PLAINTIFF'S
MOTION FOR CLARIFICATION,
GRANTING JOINT COUNTERMOTION
TO DISMISS ALL REMAINING
DEFENDANTS BASED ON PLAINTIFF'S
LACK OF STANDING, AND ENTERING
FINAL JUDGMENT IN FAVOR OF ALL
DEFENDANTS BASED ON PLAINTIFF'S
LACK OF STANDING**

1 THOMPSON, an individual engaging in dual
2 employment with the Nevada State Assembly and
3 University of Nevada, Reno; JILL TOLLES, an
4 individual engaging in dual employment with the
5 Nevada State Assembly and University of Nevada,
6 Reno; and SELENA TORRES, an individual
7 engaging in dual employment with the Nevada State
8 Assembly and Clark County School District,

9
10 Defendants, and

11 THE LEGISLATURE OF THE STATE OF
12 NEVADA,

13 Intervenor-Defendant.
14

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BACKGROUND

1 In this action, Plaintiff Nevada Policy Research Institute (“NPRI”) has alleged that the individual
2 Defendants are persons simultaneously holding elected offices in the Nevada Legislature and paid
3 positions with the executive branch of the Nevada State Government or with local governments in
4 violation of the separation-of-powers provision in Article 3, Section 1 of the Nevada Constitution.
5 NPRI is represented by Deanna L. Forbush, Esq. and Colleen E. McCarty, Esq., of Fox Rothschild LLP.

6 On December 8, 2020, the Court entered an Order Granting Nevada Legislature’s Motion to
7 Intervene as an Intervenor-Defendant (the “Legislature”). The Legislature is represented by Kevin C.
8 Powers, General Counsel, Legislative Counsel Bureau, Legal Division, under NRS 218F.720.
9 Additionally, on December 8, 2020, the Court entered an Omnibus Order Granting Motions to Dismiss
10 in favor of the following individual Defendants based on NPRI’s lack of standing: (1) Defendants
11 Brittney Miller and Selena Torres,¹ who are represented by Bradley Schrager, Esq., and Daniel Bravo,
12 Esq., of Wolf, Rifkin, Shapiro, Schulman & Rabkin LLP; (2) Defendants Jason Frierson and Nicole
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¹ Although Defendant Selena Torres did not file a separate Motion to Dismiss, she filed Joinders to the
other Defendants’ Motions to Dismiss. In the Court’s Omnibus Order Granting Motions to Dismiss,
the Court granted all Joinders to the other Defendants’ Motions to Dismiss.

1 Cannizzaro, who are represented by Jonathan D. Blum, Esq., of Wiley Petersen; and (3) Defendants
2 Osvaldo Fumo, Heidi Seevers Gansert, and Dina Neal (the Nevada System of Higher Education or
3 “NSHE” Defendants), who are represented by Berna L. Rhodes-Ford, General Counsel, Nevada State
4 College, and Gary A. Cardinal, Assistant General Counsel, University of Nevada, Reno. On
5 December 9, 2020, the Court entered an Order Denying NPRI’s Motion to Disqualify Official Attorneys
6 from representing the NSHE Defendants.

7 In addition to the individual Defendants dismissed by the Court’s Omnibus Order Granting
8 Motions to Dismiss, the following individual Defendants were voluntarily dismissed by NPRI, without
9 prejudice, pursuant to NRCP 41(a)(1) during the course of this litigation: (1) Defendant Teresa Benitz-
10 Thompson on September 17, 2020; (2) Defendant Kasina Douglass-Boone on September 28, 2020; and
11 (3) Defendants Osvaldo Fumo and Jill Tolles on November 16, 2020. NPRI voluntarily dismissed these
12 Defendants based on representations from their respective counsel that they were no longer engaging in
13 the dual employment as alleged by NPRI in its Amended Complaint.

14 However, with regard to Defendant Jill Tolles, upon notification from her counsel that she would
15 be entering into a new contract with her state employer, NPRI and all other parties entered into, and the
16 Court approved, a Stipulation and Order on December 16, 2020, which: (1) vacated the voluntary
17 dismissal of Defendant Jill Tolles and reinstated her as a Defendant with all defenses reserved, including
18 her right to argue that she is not an employee of NSHE or the University of Nevada, Reno; and
19 (2) provided that the Court’s Omnibus Order Granting Motions to Dismiss and the Court’s Order
20 Denying NPRI’s Motion to Disqualify Official Attorneys from representing the NSHE Defendants shall
21 apply equally to Defendant Jill Tolles, such that all parties are bound thereby without the need to re-
22 litigate the motions decided therein. Defendant Jill Tolles is represented by counsel for the NSHE
23 Defendants.

