

IN THE SUPREME COURT OF THE STATE OF NEVADA

NEVADA POLICY RESEARCH
INSTITUTE, a Nevada domestic
nonprofit corporation,

Appellant,

v.

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 Clark County Public
Charter School; and THE
LEGISLATURE OF THE STATE OF
NEVADA,

Respondents.

Electronically Filed
Aug 14 2023 12:41 PM
Elizabeth A. Brown
Clerk of Supreme Court

Case No. 85935

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

**Respondent Dina Neal's Answering
Brief**

Respondent Dina Neal's
Answering Brief

Berna Rhodes-Ford, SBN 7879
General Counsel, Nevada State University
1300 Nevada State Dr., RSC 374
Henderson, Nevada 89002
(702) 992-2378

Attorney for Respondent Dina Neal

NRAP 26.1 DISCLOSURE STATEMENT

The undersigned counsel of record certifies that the following is a person as described in NRAP 26.1(a) and must be disclosed. These representations are made in order that the Justices of this Court may evaluate possible disqualification or recusal.

1. Respondent Dina Neal is an individual and is represented in this matter by Berna Rhodes-Ford, General Counsel for Nevada State University.

Dated this 11th day of August, 2023.

/s/ Berna L. Rhodes-Ford
BERNA L. RHODES-FORD
Nevada Bar No. 7879
General Counsel
Nevada State University
1300 Nevada State Dr., RSC 374
Henderson, Nevada 89002
Tel: (702) 992-2378
berna.rhodes-ford@nsc.edu

*Attorney for Respondent
Dina Neal*

TABLE OF CONTENTS

NRAP 26.1 DISCLOSURE STATEMENT	i
TABLE OF AUTHORITIES	iv
ROUTING STATEMENT.....	viii
ISSUES PRESENTED FOR REVIEW	ix
I. STATEMENT OF THE CASE	1
II. STATEMENT OF FACTS.....	5
III. SUMMARY OF ARGUMENT	7
IV. ARGUMENT.....	10
A. Standard of Review	10
B. The District Court properly determined that Neal did not violate the separation of powers clause of the Nevada Constitution by serving as both a Senator and an Adjunct Professor	11
1. The Principle of Party Presentation does not prohibit the District Court from applying case law to issues framed by the parties	11
2. Neal’s service as a Senator and employment as an Adjunct Professor does not violate the separation on powers doctrine.....	13
a) An adjunct professor is not a public official or officer	16
(1) Adjunct professors are not public officers created by law	17
(2) Adjunct professors do not exercise sovereign functions	21

3. Regardless of the basis of the court’s decision, it is correct and should be affirmed.....	24
C. The District Court properly denied NPRI’s Motion to Strike Defendants’ Motions to Dismiss and Joinders.....	26
1. Motions to Strike are not Proper Vehicles to Address Motions to Dismiss and Joinders Thereto.....	26
2. Neal complied with the Rules	27
a) Neal did not omit arguments from her earlier motion.....	28
b) This Court decided the prior appeal only on standing, allowing other issues to be considered on remand	29
V. CONCLUSION	30
CERTIFICATE OF COMPLIANCE.....	32
CERTIFICATE OF SERVICE	34

TABLE OF AUTHORITIES

<i>Afriat v. Afriat</i> , 61 Nev. 321, 117 P.2d 83 (1941)	9, 26
<i>Breliant v. Preferred Equities Corp.</i> , 109 Nev. 842, 858 P.2d 1258 (1993).....	5
<i>Buzz Stew, LLC v. City of N. Las Vegas</i> , 124 Nev. 224, 181 P.3d 670 (2008)	10
<i>Clark Cnty. Sch. Dist. v. Richardson Const., Inc.</i> , 123 Nev. 382, 168 P.3d 87 (2007)	29
<i>Consolidated Generator-Nevada v. Cummins Engine</i> , 114 Nev. 1304, 971 P.2d 1251 (1998)	10
<i>Dan Ryan Builders, Inc. v. Crystal Ridge Development, Inc.</i> , 783 F.3d 976 (4th Cir. 2015)	7, 12
<i>Daniels-Hall v. Nat’l Educ. Ass’n</i> , 629 F.3d 992 (9th Cir. 2010)	19
<i>Eads v. City of Boulder City</i> , 94 Nev. 735 (1978)	8, 15, 21
<i>French v. Gansert</i> , No. 1700000231B (2nd Jud. Dist. Ct. 2017)	7, 14, 22, 23
<i>FTC v. AMG Servs.</i> , No. 2:12-cv-00536-GMN-VCF, 2014 U.S. Dist. LEXIS 10490 (D. Nev. Jan. 28, 2014)	19
<i>Greenlaw v. U.S.</i> , 554 U.S. 237, 128 S.Ct. 2559, 171 L.Ed.2d 399 (2008)	11
<i>In re Apple iPhone Antitrust Litigation</i> , 846 F.3d 313 (9th Cir. 2017)	11
<i>Kamen v. Kemper Fin. Servs., Inc.</i> , 500 U.S. 90, 111 S.Ct. 1711, 114 L.Ed.2d 152 (1991).....	12

