

IN THE SUPREME COURT OF THE STATE OF NEVADA

NEVADA POLICY RESEARCH INSTITUTE,
INC., a Nevada domestic nonprofit corporation,
Appellant,

vs.

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 and College of Southern
Nevada; JAMES OHRENSCHALL, an
individual engaging in dual employment with
the Nevada State Senate and Clark County
Public Defender; SELENA TORRES, an
individual engaging in dual employment with
the Nevada State Assembly and a Clark County
Public Charter School; and THE
LEGISLATURE OF THE STATE OF
NEVADA,
Respondents.

Electronically Filed
Aug 12 2023 04:42 AM
Elizabeth A. Brown
Clerk of Supreme Court

Case No. 85935

Appeal from Eighth Judicial
District Court, Clark County,
Nevada,
Case No. A-20-817757-C

**RESPONDENT LEGISLATURE'S
APPENDIX**

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 Legislature of the State of Nevada

ALPHABETICAL INDEX

Assemblywoman Shondra Summers-Armstrong’s Declaration Re: Employment (12/28/2022)	LA0022
Defendant James Ohrenschall’s Joinder to Nevada Legislature’s Opposition to Plaintiff’s Motion for Leave to File Second Amended Complaint and Countermotion to Dismiss Plaintiff’s First Amended Complaint (12/30/2022)	LA0053
Defendants Brittney Miller and Selena Torres’s Limited Opposition to Plaintiff’s Motion to Amend (12/21/2022)	LA0018
Nevada Legislature’s Opposition to Plaintiff’s Motion for Leave to File Second Amended Complaint and Countermotion to Dismiss Plaintiff’s First Amended Complaint (12/29/2022)	LA0024
NSHE Defendant Dina Neal’s Joinder to Legislative Counsel Bureau’s Nevada Legislature’s Opposition to Plaintiff’s Motion for Leave to File Second Amended Complaint and Countermotion to Dismiss Plaintiff’s First Amended Complaint (12/29/2022)	LA0050
Plaintiff’s Motion for Leave to File Second Amended Complaint and to Amend Caption in Conformity Therewith (12/15/2022)	LA0001

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Nevada Legislative Counsel Bureau, Legal Division, and that on the 12th day of August, 2023, pursuant to NRAP 25 and NEFCR 9, I filed and served a true and correct copy of Respondent Legislature's Appendix, by means of the Nevada Supreme Court's electronic filing system, directed to:

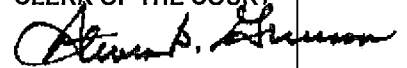
DEANNA L. FORBUSH, ESQ.
COLLEEN E. MCCARTY, ESQ.
FOX ROTHSCHILD LLP
dforbush@foxrothschild.com
cmccarty@foxrothschild.com
*Attorneys for Appellant Nevada
Policy Research Institute*

BERNA L. RHODES-FORD, ESQ.
General Counsel
NEVADA STATE COLLEGE
berna.rhodes-ford@nsc.edu
Attorneys for Respondent Dina Neal

BRADLEY SCHRAGER, ESQ.
ROYI MOAS, ESQ.
DANIEL BRAVO, ESQ.
WOLF, RIFKIN, SHAPIRO, SCHULMAN
& RABKIN LLP
bschrager@wrslawyers.com
rmoas@wrslawyers.com
dbravo@wrslawyers.com
*Attorneys for Respondents
Brittney Miller and Selena Torres*

JONATHAN D. BLUM, ESQ.
WILEY PETERSEN
jblum@wileypetersenlaw.com
*Attorneys for Respondent
James Ohrenschall*

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



1 **MAMC**
2 DEANNA L. FORBUSH, ESQ.
3 Nevada Bar No. 6646
4 dforbush@foxrothschild.com
5 COLLEEN E. MCCARTY, ESQ.
6 Nevada Bar No. 13186
7 cmccarty@foxrothschild.com
8 **FOX ROTHSCHILD LLP**
9 1980 Festival Plaza Drive, Suite 700
10 Las Vegas, Nevada 89135
11 Telephone: (702) 262-6899
12 Facsimile: (702) 597-5503
13 Attorneys for Plaintiff
14 Nevada Policy Research Institute

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

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

14 Plaintiff,

15 vs.

16 NATHA C. ANDERSON, an individual engaging in
17 dual employment with the Nevada State Assembly
18 and Washoe County School District; REUBEN
19 D'SILVA, an individual engaging in dual
20 employment with the Nevada State Assembly and
21 Clark County School District; CECELIA
22 GONZÁLEZ, an individual engaging in dual
23 employment with the Nevada State Assembly and
24 University of Nevada, Las Vegas; LISA
25 KRASNER, an individual engaging in dual
26 employment with the Nevada State Senate and
27 Truckee Meadows Community College; SELENA
28 LA RUE HATCH, an individual engaging in dual
employment with the Nevada State Assembly and
Washoe County School District; 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.: VIII

HEARING REQUESTED

**PLAINTIFF'S MOTION FOR LEAVE
TO FILE SECOND AMENDED
COMPLAINT AND TO AMEND
CAPTION IN CONFORMITY
THEREWITH**

1 individual engaging in dual employment with the
2 Nevada State Senate and Nevada State College and
3 College of Southern Nevada; JAMES
4 OHRENSCHALL, an individual engaging in dual
5 employment with the Nevada State Senate and Clark
6 County Public Defender; DAVID ORENTLICHER,
7 an individual engaging in dual employment with the
8 Nevada State Assembly and University of Nevada,
9 Las Vegas; SHONDRA SUMMERS-
10 ARMSTRONG, an individual engaging in dual
11 employment with the Nevada State Assembly and
12 Regional Transportation Commission; and SELINA
13 TORRES, an individual engaging in dual
14 employment with the Nevada State Assembly and a
15 Clark County Public Charter School,

16
17 Defendants,
18
19 and Legislature of the State of Nevada,
20
21 Intervenor-Defendant.

22 Pursuant to NRCP 15, Plaintiff Nevada Policy Research Institute (“NPRI”), by and through
23 its attorneys of record, Deanna L. Forbush, Esq. and Colleen E. McCarty, Esq., of Fox Rothschild
24 LLP, hereby files its Motion for Leave to File Second Amended Complaint (“Motion to Amend”).

25 Following certification of the 2022 General Election by the Nevada Supreme Court, NPRI
26 reviewed the results and found seven (7) additional individuals who, at the time of hearing of this
27 matter, will be simultaneously holding elected office in the Nevada State Legislature and paid
28 positions in the Executive Branch, in alleged violation of the Separation of Powers requirement of
the Nevada Constitution, Nevada Const. Art. 3, § 1, ¶ 1. NPRI seeks to file the Second Amended
Complaint, a copy of which is attached hereto as **Exhibit 1**, to add these individuals to ensure their
rights are properly adjudicated. Additionally, since the matter was originally filed, a number of
Defendants have ceased engaging in dual service and have either been voluntarily dismissed by
NPRI or dismissed by way of either stipulation or court order. NPRI further seeks amendment to
amend the case caption to remove these former Defendants to avoid confusion in future proceedings.

1 This Motion to Amend is made and based on the following Memorandum of Points and
2 Authorities; the Declaration of Deanna L. Forbush included therein; the proposed Second Amended
3 Complaint attached thereto as **Exhibit 1**, all pleadings and papers already on file; and any oral
4 argument the Court may permit at a hearing of this matter.

5 Dated this 15th day of December, 2022.

6 **FOX ROTHSCHILD LLP**

7
8 By: /s/ Deanna L. Forbush

9 DEANNA L. FORBUSH
10 Nevada Bar No. 6646
11 COLLEEN E. MCCARTY
12 Nevada Bar No. 13186
13 1980 Festival Plaza Drive, Suite 700
14 Las Vegas, Nevada 89135
15 Telephone: (702) 262-6899
16 Attorneys for Plaintiff
17 Nevada Policy Research Institute

18 **DECLARATION OF DEANNA L. FORBUSH, ESQ. IN SUPPORT OF**
19 **MOTION TO AMEND**

20 I, Deanna L. Forbush, hereby declare as follows:

21 1. I am an attorney licensed to practice law in the State of Nevada, and I am a Partner
22 with Fox Rothschild LLP, attorneys for Plaintiff, Nevada Policy Research Institute.

23 2. I have personal knowledge of the facts stated in this Declaration. If called upon to
24 testify to the same, I am competent to do so.

25 3. NPRI filed the instant action for declaratory and injunctive relief on July 9, 2020. At
26 that time, NPRI was aware of 13 individuals who were engaging in dual service by simultaneously
27 holding elected office in the Nevada State Legislature and paid positions with Nevada State or local
28 governments, in alleged violation of the Separation of Powers requirement of the Nevada
Constitution, Nevada Const. Art. 3, § 1, ¶ 1.

4. Over the course of this litigation, including while the matter was on appeal with the Nevada Supreme Court, nine 9 of the originally named Defendants, i.e. Nicole Cannizzaro, Kasina Douglass-Boone, Jason Frierson, Osvaldo Fumo, Heidi Seevers Gansert, Glen Leavitt, Melanie Scheible, Teresa Benitez-Thompson and Jill Tolles, ceased engaging in dual service and were dismissed by voluntary notice, stipulation or court order.

5. Following certification of the 2022 General Election, NPRI conducted a due diligence review of the results and determined that, in addition to the 4 Defendants remaining from the original pleading of this matter, there are seven 7 additional individuals, i.e. Natha C. Anderson, Reuben D'Silva, Cecelia González, Lisa Krasner, Selena La Rue Hatch, David Orentlicher and Shondra Summers-Armstrong, who will be simultaneously holding elected office in the Nevada State Legislature and paid positions with Nevada State or local governments at the time of the hearing of this matter.

6. NPRI respectfully seeks leave to file the Second Amended Complaint, attached hereto as **Exhibit 1**, and to amend the case caption in conformity therewith, to ensure all individuals who are similarly situated with regard to their alleged violation of the Separation of Powers requirement of the Nevada Constitution are properly named and adjudicated herein.

I declare under penalty of perjury under the laws of the State of Nevada (NRS 53.045)¹ that the foregoing is true and correct.

Dated this 15th day of December, 2022.

/s/ Deanna L. Forbush
DEANNA L. FORBUSH

¹ NRS 53.045. Use of unsworn declaration in lieu of affidavit or other sworn declaration. Any matter whose existence or truth may be established by an affidavit or other sworn declaration may be established with the same effect by an unsworn declaration of its existence or truth signed by the declarant under penalty of perjury, and dated, in substantially the prescribed form.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **INTRODUCTION**

4 NPRI filed its nonpartisan declaratory and injunctive relief action on July 9, 2020. It named
5 all individuals known at that time to be engaging in dual service by simultaneously holding elected
6 office in the Nevada State Legislature and paid positions in the Executive Branch, in alleged
7 violation of the Separation of Powers requirement of the Nevada Constitution, Nevada Const. Art. 3,
8 § 1, ¶ 1. Of the 13 individuals so named, 9 subsequently ceased engaging in dual service by either
9 leaving elected office or resigning from government employment and were subsequently dismissed
10 from the case. Their names, however, remain reflected in the case caption.
11

12 Following its review of the results of the 2022 General Election, which were certified by the
13 Nevada Supreme Court on November 22, 2022, NPRI identified 7 additional individuals who will be
14 engaging in dual service as of the date of hearing of this matter. By way of the instant Motion to
15 Amend, NPRI seeks to ensure all proper parties are present in the litigation going forward and that
16 the case caption properly reflects the same. NPRI does not seek to change its causes of action or
17 otherwise make any substantive changes to its complaint allegations. This is simply a
18 straightforward request that does not warrant opposition by any existing party and is appropriate to
19 be heard and granted on order shortening time.
20

21 **II.**

22 **STATEMENT OF FACTS**

23 The facts relevant to the instant Motion to Amend are contained within the Declaration of
24 Deanna L. Forbush, supra, and are incorporated by reference as though fully set forth herein.
25

26 ///

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

III.

