

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

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APPELLANT'S RESPONSE TO:

**1) RESPONDENT-
LEGISLATORS' JOINT
OPPOSITION TO MOTION FOR
THE COURT TO SUSPEND THE
RULES PURSUANT TO NRAP 2
AND EXPEDITE ITS DECISION
UPON EXPEDITED BRIEFING
OR, IN THE ALTERNATIVE,
WITHOUT BRIEFING UPON
SUBMISSION OF THE RECORD
AND COUNTERMOTION FOR
LEGISLATIVE CONTINUANCE
AS MATTER OF RIGHT
PURSUANT TO NRS 1.310,**

AND

**2) LEGISLATURE'S JOINDER
IN RESPONDENT-
LEGISLATORS' JOINT
OPPOSITION AND
COUNTERMOTION FILED ON
FEBRUARY 16, 2021**

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 Fox Rothschild LLP, hereby submits its Reply in support of its motion for suspension of the Court’s rules pursuant to NRAP 2, which has been jointly opposed by Respondents and Intervenor-Respondent. Inclusive in NPRI’s Reply are arguments in opposition to the countermotion for stay pursuant to NRS 1.310.

POINTS AND AUTHORITIES

I. INTRODUCTION

Respondents’ joint opposition to NPRI’s motion exceeds the page limit allowance under NRAP 27(d)(2). The joint opposition and joinder also incorrectly refer to NPRI’s motion as solely procedural and neglect to address all arguments contained therein. NRAP 27(a)(2) requires a motion state the relief sought and the legal argument necessary to support it. And the Court is permitted to treat the failure to oppose or refute an argument as an admission that the argument has merit and a consent to granting relief in favor of the moving party on that basis. *Foster v. Dingwall*, 126 Nev. 56, 66, 227 P.3d 1042, 1049 (2010); *see also Knickmeyer v.*

Nevada ex. rel. Eighth Jud. Dist. Ct., 173 F.Supp. 1034, 1044 (D. Nev. 2016).

Notwithstanding these deficiencies, in the interest of judicial and party economy, NPRI simply asks the Court to resolve the pending motion and countermotion in NPRI's favor based on all papers on file, as submitted.

NPRI's ask is wholly supported by Respondents' primary argument, too, which confirms rather than contrasts the need for NPRI's alternative request for relief. Respondents posit that it would be "unfair and prejudicial" to require them to "assist and worry about" this appeal while currently serving in the Legislature. (See Respondents' joint opposition at p. 10.) No such unfair and prejudicial assistance and worry would be required, however, if Respondents had submitted a joint non-opposition to the request that this Court resolve the matter of NPRI's standing and related disqualification and intervention matters upon review of the briefs below. Judge Crockett never held a hearing, never took oral argument, and never stated a basis for his decisions outside of the minutes entered by the clerk. Accordingly, this Court is perfectly capable of making—and NRAP 2 entitles it to make—determinations from the thoroughly briefed record below, which it will be required to do regardless, and that makes this the perfect appeal to proceed without the parties incurring additional time or expense or, in particular, additional worry.

In the same vein, should the Court require the parties to condense the briefings below, an expedited briefing schedule will minimize any adverse impact

on the parties. And with it being purely an academic exercise, carried out by counsel for Respondents and the Legislature—the latter of which is actively pursuing amicus standing to make a Separation of Powers argument involving Respondent Melanie Scheible in the matter of *State v. District Court (Plumlee/Molen)*, Supreme Court Consolidated Case No. 82236—there is simply no reason to stay, and every reason to expedite, review of this matter.

II. ARGUMENT

A. A Stay is Not Necessary or Required Under NRS 1.310

As NPRI anticipated in its motion, the gravamen of Respondents joint opposition is the invocation of NRS 1.310, which allows a Legislator who is party to a court action to request a continuance until 7 days after the conclusion of the legislative session. NRS 1.310(1) and (2). The statute, however, also allows a party to successfully object to a continuance where it has “a substantial existing right or interest that will be defeated or abridged” and will “suffer substantial and immediate irreparable harm” if the continuance is granted. NRS 1.310(3). NPRI’s motion sets forth exactly these extraordinary and irreparably harmful circumstances where it argues that Respondents’ dual employment violates the Nevada Constitution, and that the legislative session is the only time Respondents’ challenged Executive branch employment is otherwise suspended. It is also axiomatic that if the Court approves NPRI’s alternative request for expedited

decision upon submittal of the record below, there would be no proceeding requiring Respondents' involvement and no need for NRS 1.310 protection.

B. Suspension of the Rules is Necessary and Warranted.

In *Schwartz v. Lopez*, 132 Nev. 732, 382 P.3d 886 (2016), this Court held that cases of significant public importance, such as the instant matter, enjoy an exception to the basic standing requirement of showing a particularized injury. 132 Nev. at 743, 382 P.3d at 894. Respondents argued below that this recent holding creates only a “very narrow” exception, to which NPRI is not entitled. On the contrary, although the exception is identified as being narrow, this Court ultimately set forth three requirements, which NPRI properly alleged and which Judge Crockett failed to properly apply.

First, there is no dispute in the record below that this case involves an issue of significant public importance. *Schwartz*, 132 Nev. at 743, 382 P.3d at 894 (citation omitted). “[S]tates are not required to structure their governments to incorporate the separation of powers doctrine (citation omitted), but Nevada has embraced this doctrine and incorporated it into its constitution.” *Commission on Ethics v. Hardy*, 125 Nev. 285, 291, 212 P.3d 1098, 1103. And “[u]nlike the United States Constitution, which expresses separation of powers through the establishment of the three branches of government (citation omitted), Nevada’s Constitution goes one step further; it contains an express provision prohibiting any

one branch of government from impinging on the functions of another.” *Id.* (citing *Secretary of State (Heller)*, 120 Nev. at 466, 93 P.3d at 753.

Next, this case clearly involves a challenge to a legislative expenditure or appropriation on the basis that it violates a specific provision of the Nevada Constitution. *Schwartz*, 132 Nev. at 743, 382 P.3d at 894 (citation omitted). NPRI made these allegations, and the district court was asked but declined to take judicial notice of legislative expenditures and Executive Branch compensation.

Finally, and most important of the considerations, there is no one better positioned to bring the instant action, and NPRI is fully capable of advocating its position in court. *Schwartz*, 132 Nev. at 743, 382 P.3d at 894-95 (citation omitted). The record below will certainly satisfy the Court regarding NPRI’s advocacy capabilities. And, as prior cases illustrate, NPRI is the only party to have ever sought to challenge Executive branch employees engaging in dual employment by also serving as Legislators. Dual employment should be addressed, and there is no legitimate reason not to utilize this case to do so.

III. CONCLUSION

For all the reasons set forth in its motion and this reply, NPRI respectfully asks the Court to suspend the Rules, pursuant to NRAP 2, and issue an expedited decision on the instant appeal following an expedited briefing schedule or, in the

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alternative, without briefing upon submittal of the record.

Dated this 23rd day of February, 2021.

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CERTIFICATE OF SERVICE

I hereby certify that on the 23rd 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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