<i>Lamb v. Lamb</i> , 55 Nev. 437, 38 P.2d 659 (1934)	9, 26
<i>Lee v. Patin</i> , 525 P.3d 834, 2023 WL 2436323 (Nev. March 9, 2023)	12
<i>Mullen v. Clark Cnty.</i> , 89 Nev. 308 (1973)	17
<i>Nev. Policy Research Inst. v. Cannizzaro</i> , 138 Nev. Adv. Op. 28, 509 P.3d 1203 (2022)	3
<i>Rohlfing v. District Court</i> , 106 Nev. 902, 803 P.2d 659 (1990)	8
<i>State v. Eighth Jud. Dist. Court (Doane)</i> 138 Nev. Adv. Op. 90, 521 P.3d 1215 (2022)	7, 11
<i>State v. Second Jud. Dist. Ct. (Hearn)</i> 134 Nev. 783, 432 P.3d. 154 (2018)	24
<i>State ex rel. Kendall v. Cole</i> , 38 Nev. 215 (1915)	8, 15, 17, 21
<i>State ex rel. Mathews v. Murray</i> , 70 Nev. 116 (1953)	8, 15, 17, 20, 21
<i>Summerfield v. Coca Cola Bottling Co.</i> , 113 Nev. 1291 948 P.2d 704 (1997)	10
<i>Univ. & Cmty. Coll. Sys. v. DR Partners</i> , 117 Nev. 195 18 P.3d 1042 (2001)	17, 18, 21

Constitution

Nevada Constitution, Article 3, §1	1, 13, 15, 22, 23
--	-------------------

Statutes

NRS 47.130.....	19
NRS 47.150.....	19
NRS 281.005(1)	18
NRS 281A.182.....	18, 21

Rules

NRAP 17(a)(11).....	viii
NRAP 17(a)(12).....	viii
NRAP 26.1(a).....	i
NRAP 28(e)(1).....	32
NRAP 32(a)(4).....	32
NRAP 32(a)(5).....	32
NRAP 32(a)(6).....	32
NRAP 32(a)(7).....	32
NRAP 32(a)(7)(C).....	32
NRCP 1	26, 29
NRCP 12(b)(1).....	28
NRCP 12(b)(5).....	1, 10, 27, 28, 29
NRCP 12(b)(6).....	1
NRCP 12(g).....	27, 28

NRCP 12(g)(2).....	ix, 9, 26
NRCP 12(h)(2).....	27
NRCP 12(h)(3).....	27
NRCP 54(b).....	2

ROUTING STATEMENT

This Court should hear and decide this case based on NRAP 17(a)(12) as the case involves a question of statewide public importance.

While the issue related to dual employment is a case of first impression involving the Nevada Constitution for this Court, lower courts have dealt with dual employment of a legislator and Nevada System of Higher Education (“NSHE”) employee as well as other related issues. As such, it is proper for this Court to retain jurisdiction under NRAP 17(a)(12), not NRAP 17(a)(11).

ISSUES PRESENTED FOR REVIEW

The issues presented for review that pertain to State Senator and Adjunct Professor Dina Neal (“Neal”)¹ are as follows:

1. Whether the District Court properly determined that Neal did not violate the separation of powers clause of the Nevada Constitution by serving both as a legislator and an adjunct professor at Nevada State University and College of Southern Nevada²;

2. Whether the District Court properly denied Nevada Policy Research Institute’s (“NPRI”) Motion to Strike under NRCP 12(g)(2) the Defendants’ Motions to Dismiss and Joinders after remand.

¹ At the time the Complaint was filed, there were five defendants employed at an NSHE institution. Currently, only one NSHE-employed defendant remains – Neal. This brief will refer to Neal for consistency even if the specific reference was at a time when multiple NSHE Defendants were still in the lawsuit.

² Appellant’s Opening Brief references Neal’s employment with Nevada State College. Effective July 1, 2023, Nevada State College became Nevada State University and will be referred to as such throughout the brief. Additionally, Neal has become employed as an adjunct professor at College of Southern Nevada.

I. STATEMENT OF THE CASE

NPRI filed an Amended Complaint for Declaratory and Injunctive Relief on July 28, 2020 naming as defendants thirteen individuals, alleging that each defendant served in the Nevada Legislature and also in an executive branch position. (1 AA pp. AA000001-AA000007.)³ The Amended Complaint sought to have this “dual employment” declared unconstitutional under Article 3, § 1 of the Nevada Constitution, and it requested an injunction prohibiting dual employment. (1 AA pp. AA000001-AA000007.)