LEGAL ARGUMENT

A. NPRI Meets the Legal Standard Applicable to a Motion to Amend.

1. Leave to Amend Is to Be Freely Given.

NRCP 15 provides that when ruling on a Motion to Amend, “[t]he court should freely give leave when justice so requires.” NRCP 15(a)(2). The Nevada appellate courts have held that “[t]he liberality embodied in NRCP 15(a) requires courts to err on the side of caution and permit amendments....because denial of a proposed pleading amendment amounts to the denial of an opportunity to explore any potential merit it might have had.” *Gardner v. Eighth Judicial District Court*, 133 Nev. 730, 732, 405 P.3d 651, 654 (2017) (quoting *Nutton v. Sunset Station*, 131 Nev. 279, 292, 357 P.3d 966, 975 (Ct. App. 2015). The Nevada Supreme Court has further explained that “in the absence of any apparent or declared reason – such as undue delay, bad faith or dilatory motive on the part of the movant – the leave sought should be freely given.” *Stephens v. S. Nev. Music Co.*, 89 Nev. 104, 105-06, 507 P.2d 138, 139 (1973) (citing *Foman v. Davis*, 371 U.S. 178, 182 (1962) (additional citation omitted)).

Thus, NRCP 15(a) contemplates the liberal amendment of pleadings, which means that most such motions ought to be granted unless a strong reason exists not to do so, such as prejudice to the opponent or lack of good faith by the moving party. *Stephens*, 89 Nev. at 105, 507 P.2d at 139.

2. Under This Standard, Leave to Amend Should Be Freely Granted in This Case.

No matter the outcome before this Court, this case will inevitably return to the Nevada Supreme Court for a final determination of whether Defendants’ dual employment in the Executive Branch while serving as elected members of the Legislature violates the separation of powers clause of the Nevada Constitution. So whether this Court ultimately agrees with NPRI that all dual employment service is precluded, or it makes a distinction between the types of service or for whom that service is provided to only grant in part NPRI’s requested relief, it is inevitable that someone

1 will appeal to obtain certainty on the issue that the Nevada Supreme Court has already noted is
2 sorely lacking. As such, the outcome here will impact all individuals engaging in dual service at the
3 time such decision is rendered. For this reason alone, the 7 individuals who are not yet parties to the
4 case – Natha C. Anderson, Reuben D'Silva, Cecelia González, Lisa Krasner, Selena La Rue Hatch,
5 David Orentlicher and Shondra Summers-Armstrong – should have the opportunity to appear as
6 parties and respond as needed concerning their dual service circumstances.

7
8 Additionally, no parties will be prejudiced by their addition to this litigation, where the
9 Nevada Legislature itself has already been permitted to intervene, and, along with the existing
10 parties, all Defendants are receiving full advocacy to which the new Defendants may add their voice
11 or simply seek joinder. Conversely, NPRI's failure to join these necessary parties could have
12 negative procedural impacts. Further, despite its age, this case remains in its procedural infancy due
13 to the errant dismissal order by this Court's predecessor that was subsequently reversed and
14 remanded by the Nevada Supreme Court, as well as the additional dismissal requests that remain
15 under advisement at the time of this filing. For this reason, there can be no prejudice to any of the
16 parties, where the case still remains in the responsive pleading stage, with only informal discovery
17 efforts having commenced to date. And, finally, leave is being sought timely and only for the
18 purposes of confirming the proper parties; no new claims or causes of action are proposed.

19
20 If leave to amend is not granted in the instant case, a just outcome may be prevented.
21 Accordingly, this Court should grant NPRI's Motion to Amend, pursuant to NRCP 15, and permit
22 the filing of the proposed Second Amended Complaint attached hereto as **Exhibit 1**.

23
24 **B. NPRI's Request to Amend the Case Caption Should Also Be Granted.**

25 As noted above, NPRI is now seeking relief in its Second Amended Complaint against 11
26 individual Defendants, a number which is reduced from the 13 Defendants originally named, but
27 which number is inclusive of only 4 original Defendants. The additional 7 Defendants are newly-
28 named, and such a significant change to the parties named herein justifies the Clerk of the Court

1 being ordered to replace the current caption with the caption reflected in the amended pleading.

2 NPRI notes, too, that the Nevada Legislature filed a similar request while the matter was
3 pending appeal with the Nevada Supreme Court. In that request, the stated basis was to ensure all
4 parties were properly named and the caption conformed to the operative pleading. *See* Notice
5 Requesting Clerk to Make Revisions to Appellate Record to Include Legislature of the State of
6 Nevada as Respondent and to Make Other Technical Revisions to Caption (“Notice to Amend
7 Caption”), filed January 30, 2021 in Supreme Court Case No. 82341. NPRI filed its Joinder to the
8 Notice to Amend Caption shortly thereafter on February 1, 2021, recognizing along with opposing
9 counsel the need for an accurate caption to avoid future confusion.
10

11 In keeping with the parties’ practice of ensuring pleading conformity then, and importantly,
12 to eliminate any confusion regarding to whom future rulings of this Court are applicable, NPRI
13 requests the Court permit amendment of the case caption upon the granting of its Motion to Amend.
14

15 IV.

16 CONCLUSION

17 Based upon the foregoing, NPRI respectfully requests the Court grant it leave to file the
18 Second Amended Complaint attached as **Exhibit 1** and to amend the caption of the case in
19 conformity therewith. NPRI’s request is made in good faith, and both outcomes are justified under
20 the applicable legal standard and will not result in prejudice to any party.

21 Dated this 15th day of December, 2022.

22 **FOX ROTHSCHILD LLP**

23
24 By: /s/ Deanna L. Forbush

25 DEANNA L. FORBUSH (#6646)
26 COLLEEN E. MCCARTY (#13186)
27 1980 Festival Plaza Drive, Suite 700
28 Las Vegas, Nevada 89135
Attorneys for Plaintiff
Nevada Policy Research Institute

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Fox Rothschild LLP and that on this 15th day of December, 2022, the foregoing document entitled **PLAINTIFF'S MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT AND TO AMEND CAPTION IN CONFORMITY THEREWITH** was caused to be served upon each of the parties, listed below, via electronic service through the Eighth Judicial District Court's Odyssey E-File and Serve system.

Berna L. Rhodes-Ford, General Counsel
Nevada State College
1300 Nevada State Drive, RSC 374
Henderson, Nevada 89002
Email: berna.rhodes-ford@nsc.edu
Attorney for Defendant Dina Neal

Jonathan D. Blum, Esq.
Wiley Petersen
1050 Indigo Drive, Suite 200B
Las Vegas, Nevada 89145
Email: jblum@wileypetersenlaw.com
Attorney for Defendant James Ohrenschall

Bradley Schragger, Esq.
Royi Moas, Esq.
Daniel Bravo, Esq.
Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP
3773 Howard Hughes Parkway, Suite 590 South
Las Vegas, Nevada 89169
Email: bschrager@wrslawyers.com
Email: rmoas@wrslawyers.com
Email: dbravo@wrslawyers.com
*Attorneys for Defendants Brittney Miller and
Selena Torres*

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

/s/ Jineen DeAngelis

An Employee of Fox Rothschild LLP

EXHIBIT 1

1 **SACOM**

2 DEANNA L. FORBUSH, ESQ.

3 Nevada Bar No. 6646

4 dforbush@foxrothschild.com

5 COLLEEN E. MCCARTY, ESQ.

6 Nevada Bar No. 13186

7 cmccarty@foxrothschild.com

8 **FOX ROTHSCHILD LLP**

9 1980 Festival Plaza Drive, Suite 700

10 Las Vegas, Nevada 89135

11 Telephone: (702) 262-6899

12 Facsimile: (702) 597-5503

13 Attorneys for Plaintiff

14 Nevada Policy Research Institute

15 **DISTRICT COURT**

16 **CLARK COUNTY, NEVADA**

17 NEVADA POLICY RESEARCH INSTITUTE, a
18 Nevada domestic nonprofit corporation,

19 Plaintiff,

20 vs.

21 NATHA C. ANDERSON, an individual engaging in
22 dual employment with the Nevada State Assembly
23 and Washoe County School District; REUBEN
24 D'SILVA, an individual engaging in dual
25 employment with the Nevada State Assembly and
26 Clark County School District; CECELIA
27 GONZÁLEZ, an individual engaging in dual
28 employment with the Nevada State Assembly and
University of Nevada, Las Vegas; LISA
KRASNER, an individual engaging in dual
employment with the Nevada State Senate and
Truckee Meadows Community College; SELENA
LA RUE HATCH, an individual engaging in dual
employment with the Nevada State Assembly and
Washoe County School District; 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.: VIII

**SECOND AMENDED COMPLAINT
FOR DECLARATORY AND
INJUNCTIVE RELIEF**

[Exemption from Arbitration Based on
Equitable Relief Requested]

1 individual engaging in dual employment with the
2 Nevada State Senate and Nevada State College and
3 College of Southern Nevada; JAMES
4 OHRENSCHALL, an individual engaging in dual
5 employment with the Nevada State Senate and Clark
6 County Public Defender; DAVID ORENTLICHER,
7 an individual engaging in dual employment with the
8 Nevada State Assembly and University of Nevada,
9 Las Vegas; SHONDRA SUMMERS-
10 ARMSTRONG, an individual engaging in dual
11 employment with the Nevada State Assembly and
12 Regional Transportation Commission; and SELENA
13 TORRES, an individual engaging in dual
14 employment with the Nevada State Assembly and a
15 Clark County Public Charter School,

16 Defendants,

17 and Legislature of the State of Nevada,

18 Intervenor-Defendant.

19 NEVADA POLICY RESEARCH INSTITUTE (“NPRI”), by and through its attorneys of
20 record, Deanna L. Forbush, Esq. and Colleen E. McCarty, Esq., of Fox Rothschild LLP, hereby
21 alleges and complains against NATHA C. ANDERSON, REUBEN D’SILVA, CECELIA
22 GONZÁLES, LISA KRASNER, SELENA LA RUE HATCH, BRITTNEY MILLER, DINA NEAL,
23 JAMES OHRENSCHALL, DAVID ORENTLICHER, SHONDRA SUMMERS-ARMSTRONG,
24 and SELENA TORRES (collectively herein “Defendants”), as follows:

25 **FACTS COMMON TO ALL CLAIMS**

26 1. NPRI files this Complaint for Declaratory and Injunctive Relief in the public interest
27 to address the ongoing constitutional violations by Defendants, and each of them, for engaging in
28 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 Natha C. Anderson has simultaneously held the elected office of Nevada State Assemblyperson and the paid government position of Teacher with the Washoe County School District.

