

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 Defendant; 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;

Electronically Filed
Feb 16 2021 04:11 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Supreme Court Case No.: 82341

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

**APPELLANT'S OPPOSITION
TO RESPONDENT HEIDI
SEEVERS GANSERT'S
MOTION TO DISMISS**

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.

Appellant, 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 submits its Opposition to the Motion to Dismiss (“Motion”) filed by Respondent, Heidi Seevers Gansert (“Respondent Gansert”).

MEMORANDUM OF POINTS AND AUTHORITIES

I. LEGAL STANDARD

NRAP 27(a) requires that a motion must state, among other things, the legal argument necessary to support it. The Supreme Court’s own website provides on its Frequently Asked Questions page, under the heading “Motions in General,” the clear statement that a motion should have points and authorities and, where it refers to factual matters that may be controverted or outside the record, an affidavit. Respondent Gansert’s Motion contains her affidavit, the concerning wording of which is addressed in the section below, but it is completely devoid of legal authority for the relief it seeks, and indeed, NPRI can find none.

II. ARGUMENT

The record below is closed. At the time the record below closed, Respondent Gansert was still employed in the high level position of Executive Director, External Relations for the University of Nevada, Reno. She now seeks dismissal from the instant appeal, which seeks to address among other issues whether that employment constituted unconstitutional dual employment when engaged in contemporaneously with her service as a Nevada State Senator. The purported basis justifying her dismissal is the carefully worded statement that she has resigned and does not intend to return to “that position” and is not “currently employed in any other executive branch position with any State agency.” See Motion at p. 2 and the Declaration of Heidi Seevers Gansert attached thereto at ¶¶ 2 – 3 (emphasis added).

First, NPRI took the position in the underlying litigation, which it will resume upon this Court’s reversal of the district court’s denial of NPRI’s standing that the reach of the Separation of Powers clause extends to all public employees engaging in dual employment. See, e.g., *Secretary of State v. Nevada State Legislature*, 120 Nev. 456, 472, 93 P.3d 746, 757 (2004); see also *Galloway v. Truesdell*, 83 Nev. 13, 21-22, 422 P.2d 237, 243 (1967). Conversely, Respondent Gansert and her other colleague working for the State in the Nevada System of Higher Education (“NSHE”), Dina Neal, argued that the Separation of Powers clause in the Nevada Constitution is restricted in its application solely to public officials or officers.¹

¹ NPRI agreed to dismiss Assemblyperson, Osvaldo Fumo, a third NSHE employee,

The executive branch employment engaged in by Respondent Gansert and Respondent Neal at all times relevant to the appeal, however, differs significantly. Specifically, Respondent Gansert held a position of authority, of which the impact on the Separation of Powers analysis remains unknown. Her dismissal from the appeal therefore, in addition to being without legal basis, would have a significant impact on any factual analysis this Court may choose to undertake.

It is also unknown if Respondent Gansert's carefully worded disclaimer of not currently engaging in any other "State agency" employment is actually preclusive to her currently engaging in executive branch employment in any capacity, including with a local government. Respondent Gansert and the other Respondents, through their motion and joinder practice, also took the position that the Separation of Powers clause does not apply to local government employees, based on the conclusion of Attorney General Opinion ("AGO") 2004-03. NPRI, as stated above, took the position that any government employment Respondent Gansert may be engaging in while serving in the Legislature, whether local or otherwise, would violate the Separation of Powers clause.

AGO 2004-03 specifically noted that, "[t]he question of whether executive branch and local government employees can dually serve as members of the Nevada State Legislature, in conformance with Article 3, Section 1 of the Nevada Constitution, has never been reviewed by the Nevada Supreme Court." AGO 2004-03

where he resigned prior to the close of the record below and his executive branch position was redundant to that of Respondent Neal.

at p. 18 (emphasis added). Unless and until this Court settles the question, NPRI submits it is imperative that Respondent Gansert and the others named in this appeal who continued to engage in dual employment during the course of the litigation below remain in the case.

III. CONCLUSION.

For the reasons stated herein, NPRI respectfully requests this Court deny Respondent Gansert's request for dismissal at this time.

Dated this 16th day of February, 2021.

FOX ROTHSCHILD LLP

By: /s/ Colleen E. McCarty
DEANNA L. FORBUSH
Nevada Bar No. 6646
dforbush@foxrothschild.com
COLLEEN E. MCCARTY
Nevada Bar No. 13186
cmccarty@foxrothschild.com
1980 Festival Plaza Drive, Suite 700
Las Vegas, Nevada 89135
Telephone: (702) 262-6899
Facsimile: (702) 597-5503
Attorneys for Appellant
Nevada Policy Research Institute

CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of February, 2021, I caused the foregoing **APPELLANT'S OPPOSITION TO RESPONDENT HEIDI SEEVERS GANSERT'S MOTION TO DISMISS** to be served on all parties to this action by electronically filing it with the Court's e-filing system, as follows:

Berna L. Rhodes-Ford, General Counsel
Nevada State College
1300 Nevada State Drive, RSC 374
Henderson, Nevada 89002
Email: berna.rhodes-ford@nsc.edu
*Attorneys for Heidi Seevers Gansert and
Dina Neal*

Gary A. Cardinal, Assistant General
Counsel
University of Nevada, Reno
1664 North Virginia Street/MS 0550
Reno, Nevada 89557-0550
Email: gcardinal@unr.edu
*Attorneys for Heidi Seevers Gansert
and Dina Neal*

Bradley Schrager, Esq.
Daniel Bravo, Esq.
Wolf, Rifkin, Shapiro, Schulman &
Rabkin, LLP
3556 E. Russell Road, Second Floor
Las Vegas, Nevada 89120
Email: bschrager@wrslawyers.com
Email: dbravo@wrslawyers.com
*Attorneys for Brittney Miller and Selena
Torres*

Jonathan D. Blum, Esq.
Wiley Petersen
1050 Indigo Drive, Suite 200B
Las Vegas, Nevada 89145
Email: jblum@wileypetersenlaw.com
*Attorneys for Jason Frierson and
Nicole Cannizzaro*

Kevin C. Powers, General Counsel
Legislative Counsel Bureau, Legal
Division
401 S. Carson Street
Carson City, Nevada 89701
Email: kpowers@lcb.state.nv.us
Attorneys for Nevada Legislature

/s/ Natasha Martinez
An Employee of Fox Rothschild LLP