

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.

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Case No. 85935

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

**RESPONDENT LEGISLATURE'S MOTION FOR ONE-DAY
EXTENSION OF TIME TO FILE ITS ANSWERING BRIEF AND
APPENDIX AND TO EXCEED WORD LIMIT FOR SUCH BRIEF**

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

MOTION

Respondent 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 this motion for a one-day extension of time to file its answering brief and appendix and to exceed the word limit for such brief. On June 30, 2023, Respondents were granted a first extension until August 11, 2023, to file their respective answering briefs and any appendices. On August 12, 2023, within 5 hours of the expiration of that deadline at approximately 4:50 a.m., LCB Legal filed the Legislature’s proposed answering brief and appendix followed by this motion for the one-day extension of time.

In addition to the one-day extension, the Legislature requests leave to file an answering brief which exceeds the word limit of 14,000 words. In support of the Legislature’s motion, LCB Legal certifies that, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), the Legislature’s proposed answering brief is proportionately spaced, has a typeface of 14 points or more, and contains **18,018 words**, which exceeds the word limit by **4,018 words**.

The Legislature’s motion is made under NRAP 21, 26, 27, 29 and 32 and is based upon the argument made herein and all pleadings, documents and exhibits on file in this case.

DECLARATION OF REASONS IN SUPPORT OF MOTION

I. Background.

In its first amended complaint, Appellant Nevada Policy Research Institute (“NPRI”) alleged that Respondent-Legislators are persons simultaneously holding elected offices in the Legislature and paid positions with the state executive branch or with local governments in violation of the separation-of-powers provision in Article 3, Section 1 of the Nevada Constitution. (AA1:000005-6)¹ In the proceedings below, the district court: (1) denied the Legislature’s motion to dismiss for lack of subject-matter jurisdiction based on NPRI’s failure to comply with NRS Chapter 41’s requirements for waiver of sovereign immunity; (2) declined to address the Legislature’s motion to dismiss based on NPRI’s failure to join all necessary party-defendants; and (3) granted Respondent-Legislators’ motion to dismiss for failure to state a claim upon which relief can be granted, concluding that NPRI’s separation-of-powers claims failed on the merits as a matter of law. (AA2:000352-79) This appeal presents numerous complex issues of first impression involving jurisdictional, procedural and constitutional law, including:

¹ Citations to “AA” are to volume and page numbers of Appellant’s Appendix.

1. Whether the district court lacked subject-matter jurisdiction over NPRI's claims because NPRI failed to comply with NRS Chapter 41's requirements for waiver of sovereign immunity given that NPRI did not bring this lawsuit against the required state executive branch and local government employers.

2. Whether NPRI failed to join all necessary party-defendants needed for a just adjudication of this action as required by the Due Process Clause, NRCP 19 and the Uniform Declaratory Judgments Act in NRS Chapter 30 given that NPRI failed to join all legislators and judges serving in dual roles and their respective state executive branch and local government employers.

3. If this Court reaches the merits of NPRI's claims, whether the district court correctly determined that the separation-of-powers provision does not prohibit legislators from holding positions of public employment with local governments because local governments and their officers and employees are not part of one of the three departments of state government.

4. If this Court reaches the merits of NPRI's claims, whether the district court correctly determined that the separation-of-powers provision does not prohibit legislators from holding positions of public employment with the state executive branch or with local governments because such employees do not exercise any sovereign functions appertaining to the state executive branch.

5. Whether the district court properly exercised its discretion when it denied NPRI's motion to strike Respondents' motions to dismiss and joinders.

II. Discussion.

Under NRAP 26(b)(1)(A), this Court may, for good cause, extend the time prescribed by its order to perform any act or permit any act to be done after that time expires, so long as such extension or permission will not prejudice substantial rights of any party. See, e.g., Component Sys. Corp. v. Dist. Ct., 101 Nev. 76, 79 n.2 (1985). Under NRAP 32(a)(7)(D), this Court may, upon a showing of diligence and good cause, permit any brief to exceed the applicable word limit.