8. At all relevant times, Defendant Reuben D'Silva has simultaneously held the elected office of Nevada State Assemblyperson and the paid government position of Teacher with the Clark County School District.

1 9. At all relevant times, Defendant Cecelia González has simultaneously held the elected
2 office of Nevada State Assemblyperson and the paid government position of Part-Time Instructor
3 with the University of Nevada, Las Vegas.

4 10. At all relevant times, Defendant Lisa Krasner has simultaneously held the elected
5 office of Nevada State Assemblyperson and the paid government position of Adjunct Professor with
6 the Truckee Meadows Community College.

7 11. At all relevant times, Defendant Selena La Rue Hatch has simultaneously held the
8 elected office of Nevada State Assemblyperson and the paid government position of Teacher with
9 the Washoe County School District.

10 12. At all relevant times, Defendant Brittney Miller has simultaneously held the elected
11 office of Nevada State Assemblyperson and the paid government position of Teacher with the Clark
12 County School District.

13 13. At all relevant times, Defendant Dina Neal has simultaneously held the elected office
14 of Nevada State Senator and the paid government position of Adjunct Professor with the Nevada
15 State College and the College of Southern Nevada.

16 14. At all relevant times, Defendant James Ohrenschall has simultaneously held the
17 elected office of Nevada State Senator and the paid government position of Deputy Public Defender
18 with the Clark County Public Defender's Office.

19 15. At all relevant times, Defendant David Orentlicher has simultaneously held the
20 elected office of Nevada State Assemblyperson and the paid government position of Professor with
21 the William S. Boyd School of Law at the University of Nevada, Las Vegas.

22 16. At all relevant times, Defendant Shondra Summers-Armstrong has simultaneously
23 held the elected office of Nevada State Senator and the paid government position of Management
24 Analyst with the Regional Transportation Commission.

25 17. At all relevant times, Defendant Selena Torres has simultaneously held the elected
26 office of Nevada State Assemblyperson and the paid government position of Teacher with a Clark
27 County Public Charter School.

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

2
3
4

5
6

7

8

90

- 1
- 2
- 3
- 4
- 5
- 6
- 7

8
9
0
1
2
3

4
5

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

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

25. 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.

26. 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.

27. 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.

28. 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.*

29. 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.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

1. For 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;

2. For an injunction against Defendants prohibiting each and every one of them from continuing to simultaneously hold elected offices in the Nevada State Legislature and paid positions

1 with Nevada State or local governments in violation of the Separation of Powers requirement of
2 Nevada Const. Art. 3, §1, ¶1;

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

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

5 Dated this 15th day of December, 2022.

6 **FOX ROTHSCHILD LLP**

7
8 By: /s/ Deanna L. Forbush

9 DEANNA L. FORBUSH, ESQ.

10 Nevada Bar No. 6646

11 COLLEEN E. MCCARTY, ESQ.

12 Nevada Bar No. 13186

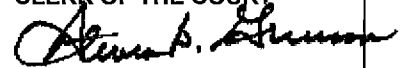
13 1980 Festival Plaza Dr., Suite 700

14 Las Vegas, Nevada 89135

15 Telephone: (702) 262-6899

16 Attorneys for Plaintiff

17 Nevada Policy Research Institute



1 **OPPS**
2 BRADLEY SCHRAGER, ESQ.
3 ROYI MOAS, ESQ.
4 DANIEL BRAVO, ESQ.
5 **WOLF, RIFKIN, SHAPIRO,**
6 **SCHULMAN & RABKIN, LLP**
7 3773 Howard Hughes Parkway, Suite 590 South
8 Las Vegas, Nevada 89169
9 Phone: (702) 341-5200 / Fax: (702) 341-5300
10 bschrager@wrslawyers.com
11 rmoas@wrslawyers.com
12 dbravo@wrslawyers.com

13 *Attorneys for Defendants*
14 *Brittney Miller and Selena Torres*

15
16 **DISTRICT COURT**
17
18 **CLARK COUNTY, NEVADA**

19 NEVADA POLICY RESEARCH
20 INSTITUTE,

21 Plaintiff,

22 vs.

23 NICOLE J. CANNIZZARO, ET AL.,

24 Defendants.

Case No.: A-20-817757-C

Dept. No.: VIII

**DEFENDANTS BRITTNEY MILLER
AND SELENA TORRES'S LIMITED
OPPOSITION TO PLAINTIFF'S
MOTION TO AMEND**

Hearing date: January 17, 2023

Hearing time: 10:00 p.m.

25 Defendants Brittney Miller ("Ms. Miller") and Selena Torres ("Ms. Torres" and together with
26 Ms. Miller, "Defendants"), by and through their counsel of record, Wolf, Rifkin, Shapiro, Schulman
27 & Rabkin, LLP, submit this response to Plaintiff's motion to file a second amended complaint.

28 This response is based on the Memorandum of Points and Authorities below, all papers and
exhibits on file herein, and any oral argument this Court sees fit to allow at hearing on this matter.

///

///

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

2
3
4
5
6
7

8
9
10
11
12
13
14
15
16
17

18

19

20

21

22

23

24

25

26

27

28

1 Beyond that, NPRI is correct that amendment is, and should be, freely granted. It has made
2 further errors in its research, however, and some of the additionally-identified defendants, like Ms.
3 Summers-Armstrong, do not currently have employment subject to any constitutional prohibition,
4 but we expect such matters will be the subject of future motion practice.

5 DATED this 21st day of December, 2022.

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

8 By: /s/ Bradley Schrager

9 BRADLEY SCHRAGER, ESQ. (SBN 10217)
10 DANIEL BRAVO, ESQ. (SBN 13078)
11 3773 Howard Hughes Parkway, Suite 590 South
12 Las Vegas, Nevada 89169
13 Phone: (702) 341-5200 / Fax: (702) 341-5300

14 *Attorneys for Defendants*
15 *Brittney Miller and Selena Torres*
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of December, 2022, a true and correct copy of the foregoing **DEFENDANTS BRITTNEY MILLER AND SELENA TORRES'S RESPONSE TO PLAINTIFF'S MOTION TO AMEND COMPLAINT** was served by electronically filing with the Clerk of the Court using the Odyssey eFileNV system and serving all parties with an email address on record, pursuant to Administrative Order 1402 and Rule 9 of the N.E.F.C.R.

By: /s/ Dannielle Fresquez
Dannielle Fresquez an Employee of
WOLF, RIFKIN, SHAPIRO,
SCHULMAN & RABKIN, LLP

1 **DECL**
2 BRADLEY SCHRAGER, ESQ. (SBN 10217)
3 ROYI MOAS, ESQ. (SBN 10686)
4 DANIEL BRAVO, ESQ. (SBN 13078)
5 WOLF, RIFKIN, SHAPIRO,
6 SCHULMAN & RABKIN, LLP
7 3773 Howard Hughes Parkway, Suite 590 South
8 Las Vegas, NV 89169
9 (702) 341-5200/Fax: (702) 341-5300

RECEIVED

DEC 28 2022

**Legal Division
Legislative Counsel Bureau**

6
7 **DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

9
10 NEVADA POLICY RESEARCH
INSTITUTE,

11 Plaintiff,

12 vs.

13
14 NICOLE J. CANNIZZARO, ET AL.,

15 Defendants.

Case No. A-20-817757-C
Dept. No.: VIII

**ASSEMBLYWOMAN SHONDRA
SUMMERS-ARMSTRONG'S
DECLARATION RE: EMPLOYMENT**

16
17 **DECLARATION OF SHONDRA SUMMERS-ARMSTRONG**

18 I, Shondra Summers-Armstrong, being duly sworn under penalty of perjury, state that the
19 following facts are true of my own knowledge unless stated to be on information and belief in
20 which case I believe them to be true, and I am competent to testify accordingly if called:

21 1. This Declaration is made with reference to my inclusion as a potential defendant in
22 the above-entitled action, by virtue of Plaintiff NPRI's pending motion to amend its Amended
23 Complaint.

24 2. I currently serve as a member of the Nevada Assembly, representing District 6.

25 3. Between January 16, 1996 and February 10, 2022, I was employed with the
26 Regional Transportation Commission of Southern Nevada (RTCSNV).

27 4. Regardless of whether the RTCSNV, as an independent regional entity created by
28 statute, would be considered a part of the executive branch of the State of Nevada, which is itself

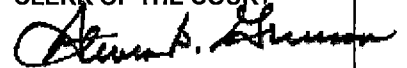
1 a questionable proposition, I retired from my position with the RTCSNV on February 10, 2022.

2 5. I do not currently hold an employment position with any government agency, apart
3 from my role as a state legislator.

4 I declare under penalty of perjury in accordance with the law of the State of Nevada and
5 the United States that the foregoing is true and correct.

6 DATED this 28th day of December, 2022.

7
8 /s/ Sondra Summers-Armstrong
9 SHONDRA SUMMERS-ARMSTRONG



OPPC

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 the Legislature of the State of Nevada

**DISTRICT COURT
CLARK COUNTY, NEVADA**

NEVADA POLICY RESEARCH INSTITUTE, a
Nevada domestic nonprofit corporation,

Plaintiff,

vs.

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; SELENA
TORRES, an individual engaging in dual
employment with the Nevada State Assembly and
Clark County School District; and THE
LEGISLATURE OF THE STATE OF NEVADA,

Defendants.

**Case No. A-20-817757-C
Dept. No. 8**

**NEVADA LEGISLATURE'S
OPPOSITION TO PLAINTIFF'S
MOTION FOR LEAVE TO FILE
SECOND AMENDED COMPLAINT
AND COUNTERMOTION TO DISMISS
PLAINTIFF'S FIRST AMENDED
COMPLAINT**

Date of Hearing: January 17, 2023
Time of Hearing: 10:00 a.m.

OPPOSITION AND COUNTERMOTION

The Legislature of the State of Nevada ("Legislature"), by and through its counsel the Legal
Division of the Legislative Counsel Bureau ("LCB Legal") under NRS 218F.720, hereby files its
Opposition to Plaintiff's Motion for Leave to File Second Amended Complaint and its Countermotion to
Dismiss Plaintiff's First Amended Complaint. The Legislature's opposition and countermotion are
made under NRCP 12 and EDCR 2.20 and are based upon the attached Memorandum of Points and

1 Authorities, all pleadings, documents and exhibits on file in this case and any oral arguments the Court
2 may allow at the hearing on these matters.

3 **MEMORANDUM OF POINTS AND AUTHORITIES**

4 **I. Introduction.**

5 In its first amended complaint, Plaintiff Nevada Policy Research Institute (“NPRI”) alleged that
6 the individual Defendants are persons simultaneously holding elected offices in the Legislature and paid
7 positions as public employees with the state executive branch or with local governments in violation of
8 the separation-of-powers clause in Article 3, Section 1 of the Nevada Constitution.