A. Throughout the case, Defendants have asserted multiple bases for dismissal

Respondent Brittney Miller (“Miller”), an Assembly Member and Clark County School District middle school teacher, was the first defendant to file her motion to dismiss on September 18, 2020, alleging lack of jurisdiction and failure to state a claim based NPRI’s lack of standing. (NA pp. NA00001-NA00026.)⁴ Neal filed a joinder in Miller’s motion. (NA pp. NA00027-NA00030.) Other defendants who had appeared also joined in Miller’s motion.

In addition to joining in Miller’s motion, Neal filed a separate motion to dismiss under NRCP 12(b)(5) and 12(b)(6). (NA pp. NA00031-NA00065.) Other

³ References to Appellant’s Appendices are designated by volume number “AA” followed by page number.

⁴ Citations to “NA” are to Neal’s Appendix followed by page number.

defendants also filed separate motions to dismiss, and all defendants filed joinders to the other defendants' motions.

After briefing concluded, the District Court granted Miller's motion and all joinders thereto in an Omnibus Order dated December 8, 2020, finding that NPRI lacked standing to bring suit. (NA pp. NA00087-NA00104.) The granting of Miller's motion to dismiss and the joinders rendered the other motions to dismiss based on other grounds moot. As such, the District Court did not reach the merits of the arguments raised in those motions to dismiss.

In response to the District Court's November 18, 2020 Minute Order (before the Court had issued its Omnibus Order), NPRI filed a motion for clarification and also requested NRC 54(b) certification, because not all defendants had appeared and the District Court had not entered a final judgment. (NA pp. NA00066-NA00076.) The defendants who had appeared filed a joint opposition to NPRI's motion for clarification and included a countermotion to dismiss all remaining defendants based on NPRI's lack of standing. (NA pp. NA00077-NA00086.) On December 28, 2020, the District Court issued its final judgment denying NPRI's motion for clarification and granting the joint countermotion to dismiss all remaining defendants based on NPRI's lack of standing. (NA pp. NA00105-NA00133.)

B. This Court reversed and remanded the case

On January 8, 2021, NPRI filed its Notice of Appeal of the District Court’s decision. After full briefing and oral argument, on April 21, 2022, this Court reversed and remanded the matter. *Nev. Policy Research Institute, Inc. v. Cannizzaro*, 138 Nev. Adv. Op. 28, 509 P.3d 1203 (2022). In reaching its decision, the Court expanded the public-importance exception to standing in *Scwartz* to include cases in which “a party seeks to protect the essential nature of ‘a government in which the three distinct departments, ... legislative, executive, and judicial, remain within the bounds of their constitutional powers.’” *Id.* at 1211.

C. The District Court properly reviewed all of the documents on file and issued its own order

After remand, the defendants filed a number of motions to dismiss and joinders thereto. Specifically, between June 28, 2022 to August 1, 2022, the parties filed the following motions:

(1) Defendants Brittney Miller and Selena Torres’s Motion to Sever Pursuant to NRCP 21;

(2) Nevada Legislature’s Motion to Dismiss Amended Complaint for Declaratory and Injunctive Relief; (1 AA pp. AA000064-AA000083.)

(3) Defendant James Ohrenschall’s Motion to Dismiss; (1 AA pp. AA000040-AA000054.)

(4) NSHE Defendant Dina Neal's Motion to Dismiss Pursuant to NRCp 12(b)(5); (1 AA pp. AA000013-AA000039.)

(5) Defendants Brittney Miller and Selena Torres's Partial Joinder to Nevada Legislature's Motion to Dismiss; (1 AA pp. AA000087-AA000089.)

(6) NSHE Defendant Dina Neal's Joinder to Legislative Counsel Bureau's Nevada Legislature's Motion to Dismiss Amended Complaint for Declaratory and Injunctive Relief; (1 AA pp. AA000084-AA000086.)

(7) Defendants Brittney Miller and Selena Torres's Partial Joinder to Defendant James Ohrenschall's Motion to Dismiss; (1 AA pp. AA000058-AA000060.)

(8) Defendants Brittney Miller and Selena Torres's Joinder to Defendant Dina Neal's Motion to Dismiss; (1 AA pp. AA000055-AA000057.)

(9) Defendant James Ohrenschall's Joinder to NSHE Defendant Dina Neal's Motion to Dismiss Pursuant to NRCp 12(b)(5); (1 AA pp. AA000090-AA000092.)

(10) Defendant James Ohrenschall's Joinder in Part, to Legislature of the State of Nevada's Motion to Dismiss Complaint; (1 AA pp. AA000093-AA000095.)