In this case, because of the numerous complex issues of first impression involving jurisdictional, procedural and constitutional law presented by this case, the Legislature was compelled to provide a comprehensive and thorough presentation of the law in order to assist this Court in deciding these complex issues. In preparing the Legislature's answering brief, LCB Legal was respectful of this Court's admonition to appellate counsel to observe reasonable limitations on arguments filed with this Court. See Hernandez v. State, 117 Nev. 463 (2001). And to that end, LCB Legal utilized the additional time requested in the extension to streamline the Legislature's arguments as much as reasonably practicable.

However, even after those additional efforts, this Court's permission to exceed the word limit is still necessary to properly address the numerous complex

issues of first impression involving jurisdictional, procedural and constitutional law presented by this case, and LCB Legal is asking to exceed the word limit to meet this Court's high standards of appellate practice in which this Court "expects all appeals to be pursued with high standards of diligence, professionalism, and competence." Barry v. Lindner, 119 Nev. 661, 671 (2003); Polk v. State, 126 Nev. 180, 184 (2010). This duty requires counsel to avoid inadequate appellate practices, such as discussing issues without including "cogent argument and citation to relevant authority." Berkson v. Lepome, 126 Nev. 492, 501-02 (2010) ("It is well established that this court need not consider issues not supported by cogent argument and citation to relevant authority.").

Based on this Court's high standards of appellate practice, LCB Legal believes that the additional 4,018 words in the Legislature's answering brief are necessary to properly and thoroughly discuss the numerous complex issues of first impression presented by this case, which required providing citations to and discussing relevant and extensive authority involving: (1) historical evidence of the practices in the Federal Government and Congress immediately following the ratification of the Federal Constitution; (2) historical evidence of the practices in the California Legislature under similar state constitutional provisions which served as the model for the Nevada Constitution; (3) historical evidence of the practices in the Nevada Legislature since statehood; (4) legal treatises and other

authorities on constitutional law; (5) case law from other jurisdictions interpreting similar state constitutional provisions; (6) common-law rules governing public officers and employees; and (7) the intent of the Framers and their underlying public policies supporting the concept of the “citizen-legislator” as the cornerstone of an effective, responsive and qualified part-time legislative body.

Accordingly, by granting the Legislature’s motion for a one-day extension of time to file its answering brief and to exceed the word limit for such brief, this Court would be facilitating a more comprehensive and thorough presentation of the law and a better understanding of the issues by allowing the Legislature to address the numerous complex issues of first impression presented by this case in a cogent manner that includes “adequate supporting law.” Barry, 119 Nev. at 672. In addition, given that the requested extension of time is for a period of less than 5 hours, such an extension will not unduly delay the proceedings or prejudice the rights of the other parties.

Finally, LCB Legal wants to stress that it takes no pleasure in asking this Court for permission to exceed the word limit or in preparing briefs that exceed the word limit. However, given the significance of this case, LCB Legal believes that the Legislature’s extended answering brief will greatly assist this Court in deciding the numerous complex issues of first impression involving jurisdictional, procedural and constitutional law presented by this case.

CONCLUSION

Based on the foregoing, the Legislature asks this Court to grant its motion for a one-day extension of time to file its answering brief and appendix and to exceed the word limit for such brief.

DATED: This **12th** day of August, 2023.

By: /s/ Kevin C. Powers

KEVIN C. POWERS, General Counsel

Nevada Bar No. 6781

LEGISLATIVE COUNSEL BUREAU, LEGAL DIVISION

401 S. Carson St.

Carson City, NV 89701

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

Email: kpowers@lcb.state.nv.us

Attorneys for the Legislature of the State of Nevada

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Nevada Legislative Counsel Bureau, Legal Division, and that on the 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 Motion for One-Day Extension of Time to File Answering Brief and Appendix and to Exceed Word Limit for Such Brief, 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