9 On July 1, 2022, the Legislature filed a motion to dismiss NPRI’s first amended complaint. In its
10 motion to dismiss, the Legislature argued that NPRI’s claims must be dismissed for: (1) lack of subject-
11 matter jurisdiction because NPRI failed to comply with the statutory requirements under NRS
12 Chapter 41 to invoke the government’s conditional waiver of sovereign immunity as necessary to bring
13 this action; and (2) failure to join all necessary party-defendants who are needed for a just adjudication
14 of this action as required by the Due Process Clause, NRCP 19, and the Uniform Declaratory Judgments
15 Act in NRS Chapter 30. With regard to the lack of subject-matter jurisdiction, the Legislature contended
16 that the first amended complaint must be dismissed for lack of subject-matter jurisdiction because, in
17 violation of NRS Chapter 41, NPRI failed to bring this lawsuit in the name of: (1) the state on relation of
18 each particular department or other agency that employs the individual Defendants who are state
19 employees; and (2) each political subdivision that employs the individual Defendants who are local
20 employees. With regard to the failure to join all necessary party-defendants, the Legislature contended
21 that NPRI failed to meet its burden to join: (1) all members of the judicial branch and the legislative
22 branch who currently serve in dual roles; and (2) all their respective state executive branch employers
23 and local government employers because they are necessary party-defendants to this action.

1 On August 4, 2022, the Court held a hearing on the Legislature's motion to dismiss the first
2 amended complaint and other related motions filed by the parties. At the conclusion of the hearing, the
3 Court directed the parties to submit proposed findings of fact and conclusions of law, and the Court
4 indicated that it would issue a written decision resolving all the pending motions. Therefore, based on
5 the Legislature's pending motion to dismiss, the following issues are presently pending before the Court:

6 (1) whether NPRI should be required to join members of the judicial branch and additional members of
7 the legislative branch who currently serve in dual roles as necessary party-defendants to this action; and
8 (2) whether NPRI should be required to join all their respective state executive branch employers and
9 local government employers as necessary party-defendants to this action.

10 Despite the fact that these issues are presently pending before the Court, NPRI filed its motion for
11 leave to file a second amended complaint on December 15, 2022, asking the Court for permission to join
12 additional members of the legislative branch whom NPRI believes are currently serving in dual roles.¹
13 However, in its motion, NPRI does not ask the Court for permission to join: (1) any members of the
14 judicial branch who currently serve in dual roles; or (2) any state executive branch employers or local
15 government employers that employ members of the judicial branch and the legislative branch who
16 currently serve in dual roles.

17 The Legislature opposes NPRI's motion for leave to file a second amended complaint because
18 NPRI's proposed second amended complaint suffers from the same jurisdictional and legal deficiencies
19 as its first amended complaint. Specifically, NPRI's proposed second amended complaint is
20 jurisdictionally deficient because, in violation of NRS Chapter 41, the proposed second amended
21

22 ¹ One of the additional members of the legislative branch whom NPRI wants to join is Assemblywoman
23 Shondra Summers-Armstrong because NPRI believes she is currently employed by the Regional
24 Transportation Commission of Southern Nevada in the position of Management Analyst. (Proposed
Second Am. Compl. ¶ 16.) On December 28, 2022, Assemblywoman Summers-Armstrong submitted
a declaration to NPRI in which she declared, under penalty of perjury, that she does not "currently
hold an employment position with any government agency, apart from my role as a state legislator."

1 complaint does not bring this lawsuit in the name of: (1) the state on relation of each particular
2 department or other agency that employs the individual Defendants who are state employees; and
3 (2) each political subdivision that employs the individual Defendants who are local employees.
4 Additionally, NPRI's proposed second amended complaint is legally deficient because it fails to join:
5 (1) all members of the judicial branch and the legislative branch who currently serve in dual roles and
6 who are necessary party-defendants to this action; and (2) all their respective state executive branch
7 employers and local government employers that are necessary party-defendants to this action. For those
8 same reasons, the Legislature filed its counter motion to dismiss NPRI's first amended complaint.

9 **II. Background.**

10 In prior proceedings in this case, the district court (former District Court Judge Jim Crockett
11 presiding) dismissed NPRI's first amended complaint based on its lack of standing. However, NPRI
12 appealed, and the Nevada Supreme Court reversed and remanded this case to the district court in a
13 published opinion. Nev. Policy Research Inst. v. Cannizzaro, 138 Nev. Adv. Op. 28, 507 P.3d 1203
14 (2022) ("NPRI"). The Supreme Court held that NPRI has standing to bring its claims under the public-
15 importance exception to traditional standing because NPRI is an appropriate party that "seeks to enforce
16 a public official's compliance with a public duty pursuant to the separation-of-powers clause." NPRI,
17 507 P.3d at 1208. Additionally, the Supreme Court held that: (1) NPRI failed to demonstrate that the
18 district court abused its discretion in denying NPRI's motion to disqualify the official attorneys for the
19 Nevada System of Higher Education ("NSHE") from representing its public employees in this litigation;
20 and (2) NPRI waived its rights on appeal to challenge the district court's order granting permissive
21 intervention to the Legislature. NPRI, 507 P.3d at 1211 n.5.

22 Because the prior proceedings in the district court and the Supreme Court are important to
23 understanding the current status of this case, it is necessary to provide a thorough review of those prior
24 proceedings. On July 9, 2020, NPRI filed its original complaint against several individuals who, at the

1 time, were members of the Legislature and held paid positions as public employees with the state
2 executive branch or with local governments. However, NPRI did not serve the summons and original
3 complaint on any of the individual Defendants named in the original complaint.

4 On July 28, 2020, NPRI filed its first amended complaint against several individuals who, at the
5 time, were members of the Legislature and held paid positions as public employees with the state
6 executive branch or with local governments. The individual Defendants named in the first amended
7 complaint were: Nicole J. Cannizzaro, Kasina Douglass-Boone, Jason Frierson, Osvaldo Fumo, Heidi
8 Seevers Gansert, Glen Leavitt, Brittney Miller, Dina Neal, James Ohrenschall, Melanie Scheible, Teresa
9 Benitez-Thompson, Jill Tolles and Selena Torres. (First Am. Compl. ¶¶ 7-19.) During the course of
10 this litigation in the district court and in the Supreme Court, the following individual Defendants were
11 dismissed, without prejudice, because they no longer are members of the Legislature or they no longer
12 hold paid positions as public employees with the state executive branch or with local governments, or
13 because of both such circumstances: Nicole J. Cannizzaro, Kasina Douglass-Boone, Jason Frierson,
14 Osvaldo Fumo, Heidi Seevers Gansert, Melanie Scheible and Teresa Benitez-Thompson. In addition,
15 Glen Leavitt and Jill Tolles were dismissed, without prejudice, because their legislative terms end on the
16 day after the 2022 general election and they are not seeking reelection to their legislative offices.

17 As a result, the current individual Defendants are: (1) Brittney Miller who is a member of the
18 Nevada State Assembly and holds a paid position with a local governmental employer in Clark County
19 as a teacher; (2) Selena Torres who is a member of the Nevada State Assembly and holds a paid position
20 with a local governmental employer in Clark County as a teacher; (3) Dina Neal who is a member of the
21 Nevada State Senate and holds a paid position with the state executive branch as an adjunct professor at
22 Nevada State College within NSHE; and (4) James Ohrenschall who is a member of the Nevada State
23 Senate and holds a paid position with a local governmental employer in Clark County as a deputy public
24 defender employed under NRS 260.040.

1 In this case, Defendants Miller and Torres are represented by Bradley Schrager, Esq., Royi Moas,
2 Esq., and Daniel Bravo, Esq., of Wolf, Rifkin, Shapiro, Schulman & Rabkin LLP. On Sept. 18, 2020,
3 Defendant Miller filed her prior motion to dismiss the first amended complaint, which was joined by
4 Defendant Torres on Oct. 6, 2020.² In the prior motion to dismiss, it was argued that: (1) NPRI lacked
5 standing to bring its claims; and (2) NPRI lacked subject-matter jurisdiction to bring its claims because
6 it failed to name each Defendant's respective state or local governmental employer as required by
7 NRS Chapter 41 in order to invoke the government's waiver of sovereign immunity. See Craig v.
8 Donnelly, 135 Nev. 37, 40 (Nev. Ct. App. 2019) (dismissing plaintiff's complaint for lack of subject-
9 matter jurisdiction under NRS Chapter 41 because plaintiff failed to name the State of Nevada as a
10 defendant in order to invoke the government's waiver of sovereign immunity). Because the district
11 court dismissed based on lack of standing in the prior proceedings, the district court did not address the
12 other arguments raised by Defendant Miller in the prior motion to dismiss.

13 In this case, Defendant Neal is represented by Berna L. Rhodes-Ford, General Counsel, Nevada
14 State College, within NSHE. On Sept. 24, 2020, Defendant Neal filed her prior motion to dismiss the
15 first amended complaint.³ In the prior motion to dismiss, it was argued that: (1) NPRI failed to state a
16 claim for violation of the separation-of-powers clause; (2) NPRI failed to state a claim for declaratory
17 relief; (3) NPRI failed to state a claim for injunctive relief; and (4) NPRI failed to join all necessary
18 party-defendants under NRCP 19 because NPRI failed to name those members of the judicial branch
19 who hold paid positions with the state executive branch as adjunct professors at universities and colleges
20 within NSHE, just like the members of the legislative branch who were named as party-defendants in
21 this case and who hold similar positions as adjunct professors at universities and colleges within NSHE.
22 Because the district court dismissed based on lack of standing in the prior proceedings, the district court

23 ² On Sept. 24, 2020, Defendant Neal joined in Defendant Miller's prior motion to dismiss, and
24 Defendant Neal also filed her prior motion to dismiss on that same date.

³ On Oct. 6, 2020, Defendants Miller and Torres joined in Defendant Neal's prior motion to dismiss.

1 did not address the other arguments raised by Defendant Neal in the prior motion to dismiss.

2 In this case, Defendant Ohrenschall is represented by Jonathan D. Blum, Esq., of Wiley Petersen.
3 In the prior proceedings, NPRI did not serve the summons and first amended complaint on Defendant
4 Ohrenschall by personal service, and Defendant Ohrenschall did not enter an appearance. Instead, on
5 Nov. 4, 2020, the district court entered: (1) an order granting NPRI's motion for enlargement of time to
6 serve the summons and first amended complaint on Defendant Ohrenschall; and (2) an order authorizing
7 service of Defendant Ohrenschall by publication. On Dec. 10, 2020, NPRI filed an affidavit of
8 publication regarding service of Defendant Ohrenschall by publication. After the Supreme Court's
9 remand, Defendant Ohrenschall entered an appearance as a party-defendant.

10 In this case, the Legislature is represented by Kevin C. Powers, General Counsel, LCB Legal. On
11 Dec. 8, 2020, the district court entered an order granting the Legislature's motion to intervene, and the
12 Legislature became entitled to all the rights of a party-defendant. Consequently, the Legislature became
13 entitled to file a motion to dismiss the first amended complaint under NRCP 12 in the same manner as if
14 the Legislature had been named as a party-defendant in the first amended complaint. However, before
15 the Legislature could file such a motion to dismiss in the prior proceedings, the district court dismissed
16 the first amended complaint based on lack of standing, and the dismissal rendered any response to the
17 first amended complaint by the Legislature moot at that time. Thereafter, NPRI filed a timely notice of
18 appeal, which divested the district court of jurisdiction over this case during the pendency of the appeal
19 until the Supreme Court issued its remittitur under NRAP 41 and remanded this case to the district court.
20 After the Supreme Court's remand, the Legislature filed its motion to dismiss the first amended
21 complaint.