(11) Plaintiff's Motion to Strike NSHE Defendant Dina Neal's Motion to Dismiss Pursuant to NRCp 12(b)(5); (1 AA pp. AA000096-AA000106.)

(12) Plaintiff’s Motion to Strike Nevada Legislature’s Motion to Dismiss Amended Complaint for Declaratory and Injunctive Relief; (1 AA pp. AA00096-AA000106) and

(13) Plaintiff’s Motion to Strike All Joinders Thereto. (1 AA pp. AA00096-AA000106.)

The District Court denied Plaintiff’s Motions to Strike (11) – (13) and ruled on the merits of the remaining motions. (2 AA pp. AA0000352-AA0000381.) On January 4, 2023, the District Court granted the defendants’ various motions to dismiss. (2 AA p. AA0000379.)

On January 6, 2023, NPRI timely appealed. (2 AA pp. AA0000416-AA0000418.)

II. STATEMENT OF FACTS

Because this appeal arises from a motion to dismiss, the facts are confined to and taken from NPRI’s Amended Complaint. *Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 845–46, 858 P.2d 1258, 1260 (1993)(stating that, on appeal from an order granting an NRCP 12(b)(5) motion to dismiss, “[t]he sole issue presented ... is whether a complaint states a claim for relief”). Therefore, “as a general rule, the court may not consider matters outside the pleadings.” *Id.* 109 Nev. at 847, 858 P.2d at 1261.

NPRI describes itself as 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.” (1 AA p. AA000003 ¶6.) NPRI alleges that all defendants are “engaging in dual employment.” (1 AA p. AA000002 ¶1.) Specifically as to Neal, she is said to engage in dual service as an elected member of the Nevada State Assembly⁵ and employed in a paid position at Nevada State University as an Adjunct Professor. (1 AA p. AA000004 ¶14.)

Noticeably absent from the Amended Complaint are any facts regarding Neal’s duties as an Adjunct Professor or Senator. NPRI also does not allege that Neal’s position with Nevada State University is created by the Nevada Constitution or by statute, or that adjunct professor positions are “public officer” positions. Finally, NPRI did not allege that Neal is a college or university president or a member of the NSHE Board of Regents. These “missing” allegations are fatal to NPRI’s claim.

⁵ The Amended Complaint erroneously alleges that Dina Neal as a member of the Nevada Assembly. She is, however, a member of the Nevada Senate. NPRI improperly amended the caption to its Opening Brief without leave to reflect Senator Neal’s correct position.

III. SUMMARY OF ARGUMENT

A. The District Court Properly Determined that Neal does not violate the separation of powers clause of the Nevada Constitution by serving as a Senator and being employed as an Adjunct Professor

The principle of party presentation requires that parties frame the issues and that courts maintain the role as neutral arbiters. *State v. Eighth Jud. Dist. Court (Doane)*, 138 Nev. Adv. Op. 90, 521 P.3d 1215 (2022). Although a large portion of Appellant's brief is dedicated to the principle of party presentation, NPRI incorrectly applies that principle to this case. Specifically, the principle of party presentation only applies when a court seeks to introduce new issues. *Dan Ryan Builders, Inc. v. Crystal Ridge Development, Inc.*, 783 F.3d 976, 980 (4th Cir. 2015). Here, the parties introduced the issues, and the District Court simply determined which law to apply to the issues as framed by the parties. Further, the District Court relied on Nevada cases in reaching its conclusions, and Nevada law supports the District Court's finding even without relying on the doctrine of incompatible offices.

Appellant's statement to the contrary, in *French v. Gansert*, the Second Judicial District Court interpreted the separation of powers clause to prohibit public officials or officers, as opposed to mere public employees, from holding positions in separate branches of government. *French v. Gansert, First Jud. Dist. Court, Nev.*,

Case No. 1700000231B (Aug. 3, 2017) (attached at 1 AA pp. AA000031-AA000039). In so finding, the *French* court found that only two groups in NSHE have been determined to be public officers (neither of which include an adjunct professor). *French v. Gansert*, at *7. Further, numerous other courts have addressed the issue of whether public employees exercise functions or powers of the state. *See State ex rel. Kendall v. Cole*, 38 Nev. 215, 229, 148 P. 551, 556 (1915); *State ex rel. Mathews v. Murray*, 70 Nev. 116, 120-21, 258 P.2d 982, 984 (1953); *Eads v. City of Boulder City*, 94 Nev. 735, 737, 587 P.2d 39, 41 (1978). These cases support the District Court’s finding that Neal is a public employee who does not exercise sovereign functions of state government and who, therefore, does not violate the Nevada Constitution by being both a Senator and an Adjunct Professor.