24 //

1 The remaining individual Defendants are Glen Leavitt, James Ohrenschall, and Melanie Scheible.
2 On November 4, 2020, the Court entered: (1) an Order Granting NPRI's Motion for Enlargement of
3 Time to Serve the Amended Complaint on Defendants Glen Leavitt, James Ohrenschall, and Melanie
4 Scheible; and (2) an Order to Serve by Publication Defendants Glen Leavitt, James Ohrenschall, and
5 Melanie Scheible. On December 9, 2020, NPRI filed an Acceptance of Service in which Jonathan D.
6 Blum, Esq., of Wiley Petersen, accepted service of the Summons and Amended Complaint on behalf of
7 Defendant Melanie Scheible. On December 14, 2020, NPRI stated in its Limited Reply in Support of its
8 Motion for Clarification that Defendants Glen Leavitt and James Ohrenschall were officially served by
9 publication effective December 10, 2020.

10 **PENDING MOTION AND COUNTERMOTION**

11 Presently pending before the Court are the following motion and countermotion and their
12 supporting documents: (1) NPRI's Motion for the Court's Clarification of its Decision to Grant
13 Defendants' Motions to Dismiss Based on NPRI's Lack of Standing ("NPRI's Motion for
14 Clarification"), which includes a request for the Court to grant NRCP 54(b) certification whereby the
15 Court finds that there is no just reason for delay and directs entry of a final judgment in order to
16 facilitate timely and meaningful appellate review; (2) Defendants' and Legislature's Joint Opposition to
17 NPRI's Motion for the Court's Clarification of its Decision to Grant Defendants' Motions to Dismiss
18 Based on NPRI's Lack of Standing and Joint Countermotion to Dismiss All Remaining Defendants
19 Based on NPRI's Lack of Standing ("Joint Countermotion to Dismiss"); and (3) NPRI's Notice of Non-
20 Opposition to Joint Countermotion to Dismiss and Limited Reply in Support of its Motion for
21 Clarification.

22 Pursuant to EDCR 2.23(c) and (d), the Court decided the pending motion and countermotion on
23 the written submissions filed by the parties without oral argument because the Court deems oral
24 argument unnecessary. Having considered the written submissions filed by the parties, and for good

1 cause shown, the Court: (1) denies NPRI's Motion for Clarification; (2) grants the Joint Countermotion
2 to Dismiss and hereby dismisses all remaining Defendants based on NPRI's lack of standing; and
3 (3) denies NPRI's request for NRCP 54(b) certification as moot because, by dismissing all Defendants
4 based on NPRI's lack of standing, the Court is entering a final judgment which adjudicates all the claims
5 against all the parties based on NPRI's lack of standing and which thereby renders NRCP 54(b)
6 certification unnecessary. Consequently, having dismissed all Defendants based on NPRI's lack of
7 standing, the Court enters a final judgment in favor of all Defendants based on NPRI's lack of standing,
8 and the Court does not address the merits of NPRI's constitutional claims.

9 **DISCUSSION**

10 **1. NPRI's Motion for Clarification.**

11 On November 18, 2020, the Court entered a Minute Order which directed counsel for the
12 prevailing parties to prepare for the Court's review and approval a proposed order granting Defendants'
13 Motions to Dismiss based on NPRI's lack of standing. On December 1, 2020, before counsel for the
14 prevailing parties had submitted a proposed order for the Court's review and approval, NPRI filed its
15 Motion for Clarification of the Court's decision granting Defendants' Motions to Dismiss based on
16 NPRI's lack of standing. When NPRI filed its Motion for Clarification on December 1, 2020, there was
17 no written order that the Court had signed and filed yet. Thus, at that time, NPRI's Motion for
18 Clarification was premature because the Court could not clarify an order that did not exist yet.