22 In its motion to dismiss, the Legislature argued that NPRI's claims must be dismissed for: (1) lack
23 of subject-matter jurisdiction because NPRI failed to comply with the statutory requirements under NRS
24 Chapter 41 to invoke the government's conditional waiver of sovereign immunity as necessary to bring

1 this action; and (2) failure to join all necessary party-defendants who are needed for a just adjudication
2 of this action as required by the Due Process Clause, NRCP 19, and the Uniform Declaratory Judgments
3 Act in NRS Chapter 30. With regard to the lack of subject-matter jurisdiction, the Legislature contended
4 that the first amended complaint must be dismissed for lack of subject-matter jurisdiction because, in
5 violation of NRS Chapter 41, NPRI failed to bring this lawsuit in the name of: (1) the state on relation of
6 each particular department or other agency that employs the individual Defendants who are state
7 employees; and (2) each political subdivision that employs the individual Defendants who are local
8 employees. With regard to the failure to join all necessary party-defendants, the Legislature contended
9 that NPRI failed to meet its burden to join: (1) all members of the judicial branch and the legislative
10 branch who currently serve in dual roles; and (2) all their respective state executive branch employers
11 and local government employers because they are necessary party-defendants to this action.

12 On August 4, 2022, the Court held a hearing on the Legislature's motion to dismiss the first
13 amended complaint and other related motions filed by the parties. At the conclusion of the hearing, the
14 Court directed the parties to submit proposed findings of fact and conclusions of law, and the Court
15 indicated that it would issue a written decision resolving all the pending motions. Therefore, based on
16 the Legislature's pending motion to dismiss, the following issues are presently pending before the Court:
17 (1) whether NPRI should be required to join members of the judicial branch and additional members of
18 the legislative branch who currently serve in dual roles as necessary party-defendants to this action; and
19 (2) whether NPRI should be required to join all their respective state executive branch employers and
20 local government employers as necessary party-defendants to this action.

21 Despite the fact that these issues are presently pending before the Court, NPRI filed its motion for
22 leave to file a second amended complaint on December 15, 2022, asking the Court for permission to join
23 additional members of the legislative branch whom NPRI believes are currently serving in dual roles.
24 However, in its motion, NPRI does not ask the Court for permission to join: (1) any members of the

1 judicial branch who currently serve in dual roles; or (2) any state executive branch employers or local
2 government employers that employ members of the judicial branch and the legislative branch who
3 currently serve in dual roles.

4 **III. As an intervenor, the Legislature has all the rights of a party-defendant and is entitled**
5 **to file its countermotion to dismiss the first amended complaint under NRCP 12 because, based on**
6 **well-established rules of appellate practice, the Supreme Court’s remand for further proceedings**
7 **in this case returned the parties to the same position they were in prior to the district court’s order**
8 **dismissing the first amended complaint for lack of standing.**

9 In reviewing the rights of intervenors, the Supreme Court is guided by federal practice interpreting
10 the corresponding federal rules. See Hairr v. Dist. Ct., 132 Nev. 180, 186-88 (2016); Lawler v.
11 Ginocchio, 94 Nev. 623, 626 (1978). Under federal practice, a proposed intervenor is not considered a
12 party until the district court enters an order granting the motion to intervene. See 7C Wright & Miller, et
13 al., Fed. Prac. & Proc. Civ. § 1920 (3d ed. & Westlaw Apr. 2022 update). However, after the district
14 court enters such an order, the intervenor has all the rights of a party, and “[t]he intervenor may move to
15 dismiss the proceeding and may challenge the subject-matter jurisdiction of the court.” Id. (footnotes
16 omitted); League of United Latin Am. Citizens v. Wilson, 131 F.3d 1297, 1304 (9th Cir. 1997) (“[A]s a
17 general rule, intervenors are permitted to litigate fully once admitted to a suit.”).

18 In this case, when the district court granted the Legislature’s motion to intervene on Dec. 8, 2020,
19 the Legislature became entitled to all the rights of a party-defendant. See NRS 218F.720(3) (“If the
20 Legislature intervenes in the action or proceeding, the Legislature has all the rights of a party.”).
21 Consequently, the Legislature became entitled to file a motion to dismiss the first amended complaint
22 under NRCP 12 in the same manner as if the Legislature had been named as a party-defendant in the
23 first amended complaint. See Bartlett v. Bishop of Nev., Corp., 59 Nev. 283, 298 (1939) (“The same
24 rules govern intervener’s rights which govern those who originally sue or defend.”); Fed. Prac. & Proc.
Civ., supra, § 1920 (stating that after intervention, “the intervenor is treated as if the intervenor were an
original party and has equal standing with the original parties.”).

1 However, before the Legislature could file such a motion to dismiss in the prior proceedings, the
2 district court dismissed the first amended complaint based on lack of standing, and the dismissal
3 rendered any response to the first amended complaint by the Legislature moot at that time. Specifically,
4 after entry of the district court's omnibus order on Dec. 8, 2020, which dismissed NPRI's first amended
5 complaint based on lack of standing, the district court did not have any jurisdictional power to reach the
6 merits of any other defenses and objections because, in the absence of standing, the district court was
7 precluded from exercising subject-matter jurisdiction over the lawsuit. See Steel Co. v. Citizens for
8 Better Env't, 523 U.S. 83, 94-97 (1998); Righthaven LLC v. Hoehn, 716 F.3d 1166, 1172-73 (9th Cir.
9 2013). Under such circumstances, the U.S. Supreme Court has explained that "[w]ithout jurisdiction the
10 court cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to
11 exist, the only function remaining to the court is that of announcing the fact and dismissing the cause."
12 Steel Co., 523 U.S. at 94 (quoting Ex parte McCardle, 74 U.S. (7 Wall.) 506, 514 (1868)).

13 Thus, after the district court entered the omnibus order dismissing NPRI's first amended
14 complaint based on lack of standing, the only function remaining to the district court was to dismiss the
15 lawsuit as to all remaining defendants based on NPRI's lack of standing. Thereafter, NPRI filed a
16 timely notice of appeal, which divested the district court of jurisdiction over this case during the
17 pendency of the appeal until the Supreme Court issued its remittitur under NRAP 41 and remanded this
18 case to the district court. See Mack-Manley v. Manley, 122 Nev. 849, 855 (2006); Buffington v. State,
19 110 Nev. 124, 126 (1994) ("Jurisdiction in an appeal is vested solely in the supreme court until the
20 remittitur issues to the district court.").

21 In its published opinion, the Supreme Court reversed the district court's order dismissing the first
22 amended complaint for lack of standing and remanded for "further proceedings" on NPRI's claims.
23 NPRI, 507 P.3d at 1211. Based on well-established rules of appellate practice, "[u]pon remand from an
24 appellate court, the lower court is required to proceed from the point at which the error occurred."

1 Giancola v. Azem, 109 N.E.3d 1194, 1200 (Ohio 2018) (quoting State ex rel. Douglas v. Burlew, 833
2 N.E.2d 293, 295 (Ohio 2005)). Thus, because the Supreme Court reversed the district court's order
3 dismissing the first amended complaint for lack of standing and remanded for further proceedings, it
4 "returned the parties to the same position they were in prior to the error," and nothing precludes the
5 parties from raising their claims and defenses on remand, except for those which were expressly decided
6 in the published opinion and have become the law of the case. Giancola, 109 N.E.3d at 1200 ("Only
7 those legal questions resolved by a reviewing court are the law of that case."). As explained by the
8 Oklahoma Supreme Court:

9 Where, on the judgment's reversal, a cause is remanded, it returns to the trial court as if it
10 had never been decided, save only for the "settled law" of the case. **The parties are**
11 **relegated to their prejudgment status and are free to re-plead or re-press their claims**
12 **as well as defenses.** It is the settled-law-of-the-case doctrine that operates to bar relitigation
13 of (a) issues in a case which are finally settled by an appellate opinion or of (b) those the
14 aggrieved party failed to raise on appeal.

15 Smedsrud v. Powell, 61 P.3d 891, 896 (Okla. 2002) (emphasis added and footnotes omitted).

16 In this case, the Supreme Court expressly decided and settled the following issues which have
17 become the law of the case: (1) NPRI has standing to bring its claims under the public-importance
18 exception to traditional standing; and (2) NPRI failed to demonstrate that the district court abused its
19 discretion in denying the motion to disqualify NSHE's official attorneys. NPRI, 507 P.3d at 1211 & n.5.
20 In addition, because the Supreme Court expressly decided and settled that NPRI waived its rights on
21 appeal to challenge the district court's order granting permissive intervention, the Legislature's
22 intervention as a party-defendant has become the law of the case. Id.

23 Accordingly, based on well-established rules of appellate practice, the Supreme Court's remand
24 for further proceedings in this case returned the parties to the same position they were in prior to the
25 district court's order dismissing the first amended complaint for lack of standing, and nothing precludes
26 the parties from raising their claims and defenses on remand, except for those which have become the

1 law of the case. Therefore, because the Legislature has all the rights of a party-defendant, it is entitled to
2 file its countermotion to dismiss the first amended complaint under NRCP 12 and raise its claims and
3 defenses on remand, except for those which have become the law of the case.

4 **IV. NPRI's first amended complaint must be dismissed and its motion for leave to file a**
5 **second amended complaint must be denied based on lack of subject-matter jurisdiction because**
6 **NPRI failed to comply with the statutory requirements under NRS Chapter 41 to invoke the**
7 **conditional waiver of sovereign immunity of the state and its state officers or employees and each**
8 **political subdivision and its local officers or employees.**

9 Under NRCP 12(b)(1), the Legislature is entitled to file its countermotion to dismiss the first
10 amended complaint based on "lack of subject-matter jurisdiction." Further, under NRCP 12(h)(3), "[i]f
11 the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the
12 action." Therefore, the lack of subject-matter jurisdiction may be raised at any stage of the litigation,
13 and the district court has an obligation to address such issues whenever they are raised by the parties or
14 are otherwise brought to the district court's attention, even if the district court must act *sua sponte* to
15 address such issues. See In re George J., 128 Nev. 345, 348 n.2 (2012) ("[R]egardless of whether the
16 State properly raised the issue, this court can *sua sponte* consider jurisdictional issues."); Landreth v.
17 Malik, 127 Nev. 175, 179 (2011) ("[W]hether a court lacks subject matter jurisdiction 'can be raised by
18 the parties at any time, or *sua sponte* by a court of review, and cannot be conferred by the parties.'" (quoting Swan v. Swan, 106 Nev. 464, 469 (1990))); Vaile v. Dist. Ct., 118 Nev. 262, 276 (2002)
19 ("[S]ubject matter jurisdiction cannot be waived and may be raised at any time, or *sua sponte* by a court
20 of review."), *overruled on other grounds by* Senjab v. Alhulaibi, 137 Nev. Adv. Op. 64, 497 P.3d 618
21 (2021). Accordingly, the district court must dismiss a complaint when the lack of subject-matter
22 jurisdiction is apparent on the face of the complaint. Craig, 135 Nev. at 39.