Because district courts have equal coextensive and concurrent jurisdiction, they cannot review orders of another district court. *Rohlfing v. District Court*, 106 Nev. 902, 906, 803 P.2d 659, 662 (1990). But interpretations by one district court judge, while persuasive, can and do inform another judge's reasoning. So, Neal accurately argued below for the same result here as in *French*. The District Court – in line with its sister court – agreed with Neal and also reasoned that the separation of powers clause applies only to prohibit public officials or officers from service in two branches of government. As such, no reversible error occurred.

B. The District Court properly denied NPRI's Motion to Strike Defendants' Motions to Dismiss and Joinders

Motions to strike other motions are disfavored by the courts. *Afriat v. Afriat*, 61 Nev. 321, 117 P.2d 83, 84 (1941). Rather than grant a motion to strike, a court should strike the motion to strike and make a ruling on the underlying motion. *Lamb v. Lamb*, 55 Nev. 437, 38 P.2d 659, 659 (1934). That is what the District Court did in this case, and there was no error.

Importantly, Appellant mischaracterizes NRCP 12(g)(2). The rule prohibits a party from making another motion under this rule raising a defense or objection that was available to the party but omitted from its earlier motion. Neal, however, raised the same defenses throughout this litigation. (NA pp. NA00031-NA00065; 1 AA pp. AA000013-AA000039.) Therefore, Neal did not omit any of her defenses. And the District Court's December 8, 2020 ruling did not reach the merits as it only addressed standing. (NA p. NA00087-NA000104.) In fact, the District Court clarified in its December 28, 2020 order that it did not reach the merits of NPRI's claims when it stated "Consequently, having dismissed all Defendants based on NPRI's lack of standing, the Court enters a final judgment in favor of all Defendants based on NPRI's lack of standing, and the Court does not address the merits of NPRI's constitutional claims." (NA p. NA00109.) As a result, the District Court

properly considered and granted Neal's Motion to Dismiss based on failure to state a claim after remand.

IV. ARGUMENT

A. Standard of Review

This Court reviews orders granting NRCP 12(b)(5) motions to dismiss de novo. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008). Appellate courts review decisions dismissing complaints pursuant to 12(b)(5) with all alleged facts in the complaint presumed true and all inferences drawn in favor of the complaint. *Id.* Dismissal of a complaint is appropriate "only if it appears beyond a doubt that [the plaintiff] could prove no set of facts, which, if true, would entitle [the plaintiff] to relief." *Id.* at 228, 181 P.3d at 672. Further, all legal conclusions are reviewed de novo. *Id.* at 228, 181 P.3d at 672.

The District Court's decision denying NPRI's Motion to Strike is an interlocutory order that would not be appealable during the case below. However, because the District Court entered the order on the Motion to Strike (an interlocutory order) prior to the order dismissing the case (a final appealable judgment), this Court may hear the issue. *See Consolidated Generator-Nevada v. Cummins Engine*, 114 Nev. 1304, 1312, 971 P.2d 1251, 1256 (1998) (quoting *Summerfield v. Coca Cola Bottling Co.*, 113 Nev. 1291, 1293-94, 948 P.2d 704, 705 (1997)) ("Although these orders are not independently appealable, since CGN is appealing from a final

judgment, the interlocutory orders entered prior to the final judgment may properly be heard by this court.”). Alleged errors of law interpreting Rule 12 are reviewed de novo. *In re Apple iPhone Antitrust Litigation*, 846 F.3d 313, 317 (9th Cir. 2017).

B. The District Court properly determined that Neal did not violate the separation of powers clause of the Nevada Constitution by serving as both a Senator and an Adjunct Professor

1. The Principle of Party Presentation does not prohibit the District Court from applying case law to issues framed by the parties

NPRI asks this Court to vacate the District Court’s order under the principle of party presentation—an issue it did not raise in the first instance below. In that vein, NPRI contends that the District Court erred and seeks to “proceed with an ultimate decision based on the parties’ actual presentations below.” (Appellant’s Opening Brief p. 23.) These arguments are to no avail, as NPRI misapplies the principle of party presentation.

It is true that “in both civil and criminal cases, in the first instance and on appeal, we follow the principle of party presentation. That is, we rely on the parties to frame the issues for decisions and assign to courts the role of neutral arbiter of matters the parties present.” *Doane*, 521 P.3d 1215 at 1221 (quoting *Greenlaw v.*

U.S., 554 U.S. 237, 243, 128 S.Ct. 2559, 171 L.Ed.2d 399 (2008)). But “[t]he party presentation principle is supple, not ironclad,” and there are “circumstances in which a modest initiating role for a court is appropriate.” *Lee v. Patin*, 525 P.3d 834, 2023 WL 2436323, *3 (Nev. March 9, 2023).