19 On December 2, 2020, counsel for Defendants Jason Frierson and Nicole Cannizzaro submitted a
20 proposed Omnibus Order Granting Motions to Dismiss, without commentary from NPRI. NPRI instead
21 emailed a Letter to the Court on December 4, 2020, which NPRI also copied to counsel for all other
22 parties, requesting that the Court hold off processing the proposed order until the hearing on the Motion
23 for Clarification ("NPRI's December 4 Letter"). NPRI's December 4 Letter has been "Left Side" filed
24 into this case.

1 On December 8, 2020, the Court signed and filed Defendants' proposed Omnibus Order Granting
2 Motions to Dismiss based on NPRI's lack of standing. On December 14, 2020, NPRI filed its Limited
3 Reply in Support of its Motion for Clarification. In NPRI's Reply, NPRI asks for the Court to provide
4 clarification of precisely why NPRI lacks standing to bring this lawsuit, arguing that the record remains
5 unclear as to how NPRI either: (1) lacks its own particularized harm to establish standing; or (2) fails to
6 meet the public-importance exception to standing under *Schwartz v. Lopez*, 132 Nev. 732, 743, 382 P.3d
7 886, 894 (2016).

8 On December 15, 2020, the Court entered a Minute Order denying NPRI's Motion for
9 Clarification, stating that:

10 Although Plaintiff styles this motion as a Motion for Clarification of the Court's Decision,
11 there is no order that has been signed and filed yet and thus the motion is premature since
12 one cannot clarify what does not exist. Plaintiff's Reply brief does not provide any
additional justification or authority for clarification. Motion for Clarification must be
DENIED.

13 Based on the Court's December 15 Minute Order, NPRI believed that the Court denied its Motion
14 for Clarification on the basis that no order from the November 18, 2020, hearing had yet been signed
15 and filed yet, even though all orders had been signed and filed on either December 8 or December 9,
16 2020. Accordingly, on December 16, 2020, NPRI emailed a Letter to the Court ("NPRI's December 16
17 Letter"), which NPRI also copied to counsel for all other parties, requesting that the record be corrected
18 and that the Court either place the Motion for Clarification back on calendar or provide the basis for the
19 denial of NPRI's Motion for Clarification. NPRI's December 16 Letter has been "Left Side" filed into
20 this case.

21 Having considered NPRI's Reply and NPRI's December 16 Letter, the Court finds that NPRI does
22 not provide any additional justification or authority for clarification, and the Court is of the view that the
23 issue of standing needs no further clarification and is entirely dispositive of the arguments raised by
24 NPRI. Therefore, the Court denies NPRI's Motion for Clarification.

1 **2. Joint Countermotion to Dismiss All Remaining Defendants.**

2 As discussed previously, the remaining individual Defendants are Glen Leavitt, James
3 Ohrenschall, and Melanie Scheible. In Nevada, a person named as a codefendant in a complaint is not
4 treated as a party to the case unless the person has been served with process or has entered a voluntary
5 appearance. *Rae v. All Am. Life & Cas. Co.*, 95 Nev. 920, 922, 605 P.2d 196, 197 (1979); *Valley Bank*
6 *of Nev. v. Ginsburg*, 110 Nev. 440, 447, 874 P.2d 729, 734 (1994); *Albert D. Massi, Ltd. v. Bellmyre*,
7 111 Nev. 1520, 1521, 908 P.2d 705, 706 (1995).

8 Based on the record in this case, NPRI filed an Acceptance of Service on December 9, 2020, in
9 which Jonathan D. Blum, Esq., of Wiley Petersen, accepted service of the Summons and Amended
10 Complaint on behalf of Defendant Melanie Scheible. Additionally, on December 14, 2020, NPRI stated
11 in its Limited Reply in Support of its Motion for Clarification that Defendants Glen Leavitt and James
12 Ohrenschall were officially served by publication effective December 10, 2020. Therefore, because the
13 remaining individual Defendants Glen Leavitt, James Ohrenschall, and Melanie Scheible have been
14 served with process, the Court finds that they are parties to this case, regardless of whether they have
15 appeared in this action.

16 The Joint Countermotion to Dismiss asks the Court to dismiss all remaining Defendants based on
17 NPRI's lack of standing and argues that NPRI lacks standing to bring its constitutional claims against all
18 remaining Defendants, regardless of whether they have appeared in this action. In NPRI's Non-
19 Opposition to the Joint Countermotion to Dismiss, NPRI does not oppose the Court's entry of a final
20 judgment as to all remaining Defendants based on NPRI's lack of standing in order to facilitate timely
21 and meaningful appellate review.