23 In this case, the Court must dismiss the first amended complaint and deny NPRI's motion for
24 leave to file a second amended complaint based on lack of subject-matter jurisdiction because NPRI
failed to comply with the statutory requirements under NRS Chapter 41 to invoke the conditional waiver

1 of sovereign immunity of: (1) the state and its state officers or employees; and (2) each political
2 subdivision and its local officers or employees. Specifically, in violation of NRS Chapter 41, NPRI
3 failed to bring this lawsuit in the name of: (1) the state on relation of each particular department or other
4 agency that employs the individual Defendants who are state employees; and (2) each political
5 subdivision that employs the individual Defendants who are local employees. Craig, 135 Nev. at 39-40;
6 NRS 41.031; NRS 41.0337; NRS 41.039.⁴

7 As part of our nation’s constitutional design, each state is an independent sovereign which enjoys
8 inherent sovereign immunity from lawsuits and liability for damages in its own state courts. Alden v.
9 Maine, 527 U.S. 706, 711-29 (1999); Echeverria v. State, 137 Nev. Adv. Op. 49, 495 P.3d 471, 475
10 (2021). Thus, “[t]he law is well settled that a state, which in the eye of the law is recognized as a
11 sovereign, cannot without its consent be sued by a citizen.” Hill v. Thomas, 70 Nev. 389, 401 (1954).
12 In other words, “the sovereign is immune from suit in the absence of a waiver of immunity.” Id.

13 Under the Nevada Constitution, sovereign immunity can be waived only by the Legislature
14 through the enactment of general laws. Nev. Const. art. 4, § 22 (“Provision may be made by general law
15 for bringing suit against the State as to all liabilities originating after the adoption of this Constitution.”);
16 Hardgrave v. State ex rel. Hwy. Dep’t, 80 Nev. 74, 76-78 (1964) (“We construe the words ‘general law’
17 as used in Section 22 to mean a general law passed by the legislature.”). Accordingly, “[i]t is the
18 legislature alone which has the power to waive immunity or to authorize such waiver.” Taylor v. State,
19 73 Nev. 151, 153 (1957). Consequently, “[i]t is not within the power of the courts . . . to strip the
20 sovereign of its armour.” Id.

21 When a legislative body waives sovereign immunity by statute, “the terms of its consent to be
22 sued in any court define that court’s **jurisdiction** to entertain the suit.” U.S. Dep’t of Treasury v. Hood,
23 101 Nev. 201, 204 (1985) (emphasis added). Thus, if a plaintiff files a lawsuit but fails to comply with

24 ⁴ NRS 41.031, NRS 41.0337 and NRS 41.039 are reproduced in the Addendum following the
Memorandum of Points and Authorities.

1 the statutory requirements to invoke the waiver of sovereign immunity, the court lacks subject-matter
2 jurisdiction to entertain the lawsuit. See Craig, 135 Nev. at 39-40; Wayment v. Holmes, 112 Nev. 232,
3 237-38 (1996).

4 In its first amended complaint and proposed second amended complaint, NPRI is seeking
5 declaratory relief against the individual Defendants under Nevada’s Uniform Declaratory Judgments Act
6 (“Uniform Act”) in NRS Chapter 30. (First Am. Compl. ¶ 24; Proposed Second Am. Compl. ¶ 22.) The
7 Uniform Act provides that it must be interpreted and construed in order to effectuate its purpose to make
8 the law uniform among the states which have enacted the Uniform Act. NRS 30.160; see also Lathigee
9 v. British Columbia Sec. Comm’n, 136 Nev. 670, 672 (2020) (“[W]e accept as persuasive authority the
10 official comments to the Uniform Act and the decisions of courts elsewhere interpreting it.”). In other
11 states that have enacted the Uniform Act, courts have held that the “Uniform Declaratory Judgments Act
12 does not waive the State’s sovereign immunity, and a plaintiff who seeks declaratory relief against the
13 State must find authorization for such remedy outside the confines of the Uniform Declaratory
14 Judgments Act.” JHK, Inc. v. Neb. Dep’t of Banking & Fin., 757 N.W.2d 515, 522 (Neb. Ct. App.
15 2008). Therefore, NPRI cannot bring this lawsuit against the individual Defendants under Nevada’s
16 Uniform Declaratory Judgments Act unless NPRI first complies with the statutory requirements under
17 NRS Chapter 41 to invoke the government’s conditional waiver of sovereign immunity.

18 In Nevada, by enacting NRS 41.0305 to 41.039, inclusive, the Legislature has provided for the
19 conditional waiver of sovereign immunity of: (1) the state and its state officers or employees; and
20 (2) each political subdivision and its local officers or employees. Hagblom v. State Dir. Mtr. Vehs., 93
21 Nev. 599, 601-04 (1977) (“The legislature has exposed the State of Nevada to liability by conditionally
22 waiving in certain instances governmental immunity from suit.”); Clark Cnty. Sch. Dist. v. Richardson
23 Constr., 123 Nev. 382, 389-90 (2007) (“Under the doctrine of sovereign immunity, generally, Nevada
24 and its political subdivisions enjoy blanket immunity from tort liability. The Legislature, however, has

1 waived this immunity on a limited basis.” (footnotes omitted)). The conditional waiver of sovereign
2 immunity applies to all causes of action, including tort actions and non-tort actions. Echeverria, 495
3 P.3d at 475-77. In order to invoke the conditional waiver of sovereign immunity, the plaintiff must
4 comply with the statutory requirements for bringing a lawsuit against: (1) the state and its state officers
5 or employees; or (2) a political subdivision and its local officers or employees. Craig, 135 Nev. at 39-
6 40; Wayment, 112 Nev. at 237-38.

7 In order to bring a lawsuit against the state or any of its state officers or employees for alleged
8 violations of the state constitution or state law, the plaintiff cannot bring the lawsuit solely against the
9 state officers or employees; instead, the plaintiff must also bring the lawsuit “in the name of the State of
10 Nevada on relation of the particular department, commission, board or other agency of the State whose
11 actions are the basis for the suit.” NRS 41.031; NRS 41.0337. The reason for this rule is that when the
12 plaintiff brings the lawsuit against the state officers or employees arising from the performance of public
13 duties in their official capacities, the lawsuit is effectively against the state itself, and the plaintiff must
14 comply with the statutory requirements to invoke the conditional waiver of sovereign immunity and
15 bring the lawsuit in the name of the state on relation of the particular department or other agency that
16 employs the state officers or employees. Craig, 135 Nev. at 39-40.

17 Similarly, in order to bring a lawsuit against a political subdivision or any of its local officers or
18 employees for alleged violations of the state constitution or state law, the plaintiff cannot bring the
19 lawsuit solely against the local officers or employees; instead, the plaintiff must also bring the lawsuit
20 against the political subdivision. NRS 41.031; NRS 41.0337; NRS 41.039. The reason for this rule is
21 that when the plaintiff brings the lawsuit against the local officers or employees arising from the
22 performance of public duties in their official capacities, the lawsuit is effectively against the political
23 subdivision itself, and the plaintiff must comply with the statutory requirements to invoke the
24 conditional waiver of sovereign immunity and bring the lawsuit against the political subdivision in

1 addition to the local officers or employees. See Craig, 135 Nev. at 39-40; Wayment, 112 Nev. at 237-
2 38.

3 In its published opinion in this litigation, the Supreme Court held—as the law of this case—that
4 NPRI has standing to bring its claims under the public-importance exception to traditional standing
5 because NPRI is an appropriate party that “seeks to enforce a public official’s compliance with a public
6 duty pursuant to the separation-of-powers clause.” NPRI, 507 P.3d at 1208. Therefore, it is the law of
7 this case that: (1) NPRI is bringing this lawsuit against the individual Defendants arising from the
8 performance of public duties in their official capacities; and (2) NPRI is seeking to enforce compliance
9 by the individual Defendants with the separation-of-powers clause based on alleged violations of that
10 clause in the performance of public duties in their official capacities.

11 Under such circumstances, the Court must dismiss the first amended complaint and deny NPRI’s
12 motion for leave to file a second amended complaint based on lack of subject-matter jurisdiction
13 because NPRI failed to comply with the statutory requirements under NRS Chapter 41 to invoke the
14 conditional waiver of sovereign immunity of: (1) the state and its state officers or employees; and
15 (2) each political subdivision and its local officers or employees. Specifically, in violation of NRS
16 Chapter 41, NPRI failed to bring this lawsuit in the name of: (1) the state on relation of each particular
17 department or other agency that employs the individual Defendants who are state employees; and
18 (2) each political subdivision that employs the individual Defendants who are local employees. Craig,
19 135 Nev. at 39-40; NRS 41.031; NRS 41.0337; NRS 41.039. Therefore, the Court must dismiss NPRI’s
20 first amended complaint and deny NPRI’s motion for leave to file a second amended complaint because
21 the lack of subject-matter jurisdiction is apparent on the face of those complaints.

22 //

23 //

24 //

1 **V. NPRI's first amended complaint must be dismissed and its motion for leave to file a**
2 **second amended complaint must be denied because NPRI failed to join all necessary party-**
3 **defendants who are needed for a just adjudication of this action as required by the Due Process**
4 **Clause, NRCP 19 and the Uniform Declaratory Judgments Act in NRS Chapter 30.**

5 Under NRCP 12(b)(6), the Legislature is entitled to file its countermotion to dismiss the first
6 amended complaint based on NPRI's failure to join all necessary party-defendants. In addition, issues
7 of failure to join all necessary party-defendants may be raised at any stage of the litigation, and the
8 district court has an obligation to address such issues whenever they are raised by the parties or are
9 otherwise brought to the district court's attention, even if the district court must act *sua sponte* to address
10 such issues. See Blaine Equip. Co. v. State Purchasing Div., 122 Nev. 860, 864-66 (2006) ("This court
11 has previously determined that a district court is obligated to, *sua sponte*, join a necessary party under
12 NRCP 19(a) if the litigants have not joined that party and the failure of a litigant to join a necessary
13 party does not constitute a waiver." (footnotes omitted)); Univ. of Nev. v. Tarkanian, 95 Nev. 389, 396
14 (1979); Johnson v. Johnson, 93 Nev. 655, 656 (1977). Therefore, the Court must address whether NPRI
15 failed to join all necessary party-defendants who are needed for a just adjudication of this action as
16 required by the Due Process Clause, NRCP 19 and the Uniform Declaratory Judgments Act in NRS
17 Chapter 30.

18 The Uniform Act requires that "[w]hen declaratory relief is sought, all persons shall be made
19 parties who have or claim any interest which would be affected by the declaration, and no declaration
20 shall prejudice the rights of persons not parties to the proceeding." NRS 30.130. Therefore, to comply
21 with the Uniform Act, a plaintiff must join all necessary party-defendants that are needed for a just
22 adjudication of the plaintiff's action for declaratory relief. In other states that have enacted the Uniform
23 Act, courts have held that "in an action for a declaratory judgment, all persons interested in the
24 declaration are necessary parties," and that "the failure to join parties, who have an interest which would
be affected by the declaration, was fatal." Williams v. Moore, 137 A.2d 193, 196-97 (Md. 1957). One

1 of the primary reasons that the Uniform Act requires joinder of all necessary party-defendants is to
2 “make any decree rendered by the Court a final and complete determination of the subject matter in
3 dispute, and thereby prevent a multiplicity of suits.” Id. at 197. Consequently, “[a] declaratory
4 judgment serves a legitimate purpose only when all interested persons who might be affected by the
5 enforcement of rights and legal relations are parties, but not otherwise. A court may and ordinarily must
6 refuse to render a declaratory judgment in the absence of necessary parties.” J-T Assocs. v. Hudson
7 River-Black River Regulating Dist., 572 N.Y.S.2d 122, 124-25 (N.Y. App. Div. 1991).