Courts deciding similar issues have stated, “neither in *Greenlaw* nor in any other case has the Court ever suggested that the party presentation principle constrains a court’s fundamental obligation to ascertain controlling law.” *Dan Ryan Builders*, 783 F.3d at 980. Indeed, “[w]hen an issue or claim is properly before the court, the court is not limited to the particular legal theories advanced by the parties, but rather retains the independent power to identify and apply the proper construction of governing law.” *Id.* (quoting *Kamen v. Kemper Fin. Servs., Inc.*, 500 U.S. 90, 99, 111 S.Ct. 1711, 114 L.Ed.2d 152 (1991)).

In this case, NPRI framed the issue—whether legislators violate the separation of powers clause of the Nevada Constitution by virtue of dual roles in the legislature and executive branches. In reaching its decision, the District Court did not raise a new issue; it merely identified the law to apply to the question advanced by the parties. As set forth above, the District Court was not required to base its decision on the theories advanced by the parties. *Dan Ryan Builders*, 783 F.3d at 980. To be sure, the District Court retained the independent authority to apply law to the issues framed by the parties. *Id.* That is exactly what the District Court did in applying the

common law doctrine of incompatible offices to the question of whether legislators violated the constitution as a result of their employment in the executive branch. Based on longstanding caselaw, the District Court did not err, and this Court need not vacate the District Court's decision.⁶

**2. Neal's service as a Senator and employment as an
Adjunct Professor does not violate the separation of
powers doctrine**

Article 3 of the Nevada Constitution states:

The powers of the Government of the State of Nevada shall be divided into three separate departments, — the Legislative, — the Executive and the Judicial; and no persons 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.

NEV. CONST. art. III, §1, cl. 1.

As stated in briefings throughout the pendency of this case, NPRI's claims are fatally flawed as they relate to Neal because the separation of powers clause has been interpreted to prohibit *public officials or officers*, as opposed to mere *public employees*, from holding positions in separate branches of government. Indeed, the

⁶ It is also important to note that this Court reviews the District Court's interpretation of the separation of powers clause de novo. In so doing, this Court may choose to apply the common law doctrine of incompatible offices or it may choose to apply a different test in reaching its decision.

Second Judicial District Court addressed the specific issue of whether a legislator who was also employed by an NSHE institution violated the separation of powers clause of the Nevada Constitution in *French v. Gansert*. In deciding she did not, the *French* court stated:

By its own terms, Article 3, Section 1(1) does not prohibit all persons in one branch from exercising any function related to another branch. The limitation on exercising any function applies to those persons who are charged with the exercise of powers given to the departments or branches of government. These departments are each charged by other parts of the Constitution with certain duties and functions, and it is to these constitutional duties and functions to which the prohibition in Article 3, Section 1(1) refers.

French v. Gansert, at *6.

The court expressly declared: “There are only two groups of people in NSHE that have been determined to be public officers: members of the Board of Regents and presidents of the universities, state colleges and community colleges.” *French v. Gansert*, at *7. The court determined that the plaintiff did not make any allegations that Defendant Gansert’s position was established by the Nevada Constitution or by statute or that it is a public officer position. Further, the court determined that plaintiff did not make any allegations that Gansert was charged with any constitutionally-prohibited powers. As a result, the *French* court held that there was no violation of the Nevada Constitution. *Id.*

The French case is instructive with regard to Neal, as a Nevada court has addressed the very issue asserted with regard to a legislator who is also employed by an institution within NSHE, but who is not a regent or university president.

Further, there is well-established caselaw in Nevada to support the tenet that public employees do not generally exercise sovereign functions. *See Kendall*, 38 Nev. at 229551, 556 (holding that a state senator did not violate the constitution by also being employed as a superintendent by a legislatively created expositions board as the position did not come with sovereign power of the state as his compensation, term of employment, and duties were all matters of contract); *Mathews*, 70 Nev. at 120–21, 258 P.2d 982, 984 (finding a public office distinguishable from other forms of employment in that its holder has, by the sovereign, been invested with some portion of the sovereign functions of government); *Eads*, 94 Nev. at 737, 587 P.2d 39, 41 (finding that a director of public works created by an ordinance, which defined duties and declared to be an officer of the city was a public officer invested with some portion of the sovereign functions of government). Public officers are the only persons who exercise the sovereign functions of state government and, therefore, only public officers can be in violation of Article 3 and the separation of powers clause. *See* NEV. CONST. art. III, §1, cl. 1; *Mathews*, 70 Nev. at 120-121, 258 P.2d at 984; *Eads*, 94 Nev. at 737, 587 P.2d at 41.