22 The Court finds that the Joint Countermotion to Dismiss is most persuasive. As argued in the
23 Joint Countermotion to Dismiss, when a plaintiff files a complaint for declaratory and injunctive relief,
24 the Court may not exercise subject-matter jurisdiction over the plaintiff's claims unless the plaintiff has

1 standing to bring the claims. *Doe v. Bryan*, 102 Nev. 523, 524-26, 728 P.2d 443, 444-45 (1986). When
2 the plaintiff lacks standing to bring its claims, the defendant is entitled to dismissal for lack of subject-
3 matter jurisdiction as a matter of law. *Id.* (affirming district court’s dismissal of plaintiffs’ constitutional
4 claims because plaintiffs lacked standing to bring those claims); NRCP 12(h)(3) (“If the court
5 determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.”).

6 Furthermore, when the plaintiff pleads a claim against multiple defendants and one of the
7 defendants proves that the claim fails as a matter of law—such as for the lack of standing—the natural
8 consequence is that the claim fails as a matter of law as to all defendants named in the claim, even if
9 some of the defendants do not answer or defend against the claim. *See In re Forsyth’s Estate*, 45 Nev.
10 385, 392, 204 P. 887, 889-90 (1922) (explaining the “well-known and general rule to the effect that,
11 where several persons are joined as defendants, one or more of whom made default, and the others
12 defend successfully upon a ground not personal to themselves, but which goes to destroy the very basis
13 of the action, their success in maintaining such defense inures to the benefit of all.”). The reason for this
14 rule is that when a claim fails as a matter of law, it is legally unsustainable, and the plaintiff cannot
15 prosecute the claim against any defendant, regardless of whether the defendant has appeared in the
16 action. *See Sutherland v. Gross*, 105 Nev. 192, 198, 772 P.2d 1287, 1291 (1989) (stating that “when the
17 defenses interposed by the answering co-defendant call into question the validity of plaintiff’s entire
18 cause of action and when such defenses prove successful, the defenses inure to the benefit of the
19 defaulting co-defendant. Consequently, the plaintiff cannot take judgment against the defendant in
20 default.” (citations omitted)); *Paul v. Pool*, 96 Nev. 130, 132, 605 P.2d 635, 636 (1980) (“The answer of
21 a co-defendant inures to the benefit of a defaulting defendant where there exists, as here, a common
22 defense as to both of them.”).

23 As determined by the Court in its Omnibus Order Granting Motions to Dismiss, standing is the
24 controlling issue here, and while other issues are discussed, standing is the determinative issue above all

1 else. In its Omnibus Order, the Court concluded that NPRI clearly lacks standing to bring its
2 constitutional claims against Defendants who filed Motions to Dismiss or Joinders thereto. The Court
3 finds that its conclusion that NPRI clearly lacks standing to bring its constitutional claims applies
4 equally to all remaining Defendants as well. Therefore, the Court grants the Joint Countermotion to
5 Dismiss and hereby dismisses all remaining Defendants based on NPRI's lack of standing.
6 Consequently, having dismissed all Defendants based on NPRI's lack of standing, the Court enters a
7 final judgment in favor of all Defendants based on NPRI's lack of standing, and the Court does not
8 address the merits of NPRI's constitutional claims.

9 **3. NRCP 54(b) certification.**

10 As a general rule, a party is not entitled to appeal from any order or other decision, however
11 designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the
12 parties. NRCP 54(b); *Wilmurth v. State*, 79 Nev. 490, 491-92, 387 P.2d 251, 251 (1963). However,
13 NRCP 54(b) contains an exception to the general rule, stating that "the court may direct entry of a final
14 judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines
15 that there is no just reason for delay." NRCP 54(b); *Crescent v. White*, 91 Nev. 209, 210, 533 P.2d 159,
16 160 (1975) (explaining that "a judgment or order that fails to adjudicate all the claims and the rights and
17 liabilities of the parties is not appealable, absent the express determination that there is no just reason for
18 delay, as required by NRCP 54(b).").

19 In this case, NPRI's request for NRCP 54(b) certification is denied as moot because, by dismissing
20 all Defendants based on NPRI's lack of standing, the Court is entering a final judgment which
21 adjudicates all the claims against all the parties based on NPRI's lack of standing and which thereby
22 renders NRCP 54(b) certification unnecessary.