8 In addition, to comply with the Due Process Clause and NRCP 19, a plaintiff must join all
9 necessary parties that are needed for a just adjudication. Olsen Family Trust v. Dist. Ct., 110 Nev. 548,
10 552-54 (1994); Tarkanian, 95 Nev. at 395-98. The requirement to join all necessary parties arises under
11 the Due Process Clause as part of the fundamental guarantee of fairness in litigation. Under the Due
12 Process Clause, a person may not be deprived of his legal rights in a judicial proceeding unless the
13 person has been made a party to that proceeding. Martin v. Wilks, 490 U.S. 755, 758-62 (1989). This
14 constitutional rule stems from the “deep-rooted historic tradition that everyone should have his own day
15 in court.” Id. at 762 (quoting 18 Wright & Miller, Fed. Prac. & Proc. Civ. § 4449 (1981)). Thus, due
16 process requires that all persons who have a material interest in the subject matter of the litigation be
17 joined as parties, so that those persons will have proper notice of the litigation and an opportunity to
18 protect their interests. Olsen Family Trust, 110 Nev. at 552-54; Tarkanian, 95 Nev. at 395-98.

19 The burden is on the plaintiff to join all necessary parties. Olsen Family Trust, 110 Nev. at 552-
20 54. The law does not impose any burden on a person to intervene voluntarily in an action when that
21 person has not been made a party to the action by service of process. Id. Thus, “[u]nless duly
22 summoned to appear in a legal proceeding, a person not a privy may rest assured that a judgment
23 recovered therein will not affect his legal rights.” Chase Nat’l Bank v. City of Norwalk, 291 U.S. 431,
24 441 (1934). Accordingly, due process is not satisfied by the fact that a person has knowledge of the

1 action and an opportunity to intervene. Martin, 490 U.S. at 762-65; Olsen Family Trust, 110 Nev. at
2 552-53. Instead, “[j]oinder as a party, rather than knowledge of a lawsuit and an opportunity to
3 intervene, is the method by which potential parties are subjected to the jurisdiction of the court and
4 bound by a judgment or decree.” Martin, 490 U.S. at 765; Olsen Family Trust, 110 Nev. at 553.

5 Because joinder of necessary parties is mandated by the Due Process Clause, courts have an
6 independent obligation to ensure that the relief requested by the plaintiff will not adversely affect the
7 interests of necessary parties that have not been joined. Tarkanian, 95 Nev. at 395-98; Blaine Equip.,
8 122 Nev. at 864-66. Accordingly, “a court must protect the interests of the parties not before it to avoid
9 possible prejudicial effect; failure of a court to protect those interests by joinder may amount to a
10 violation of due process.” R.J. Williams Co. v. Fort Belknap Hous. Auth., 92 F.R.D. 17, 21 (D. Mont.
11 1981). Moreover, if a court enters a judgment which substantially affects the rights of necessary parties
12 that have not been joined, such a judgment violates due process and is void. See Fletcher Aircraft Co. v.
13 Bond, 77 F.R.D. 47, 52 (C.D. Cal. 1977); Schwob v. Hemsath, 98 Nev. 293, 294-95 (1982); Johnson v.
14 Johnson, 93 Nev. 655, 658-59 (1977).

15 These fundamental principles of due process are reflected in NRCP 19, which requires the joinder
16 of all persons who qualify as necessary parties and who are needed for a just adjudication of the
17 litigation. Because NRCP 19 is modeled on the federal joinder rule in FRCP 19, the Supreme Court has
18 determined that federal cases interpreting the federal joinder rule are to be regarded as “persuasive
19 authority” when interpreting Nevada’s joinder rule in NRCP 19. Blaine Equip., 122 Nev. at 865
20 (quoting Nelson v. Heer, 121 Nev. 832, 834 (2005)).

21 Under NRCP 19(a)(1)(A), a person is considered a necessary party if “in that person’s absence,
22 the court cannot accord complete relief among existing parties.” In order for a court to provide complete
23 relief among the parties, the court must be able to enter a judgment that binds all persons who have a
24 material interest in the subject matter of the litigation. Blaine Equip., 122 Nev. at 865-66. But if there

1 are persons having such an interest who are not joined as parties, those persons would not be bound by
2 the court's judgment, leaving open the possibility of additional lawsuits, relitigation of the same issues
3 and inconsistent or conflicting decisions regarding the same controversy. Id. Thus, the purpose of
4 requiring joinder of all necessary parties under NRCP 19(a)(1)(A) is to ensure that the court can render a
5 final and complete determination of the controversy that binds all interested parties, avoids piecemeal
6 determination of the issues and prevents a multiplicity of lawsuits. Tarkanian, 95 Nev. at 397; Young
7 Inv. Co. v. Reno Club, Inc., 66 Nev. 216, 222 (1949).

8 In its published opinion in this litigation, the Supreme Court determined that NPRI has standing to
9 bring its claims under the public-importance exception to traditional standing because "it is represented
10 by counsel who have competently advocated NPRI's position and **named as defendants all of the**
11 **individuals who currently serve in dual roles.**" NPRI, 507 P.3d at 1210 (emphasis added).
12 Unfortunately, this statement is not accurate in this litigation because there are members of the judicial
13 branch and the legislative branch who currently serve in dual roles but who are not named as party-
14 defendants in this litigation.

15 In particular, there are members of the judicial branch who hold paid positions with the state
16 executive branch as adjunct professors at universities and colleges within NSHE, just like Defendant
17 Neal.⁵ However, NPRI has not joined these members of the judicial branch as necessary party-
18 defendants in this case. As required by the Due Process Clause, NRCP 19 and the Uniform Act, NPRI
19 has the burden to join these members of the judicial branch as necessary party-defendants. See Olsen
20 Family Trust, 110 Nev. at 552-54.

21
22 ⁵ Those members of the judicial branch are: (1) Honorable Jerome T. Tao, Nevada Court of Appeals
23 Judge and adjunct professor at William S. Boyd School of Law at the University of Nevada, Las
24 Vegas; (2) Honorable Frank P. Sullivan, Clark County Family Court Judge and adjunct professor at
William S. Boyd School of Law at the University of Nevada, Las Vegas; (3) Honorable Scott N.
Freeman, Second Judicial District Court Judge and instructor at the University of Nevada, Reno; and
(4) Honorable Dixie Grossman, Second Judicial District Court Judge and instructor at the University
of Nevada, Reno.

1 Additionally, NPRI has the burden to: (1) identify any other members of the judicial branch who
2 currently serve in dual roles with NSHE or with any other state executive branch employer or local
3 government employer; and (2) join these members of the judicial branch as necessary party-defendants.
4 Likewise, NPRI has the burden to: (1) identify any other members of the legislative branch who
5 currently serve in dual roles with NSHE or with any other state executive branch employer or local
6 government employer; and (2) join these members of the legislative branch as necessary party-
7 defendants. Finally, after NPRI meets its burden to identify all members of the judicial branch and the
8 legislative branch who currently serve in dual roles and join them as necessary party-defendants, NPRI
9 has the burden to join all the respective state executive branch employers and local government
10 employers because they are also necessary party-defendants to this action.

11 In order for a judgment in this case to provide complete and effective relief, the judgment would
12 have to be binding on all those members who currently serve in dual roles and all their respective state
13 executive branch employers and local government employers. However, under basic principles of due
14 process, a person cannot be bound by a judgment entered in an action unless the person has been made a
15 party to that action. See Martin, 490 U.S. at 758-62. Thus, unless all those members who currently
16 serve in dual roles and all their respective state executive branch employers and local government
17 employers are joined as necessary party-defendants to this action, there cannot be “a complete decree to
18 bind them all.” Olsen Family Trust, 110 Nev. at 553. Without such a decree, any judgment in this case
19 that does not include all such necessary party-defendants would clearly leave open the possibility of
20 additional lawsuits, relitigation of the same issues and inconsistent or conflicting decisions regarding the
21 same controversy. Therefore, by requiring NPRI to join all such necessary party-defendants to this case,
22 the Court would be taking steps that are necessary to avoid piecemeal determination of the issues and
23 prevent a multiplicity of lawsuits.

1 In addition, under NRCP 19(a)(1)(B), a person is considered a necessary party if “that person
2 claims an interest relating to the subject of the action and is so situated that disposing of the action in the
3 person’s absence may: (i) as a practical matter impair or impede the person’s ability to protect the
4 interest; or (ii) leave an existing party subject to a substantial risk of incurring double, multiple, or
5 otherwise inconsistent obligations because of the interest.” Because the purpose of the rule is to protect
6 necessary parties from being deprived of their interests without notice and an opportunity to be heard,
7 the “interest” requirement in the rule is liberally construed and applied in a practical manner. Aguilar v.
8 L.A. Cnty., 751 F.2d 1089, 1093 (9th Cir. 1985); Lopez v. MLK, Jr. Hosp., 97 F.R.D. 24, 29 (C.D. Cal.
9 1983). Thus, the rule does not require that a necessary party have an interest in the litigation which
10 would be the equivalent of a constitutionally protected property right. Id. The rule only requires that a
11 necessary party have an interest which could be impaired by the litigation “as a practical matter.” Id.

12 If the Court were to grant the relief requested by NPRI, such relief would clearly impair “as a
13 practical matter” the employment interests of all members of the judicial branch and the legislative
14 branch who currently serve in dual roles, and such relief would also clearly impair “as a practical
15 matter” the interests of all their respective state executive branch employers and local government
16 employers which have devoted substantial time, effort and resources to developing and utilizing their
17 skills and expertise as employees. Under such circumstances, NPRI has the burden to join all members
18 of the judicial branch and the legislative branch who currently serve in dual roles and all their respective
19 state executive branch employers and local government employers because they are necessary party-
20 defendants to this action. Accordingly, NPRI’s first amended complaint must be dismissed and its
21 motion for leave to file a second amended complaint must be denied because NPRI failed to join all
22 necessary party-defendants who are needed for a just adjudication of this action as required by the Due
23 Process Clause, NRCP 19 and the Uniform Declaratory Judgments Act in NRS Chapter 30.

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4

The undersigned hereby affirm that this document does not contain “personal information about any person” as defined in NRS 239B.030 and 603A.040.

Respectfully submitted,

KEVIN C. POWERS

Nevada Bar No. 6781

401 S. Carson St.

Tel: (775) 684-6830; Fax: (775) 684-6761

Attorneys for Defendant Legislature of the State of Nevada

ADDENDUM

NRS 41.031 Waiver applies to State and its political subdivisions; naming State as defendant; service of process; State does not waive immunity conferred by Eleventh Amendment.