a) An adjunct professor is not public official or officer

As stated in Neal's Motion to Dismiss, to determine whether Neal's service as a Senator and employment as an Adjunct Professor violates the Nevada Constitution, the Court must analyze whether her position as an Adjunct Professor is one of a public officer or one of public employment. *See Mathews*, 70 Nev. at 120-121, 258 P.2d at 984; *Eads*, 94 Nev. at 737, 587 P.2d at 41. NPRI merely alleges that Neal is an Adjunct Professor. It does not allege that Neal is a member of the NSHE Board of Regents or a college or university president who is considered a public officer only for the limited purpose of the Ethics Law. It does not allege that Neal serves in a position created by law or that she exercises sovereign duties of the executive branch. The Amended Complaint contains no factual allegations from which the District Court could infer that Neal holds a position that would cause her to fall under the constitutional prohibition NPRI seeks to enforce. To be sure, Appellant argues that Neal's mere employment—regardless of function—is sufficient to violate the Constitution. (Appellant's Opening Brief p. 13 ("NPRI respectfully seeks the Court's definitive decision that the Nevada Constitution means what it says and prohibits, without exception, any person exercising the power of the legislative branch from simultaneously exercising any functions in executive branch

employment.”))⁷ But under no set of facts could NPRI show that an adjunct professor is a position created by law that is imbued with sovereign power. This Court need not reverse dismissal.

(1) Adjunct professors are not public officers created by law

The definition of public officer can be found in both case and statutory law. The caselaw establishes two guiding principles in defining a public officer. First, a public officer must serve in a position created by law. *Univ. & Cmty. Coll. Sys. v. DR Partners*, 117 Nev. 195, 200, 18 P.3d 1042, 1046 (2001) (citing *Mathews*, 70 Nev. at 120-121, 258 P.2d at 984). Second, the duties of a public officer must be fixed by law and must involve an exercise of the sovereign functions of the state. *DR Partners*, 117 Nev. at 200, 18 P.3d at 1046 (citing *Kendall*, 38 Nev. at 224, 148 P. at 553). Both of these principles must be satisfied before a person is deemed a public officer. *See Mullen v. Clark Cnty.*, 89 Nev. 308, 310–11, 511 P.2d 1036, 1037–38 (1973).

Similarly, the law defines a public officer as a person elected or appointed to a position which: (a) is established by the Constitution or a statute of this State, or by a charter or ordinance of a political subdivision of this State; and (b) involves the

⁷ According to NPRI’s desired reading, not even a custodian working at an NSHE institution could serve as a legislator.

continuous exercise, as part of the regular and permanent administration of the government, of a public power, trust or duty. NEV. REV. STAT. § 281.005(1). The case law and statute can be read in harmony because NRS 281.005(1)(a) encompasses the fundamental principle that a public officer is created by law, and NRS 281.005(1)(b) encompasses the fundamental principle that a public officer's duties are fixed by law and involve an exercise of the state's sovereign power. *See DR Partners*, 117 Nev. at 201, 18 P.3d at 1047.

The Amended Complaint does not allege that Neal's position is established by the Nevada Constitution or by statute. In *DR Partners*, this Court determined that only the Board of Regents hold positions established by the Constitution or a statute of the state. *See Id.* at 205, 18 P.3d at 1048 ("the sovereign functions of higher education repose in the Board of Regents, which has been constitutionally entrusted to control and manage the University"). After *DR Partners* was decided, the legislature enacted NRS 281A.182 which provides that a president of a university, state college or community college within the NSHE system is also considered a public officer only for the limited purpose of the Ethics Law.⁸ NEV.

⁸ In designating college or university presidents as public officers only for the limited purpose of the Ethics Law, NRS 281A.182 expressly provides that such a designation: (1) does not make the person a public officer for the purposes of any other law or for any other purposes; and (2) must not be used, interpreted or applied in any manner to establish, suggest or prove that the person is a public officer for the purposes of any other law or for any other purposes. NEV. REV. STAT. § 281A.182(6).

REV. STAT. § 281A.182(1), (6). Hence, only the members of the Board of Regents are public officers, and college or university presidents are considered public officers only for the limited purpose of the Ethics Law.

The Court can take judicial notice of the current elected members of the Board of Regents as posted on NSHE's website (www.nshe.nevada.edu), and see that Neal is not a current Board member. *See* NEV. REV. STAT. § 47.130; NEV. REV. STAT. § 47.150; *FTC v. AMG Servs.*, No. 2:12-cv-00536-GMN-VCF, 2014 U.S. Dist. LEXIS 10490, *45-46, n. 5 (D. Nev. Jan. 28, 2014) (allowing judicial notice of information posted on government websites as it can be “accurately and readily determined from sources whose accuracy cannot reasonably be questioned”); *Daniels-Hall v. Nat’l Educ. Ass’n*, 629 F.3d 992, 998–99 (9th Cir. 2010) (“It is appropriate to take judicial notice of this information, as it was made publicly available by government entities.”). Additionally, the Court can take judicial notice of the current presidents of Nevada State University (www.nsc.edu) and College of Southern Nevada (www.csn.edu) to demonstrate that Neal is not president. *Id.* Hence, NPRI cannot meet the first tenet of establishing Neal’s position with NSHE is one of a public officer because under no set of facts can it prove she is a member of the Board of Regents or a university or college president who is considered a public officer only for the limited purpose of the Ethics Law.