23 //

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2. IT IS HEREBY FURTHER ORDERED that Defendants' and Legislature's Joint Countermotion to Dismiss All Remaining Defendants Based on NPRI's Lack of Standing is GRANTED.

3. IT IS HEREBY FURTHER ORDERED that NPRI's request for NRCP 54(b) certification is DENIED as moot because, by dismissing all Defendants based on NPRI's lack of standing, the Court is entering a final judgment which adjudicates all the claims against all the parties based on NPRI's lack of standing and which thereby renders NRCP 54(b) certification unnecessary.

4. IT IS HEREBY FURTHER ORDERED that a FINAL JUDGMENT is entered in favor of all Defendants based on NPRI's lack of standing.

Dated this 28th day of December, 2020



Order submitted by:

/s/ Kevin C. Powers
KEVIN C. POWERS, General Counsel
 Nevada Bar No. 6781
 LEGISLATIVE COUNSEL BUREAU, LEGAL DIVISION
 401 S. Carson St.
 Carson City, NV 89701
 Tel: (775) 684-6830; Fax: (775) 684-6761
 Email: kpowers@lcb.state.nv.us
Attorneys for Intervenor-Defendant Legislature of

D49 621 CDB2 0D29
Jim Crockett
District Court Judge

//
//
//

Order reviewed by:

/s/ Colleen E. McCarty

DEANNA L. FORBUSH, ESQ.

COLLEEN E. MCCARTY, ESQ.

FOX ROTHSCHILD LLP

dforbush@foxrothschild.com

cmccarty@foxrothschild.com

*Attorneys for Plaintiff Nevada Policy
Research Institute*

/s/ Bradley Schrager

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RABKIN LLP

bschrager@wrslawyers.com

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*Attorneys for Defendants Brittney Miller
and Selena Torres*

/s/ Berna L. Rhodes-Ford

BERNA L. RHODES-FORD, ESQ.

General Counsel

NEVADA STATE COLLEGE

berna.rhodes-ford@nsc.edu

/s/ Gary A. Cardinal

GARY A. CARDINAL, ESQ.

Assistant General Counsel

UNIVERSITY OF NEVADA, RENO

gcardinal@unr.edu

*Attorneys for Defendants Osvaldo Fumo,
Heidi Seevers Gansert, Dina Neal and Jill Tolles*

/s/ Jonathan D. Blum

JONATHAN D. BLUM, ESQ.

WILEY PETERSEN

jblum@wileypetersenlaw.com

*Attorneys for Defendants Jason Frierson,
Nicole Cannizzaro and Melanie Scheible*

Powers, Kevin

From: Berna Rhodes-Ford <Berna.Rhodes-Ford@nsc.edu>
Sent: Wednesday, December 23, 2020 5:23 PM
To: Powers, Kevin
Cc: McCarty, Colleen E.; Forbush, Deanna L.; Bradley Schrage; Daniel Bravo; jblum@wileypetersenlaw.com; Gary A Cardinal
Subject: Re: A-20-817757-C, NPRI v Cannizzaro: Proposed Order and Final Judgment

I authorize use of my electronic signature on the revised proposed order.

Berna L. Rhodes-Ford
office [702.992.2378](tel:702.992.2378)
Berna.Rhodes-Ford@nsc.edu

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General Counsel

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<CMcCarty@foxrothschild.com>

Cc: 'Bradley Schrager' <BSchrager@wrslawyers.com>; 'Daniel Bravo' <DBravo@wrslawyers.com>;

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<2020_12-23_01_A-20-817757-C_Proposed Order Denying Motion for Clarification, Granting Countermotion to Dismiss Remaining Defs and Entering Final Judgment.doc>

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Sent: Thursday, December 24, 2020 7:30 AM
To: Powers, Kevin
Cc: McCarty, Colleen E.; Forbush, Deanna L.; Daniel Bravo; jblum@wileypetersenlaw.com; Gary A Cardinal; Berna Rhodes-Ford
Subject: Re: A-20-817757-C, NPRI v Cannizzaro: Proposed Order and Final Judgment

Signature authorized on behalf of my clients

Bradley Schrager
Wolf Rifkin Shapiro Schulman & Rabkin

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Sent: Thursday, December 24, 2020 8:12 AM
To: Powers, Kevin; 'McCarty, Colleen E.'; 'Forbush, Deanna L.'
Cc: 'Bradley Schrager'; 'Daniel Bravo'; 'Gary A Cardinal'; 'Berna Rhodes-Ford';
ibautista@wileypetersenlaw.com
Subject: RE: A-20-817757-C, NPRI v Cannizzaro: Proposed Order and Final Judgment 00618

Thanks, Kevin.