1. The State of Nevada hereby waives its immunity from liability and action and hereby consents to have its liability determined in accordance with the same rules of law as are applied to civil actions against natural persons and corporations, except as otherwise provided in NRS 41.032 to 41.038, inclusive, 485.318, subsection 3 and any statute which expressly provides for governmental immunity, if the claimant complies with the limitations of NRS 41.010 or the limitations of NRS 41.032 to 41.036, inclusive. The State of Nevada further waives the immunity from liability and action of all political subdivisions of the State, and their liability must be determined in the same manner, except as otherwise provided in NRS 41.032 to 41.038, inclusive, subsection 3 and any statute which expressly provides for governmental immunity, if the claimant complies with the limitations of NRS 41.032 to 41.036, inclusive.

2. An action may be brought under this section against the State of Nevada or any political subdivision of the State. In any action against the State of Nevada, the action must be brought in the name of the State of Nevada on relation of the particular department, commission, board or other agency of the State whose actions are the basis for the suit. An action against the State of Nevada must be filed in the county where the cause or some part thereof arose or in Carson City. In an action against the State of Nevada, the summons and a copy of the complaint must be served upon:

(a) The Attorney General, or a person designated by the Attorney General, at the Office of the Attorney General in Carson City; and

(b) The person serving in the office of administrative head of the named agency.

3. The State of Nevada does not waive its immunity from suit conferred by Amendment XI of the Constitution of the United States.

NRS 41.0337 State or political subdivision to be named party defendant.

1. No tort action arising out of an act or omission within the scope of a person's public duties or employment may be brought against any present or former:

(a) Local judicial officer or state judicial officer;

(b) Officer or employee of the State or of any political subdivision;

(c) Immune contractor; or

(d) State Legislator,

↪ unless the State or appropriate political subdivision is named a party defendant under NRS 41.031.

2. No tort action may be brought against a person who is named as a defendant in the action solely because of an alleged act or omission relating to the public duties or employment of any present or former:

(a) Local judicial officer or state judicial officer;

(b) Officer or employee of the State or of any political subdivision;

(c) Immune contractor; or

(d) State Legislator,

↪ unless the State or appropriate political subdivision is named a party defendant under NRS 41.031.

1 3. As used in this section:

2 (a) "Local judicial officer" has the meaning ascribed to it in NRS 41.03377.

3 (b) "State judicial officer" has the meaning ascribed to it in NRS 41.03385.

4 **NRS 41.039 Filing of valid claim against political subdivision condition precedent to**
5 **commencement of action against immune contractor, employee or officer.** An action which
6 is based on the conduct of any immune contractor, employee or appointed or elected officer of a
7 political subdivision of the State of Nevada while in the course of the person's employment or in
8 the performance of the person's official duties may not be filed against the immune contractor,
9 employee or officer unless, before the filing of the complaint in such an action, a valid claim has
10 been filed, pursuant to NRS 41.031 to 41.038, inclusive, against the political subdivision for which
11 the immune contractor, employee or officer was authorized to act.
12
13
14
15
16
17
18
19
20
21
22
23
24

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Nevada Legislative Counsel Bureau, Legal Division, and that on the 29th day of December, 2022, pursuant to NRCP 5(b) and NEFCR 9, I served a true and correct copy of the Nevada Legislature's Opposition to Plaintiff's Motion for Leave to File Second Amended Complaint and Countermotion to Dismiss Plaintiff's First Amended Complaint, by means of the Eighth Judicial District Court's electronic filing system, directed to:

DEANNA L. FORBUSH, ESQ.
COLLEEN E. MCCARTY, ESQ.

FOX ROTHSCHILD LLP
dforbush@foxrothschild.com
cmccarty@foxrothschild.com
Attorneys for Plaintiff Nevada
Policy Research Institute

BERNA L. RHODES-FORD, ESQ.

General Counsel
NEVADA STATE COLLEGE
berna.rhodes-ford@nsc.edu
Attorneys for Defendant Dina Neal

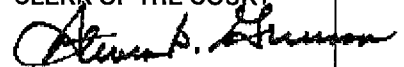
BRADLEY SCHRAGER, ESQ.
ROYI MOAS, ESQ.

DANIEL BRAVO, ESQ.
WOLF, RIFKIN, SHAPIRO, SCHULMAN
& RABKIN LLP
bschrager@wrslawyers.com
rmoas@wrslawyers.com
dbravo@wrslawyers.com
Attorneys for Defendants Brittney Miller
and Selena Torres

JONATHAN D. BLUM, ESQ.

WILEY PETERSEN
jblum@wileypetersenlaw.com
Attorneys for Defendant James Ohrenschall

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



1 **JOPP**

2 Berna L. Rhodes-Ford
3 Nevada Bar No. 7879
4 General Counsel
5 Nevada State College
6 1300 Nevada State Dr., RSC 374
7 Henderson, Nevada 89002
8 Tel: (702) 992-2378
9 Fax: (702) 974-0750
10 berna.rhodes-ford@nsc.edu

11 *Attorney for Defendant*
12 *Dina Neal*

13 **DISTRICT COURT**
14 **CLARK COUNTY, NEVADA**

15 NEVADA POLICY RESEARCH INSTITUTE,
16 a Nevada domestic nonprofit corporation,

Case No.: A-20-817757-C

17 Plaintiff,

Dept. No.: 8

18 v.

19 BRITTNEY MILLER, an individual engaging in
20 dual employment with the Nevada State
21 Assembly and Clark County School District;
22 DINA NEAL, an individual engaging in dual
23 employment with the Nevada State Senate and
24 Nevada State College; JAMES
25 OHRENSCHALL, an individual engaging in
26 dual employment with the Nevada State Senate
27 and Clark County Public Defender; SELENA
28 TORRES, an individual engaging in dual
employment with the Nevada State Assembly
and Clark County School District; and THE
LEGISLATURE OF THE STATE OF
NEVADA,

**NSHE DEFENDANT DINA NEAL'S
JOINDER TO LEGISLATIVE
COUNSEL BUREAU'S NEVADA
LEGISLATURE'S OPPOSITION TO
PLAINTIFF'S MOTION FOR LEAVE
TO FILE SECOND AMENDED
COMPLAINT AND
COUNTERMOTION TO DISMISS
PLAINTIFF'S FIRST AMENDED
COMPLAINT**

Defendants.

NSHE Defendant Dina Neal hereby joins in Intervenor Legislative Counsel Bureau's ("LCB") Nevada Legislature's Opposition To Plaintiff's Motion For Leave To File Second Amended Complaint And Countermotion to Dismiss Plaintiff's First Amended Complaint dated December 29, 2022 and filed herein on December 29, 2022, and adopt by reference and incorporate herein Intervenor LCB's Opposition and Countermotion, Memorandum of Points and Authorities, Addendum and Exhibits, if any, as if set forth in full.

/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

LA0051

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an employee in the Office of General Counsel for Nevada State College,
3 located at 1300 Henderson, Nevada 89002, I am over the age of 18 years, and I am not a party to the within
4 cause. Pursuant to NRCP 5, I further certify that on December 29, 2022, I caused the following document,
5 **NSHE DEFENDANT DINA NEAL'S JOINDER TO LEGISLATIVE COUNSEL BUREAU'S**
6 **NEVADA LEGISLATURE'S OPPOSITION TO PLAINTIFF'S MOTION FOR LEAVE TO FILE**
7 **SECOND AMENDED COMPLAINT AND COUNTERMOTION TO DISMISS PLAINTIFF'S**
8 **FIRST AMENDED COMPLAINT**, to be served as follows:

9 ☒

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

14 Deanna L. Forbush, Esq.
15 **FOX ROTHSCHILD LLP**
16 Email: dforbush@foxrothschild.com
17 *Attorneys for Plaintiff*

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

18 Bradley Schrager, Esq.
19 **WOLF, RIFKIN, SHAPIRO, SCHULMAN &**
20 **RABKIN, LLP**
21 Email: bschrager@wrslawyers.com
22 *Attorneys for Defendant Brittney Miller*
23 *and Selena Torres*

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

24 Jonathan D. Blum, Esq.
25 **WILEY PETERSEN**
26 Email: jblum@wileypetersenlaw.com
27 *Attorney for Defendant James Ohrenschall*

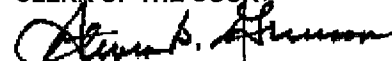
Kevin C. Powers, Esq.
LEGISLATIVE COUNSEL BUREAU,
LEGAL DIVISION
Email: kpowers@lcb.state.nv.us
Attorney for Intervenor-Defendant
Legislature of the State of Nevada

28 ☐

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.

Edwin Maguinto

An employee of the Office of General Counsel
Nevada State College



1 **JOIN**

2 JONATHAN D. BLUM, ESQ.

3 Nevada Bar No. 09515

4 **WILEY PETERSEN**

5 1050 Indigo Drive, Suite 200B

6 Las Vegas, Nevada 89145

7 Telephone: (702) 910-3329

8 Facsimile: (702) 553-3467

9 E-Mail: jblum@wileypetersenlaw.com

10 *Attorney for Defendant,*

11 *James Ohrenschall*

12 **DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

14 NEVADA POLICY RESEARCH
15 INSTITUTE, a Nevada domestic nonprofit
16 corporation,

17 Plaintiff,

18 vs.

19 BRITTNEY MILLER, an individual engaging
20 in dual employment with the Nevada State
21 Assembly and Clark County School District;
22 DINA NEAL, an individual engaging in dual
23 employment with the Nevada State Senate and
24 Nevada State College; JAMES
25 OHRENSCHALL, an individual engaging in
26 dual employment with the Nevada State Senate
27 and Clark County Public Defender; SELENA
28 TORRES, an individual engaging in dual
employment with the Nevada State Assembly
and Clark County School District; and THE
LEGISLATURE OF THE STATE OF
NEVADA,

Defendants.

CASE NO: A-20-817757-C

DEPT. NO: VIII

**DEFENDANT JAMES
OHRENSCHALL'S JOINDER TO
NEVADA LEGISLATURE'S
OPPOSITION TO PLAINTIFF'S
MOTION FOR LEAVE TO FILE
SECOND AMENDED COMPLAINT
AND COUNTERMOTION TO DISMISS
PLAINTIFF'S FIRST AMENDED
COMPLAINT**

HEARING DATE: JANUARY 17, 2023

HEARING TIME: 10:00 A.M.

23 //

24 //

25 //

26 //

27 //

28 //

1 Defendant JAMES OHRENSCHALL (hereinafter "State Senator Ohrenschall"), by and
2 through his counsel of record, WILEY PETERSEN, hereby joins, incorporates and adopts the
3 factual allegations and authorities asserted in Nevada Legislature's Opposition to Plaintiff's
4 Motion for Leave to File Second Amended Complaint and Countermotion to Dismiss
5 Plaintiff's First Amended Complaint, filed on December 29, 2022 (the "Opposition").

6 DATED this 30th day of December, 2022.

7 **WILEY PETERSEN**

8
9
10 JONATHAN D. BLUM, ESQ.
11 Nevada Bar No. 09515
12 1050 Indigo Dr., Suite 200B
13 Las Vegas, Nevada 89145
14 Telephone No. (702) 910-3329
15 Facsimile: (702) 553-3467
16 jblum@wileypetersenlaw.com

17
18 *Attorney for Defendant,*
19 *James Ohrenschall*
20
21
22
23
24
25
26
27
28

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

2
3
4
5
6
7

8
9
10
11

12

13