Missing one word in caption:

**ORDER DENYING PLAINTIFF'S MOTION FOR CLARIFICATION, GRANTING JOINT
COUNTERMOTION TO DISMISS ALL REMAINING DEFENDANTS BASED ON PLAINTIFF'S
LACK OF STANDING, AND ENTERING FINAL JUDGMENT IN FAVOR **OF** ALL DEFENDANTS
BASED ON PLAINTIFF'S LACK OF STANDING**

You may affix my e-signature.

Happy Holidays to all,
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From: Gary A Cardinal <gcardinal@unr.edu>
Sent: Monday, December 28, 2020 7:36 AM
To: 'jblum@wileypetersenlaw.com'; Powers, Kevin; 'McCarty, Colleen E.'; 'Forbush, Deanna L.'
Cc: 'Bradley Schrager'; 'Daniel Bravo'; 'Berna Rhodes-Ford';
ibautista@wileypetersenlaw.com
Subject: RE: A-20-817757-C, NPRI v Cannizzaro: Proposed Order and Final Judgment 00618

You may affix my e-signature. Thank you.

GARY A. CARDINAL

Assistant General Counsel
University of Nevada, Reno
1664 North Virginia Street
Mail Stop 0550
Reno, NV 89557
Tel: (775) 784-3495
Fax: (775) 327-2202
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To: Forbush, Deanna L. <DForbush@foxrothschild.com>; McCarty, Colleen E. <CMcCarty@foxrothschild.com>

Cc: 'Bradley Schrager' <BSchrager@wrslawyers.com>; 'Daniel Bravo' <DBravo@wrslawyers.com>;

'jblum@wileypetersenlaw.com' <jblum@wileypetersenlaw.com>; Gary A Cardinal <gcardinal@unr.edu>; 'Berna Rhodes-Ford' <Berna.Rhodes-Ford@nsc.edu>

Subject: [EXT] A-20-817757-C, NPRI v Cannizzaro: Proposed Order and Final Judgment

Plaintiff's Counsel:

Counsel for all Defendants have prepared and approved the attached proposed order and final judgment in this matter based on the Court's minute orders on December 15 and 16, 2020. Please review the proposed order and final judgment and let us know whether you have any suggested revisions.

Counsel for all Defendants would like to submit the proposed order and final judgment to the Court as early as possible next week before the holiday.

Thank you for your prompt consideration of this matter.

Kevin C. Powers

General Counsel

Nevada Legislative Counsel Bureau, Legal Division

401 S. Carson Street

Carson City, NV 89701-4747

(775) 684-6830

(775) 684-6761-Fax

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Powers, Kevin

From: McCarty, Colleen E. <CMcCarty@foxrothschild.com>
Sent: Monday, December 28, 2020 11:41 AM
To: Powers, Kevin; Forbush, Deanna L.
Cc: 'Bradley Schrager'; 'Daniel Bravo'; 'jblum@wileypetersenlaw.com'; Gary A Cardinal; 'Berna Rhodes-Ford'
Subject: RE: A-20-817757-C, NPRI v Cannizzaro: Proposed Order and Final Judgment

You may affix my e-signature. Thank you.

From: Powers, Kevin <kpowers@lcb.state.nv.us>
Sent: Wednesday, December 23, 2020 5:04 PM
To: McCarty, Colleen E. <CMcCarty@foxrothschild.com>; Forbush, Deanna L. <DForbush@foxrothschild.com>
Cc: 'Bradley Schrager' <BSchrager@wrslawyers.com>; 'Daniel Bravo' <DBravo@wrslawyers.com>; 'jblum@wileypetersenlaw.com' <jblum@wileypetersenlaw.com>; Gary A Cardinal <gcardinal@unr.edu>; 'Berna Rhodes-Ford' <Berna.Rhodes-Ford@nsc.edu>
Subject: [EXT] RE: A-20-817757-C, NPRI v Cannizzaro: Proposed Order and Final Judgment

Plaintiff's Counsel:

In response to NPRI's suggested revisions to the proposed order, Counsel for all Defendants have prepared and approved the attached revised proposed order and final judgment in this matter.

The revised proposed order includes most—but not all—of NPRI's suggested revisions. The revised proposed order also includes some additional revisions from Defendants in response to NPRI's suggested revisions that are included in the revised proposed order.

Counsel for all Defendants do not intend to make any additional revisions to the revised proposed order. Therefore, please review the revised proposed order, and please reply to this email as to whether you authorize the use of your electronic signature on the revised proposed order.

If you do not so authorize, then LCB Legal will submit the revised proposed order to the Court, and NPRI may submit a competing proposed order if it so desires.

Finally, in order to submit the revised proposed order with the required email verification, **Counsel for all Defendants**, please reply to this email in order to authorize the use of your electronic signature on the revised proposed order.

Thanks.

Kevin C. Powers

General Counsel
Nevada Legislative Counsel Bureau, Legal Division
401 S. Carson Street
Carson City, NV 89701-4747

(775) 684-6830
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From: McCarty, Colleen E. <CMcCarty@foxrothschild.com>
Sent: Tuesday, December 22, 2020 12:11 PM
To: Powers, Kevin <kpowers@lcb.state.nv.us>; Forbush, Deanna L. <DForbush@foxrothschild.com>
Cc: 'Bradley Schrager' <BSchrager@wrslawyers.com>; 'Daniel Bravo' <DBravo@wrslawyers.com>; 'jblum@wileypetersenlaw.com' <jblum@wileypetersenlaw.com>; Gary A Cardinal <gcardinal@unr.edu>; 'Berna Rhodes-Ford' <Berna.Rhodes-Ford@nsc.edu>
Subject: RE: A-20-817757-C, NPRI v Cannizzaro: Proposed Order and Final Judgment

Mr. Powers,

Attached please find NPRI's suggested revisions to the draft order. We believe they add some additional context and complete the record and also, as NPRI did not oppose the motion to dismiss, remove some superfluous language.

Should you have any questions or wish to discuss the track changes, please do not hesitate to reach out.

Colleen

From: Powers, Kevin <kpowers@lcb.state.nv.us>
Sent: Friday, December 18, 2020 5:10 PM
To: Forbush, Deanna L. <DForbush@foxrothschild.com>; McCarty, Colleen E. <CMcCarty@foxrothschild.com>
Cc: 'Bradley Schrager' <BSchrager@wrslawyers.com>; 'Daniel Bravo' <DBravo@wrslawyers.com>; 'jblum@wileypetersenlaw.com' <jblum@wileypetersenlaw.com>; Gary A Cardinal <gcardinal@unr.edu>; 'Berna Rhodes-Ford' <Berna.Rhodes-Ford@nsc.edu>
Subject: [EXT] A-20-817757-C, NPRI v Cannizzaro: Proposed Order and Final Judgment

Plaintiff's Counsel:

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Thank you for your prompt consideration of this matter.

Kevin C. Powers

General Counsel
Nevada Legislative Counsel Bureau, Legal Division
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1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

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6 Nevada Policy Research
Institute, Plaintiff(s)

CASE NO: A-20-817757-C

7 vs.

DEPT. NO. Department 24

8
9 Nicole Cannizzaro, Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District
13 Court. The foregoing Order was served via the court's electronic eFile system to all
recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 12/28/2020

15 Bradley Schrager	bschrager@wrslawyers.com
16 Dannielle Fresquez	dfresquez@wrslawyers.com
17 Daniel Bravo	dbravo@wrslawyers.com
18 Christie Rehfeld	crehfeld@wrslawyers.com
19 Kevin Powers	kpowers@lcb.state.nv.us
20 Deanna Forbush	dforbush@foxrothschild.com
21 Doreen Loffredo	dloffredo@foxrothschild.com
22 Colleen McCarty	cmccarty@foxrothschild.com
23 Natasha Martinez	nmartinez@foxrothschild.com
24 Ivette Bautista	ibautista@wileypetersenlaw.com
25 Jonathan Blum	jblum@wileypetersenlaw.com

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