The *Mathews* case further illustrates why Neal's position as an Adjunct Professor is not one of a public officer. In *Mathews*, the government employee was the director of the Driver's License Division. This Court determined that Mathews was not a public officer because his position was created by administrative authority and not by statute, and the position was wholly subordinate and responsible to the administrator of the department. *Mathews*, 70 Nev. at 122-123, 258 P.2d at 983.

This Court reasoned that if the position was wholly subordinate and responsible to the administrator, the position was not created by law, the duties attached to the position had not been prescribed by law and the person holding the position was not independent in exercising their duties. *Id.* at 123, 258 P.2d at 983. As such, the position had not been invested with any portion of the sovereign functions of the government. *Id.*

NPRI correctly argues that "the only facts at issue in this appeal are the facts set forth in NPRI's Amended Complaint for Declaratory and Injunctive Relief." (Appellant's Opening Brief p. 4.) All that can be inferred from the Amended Complaint is that Neal's position as adjunct faculty is even more tenuous than the director in the *Mathews* case. There is no allegation that the adjunct position was created by law or that the position has constitutional responsibilities. "Adjunct" implies subordinate positions subject to modification or elimination. Nothing about

the term suggests permanency. Absent factual allegations to demonstrate that adjunct professors are constitutional officers, the most generous interpretation of the Amended Complaint is that Neal is a public employee, not a public officer.

(2) Adjunct professors do not exercise sovereign functions

NPRI also did not establish that Neal's position as an Adjunct Professor is one of a public officer under the second tenet, which states that duties of a public officer must be fixed by law and must involve an exercise of the sovereign functions of the state. *DR Partners*, 117 Nev. at 201, 18 P.3d at 1047. NPRI did not allege that Neal's duties were fixed by law and that they involved the exercise of the sovereign functions of the state. Nor could it because, even if NPRI had made these allegations, they would not save its claim as caselaw and statutory law make it clear that the Neal's position exercises no sovereign functions. Sovereign functions can only be exercised by public officers, not public employees. *See Kendall*, 38 Nev. at 229, 148 P. at 556; *Mathews*, 70 Nev. at 120–21, 258 P.2d at 983; *Eads*, 94 Nev. at 737, 587 P.2d at 41. And as previously explained, only the members of the Board of Regents are public officers for the NSHE System, and college or university presidents are considered public officers only for the limited purpose of the Ethics Law. *DR Partners*, 117 Nev. at 201, 18 P.3d at 1047; NRS 281A.182.

When addressing the issue of whether an NSHE employee who also serves as a legislator violates the separation of powers clause of the Nevada Constitution, the

Second Judicial District Court dismissed the Complaint. In the order of dismissal, the court analyzed the issue, deciding that Article 3, Section 1(1) does not prohibit all persons in one branch from exercising any function related to another branch and only those individuals exercising certain duties and functions could run afoul of the Nevada Constitution. The *French* court also stated:

“Not every employee in a branch is charged with these constitutional powers, duties and functions. Public employees, as distinguished from public officials or officers, do not exercise functions or powers of the state. See, *State ex rel. Kendall v. Cole*, 38 Nev. 215, 9, 148 P. 551, 553 (1915); *State ex rel. Mathews v. Murray*, 70 Nev. 116, 120-21, 258 P.2d 982, 983 (1953); *Eads v. City of Boulder City*, 94 Nev. 735, 737, 587 P.2d 39, 41 (1978). Public officers are the only persons who exercise the sovereign functions of state government. *Mathews*, 70 Nev. at 120-21, 258 P.2d at 983. This is because public employees have not been invested by the State with some portion of the powers, duties and functions of the government. *Mathews*, 70 Nev. at 120-21, 258 P.2d at 983; *Kendall*, 38 Nev. at 229, 148 P. at 553 (“To be an officer, one must be charged by law with duties involving the exercise of some part of the sovereign power of the state”).

“The case law describing public officials is consistent with the statutory law. NRS 281.005(1) states that a public officer is a person elected or appointed to a position which: (a) Is established by the Constitution or a statute of this State, or by a charter or ordinance of a political subdivision of this State; and (b) involves the continuous exercise, as part of the regular and permanent administration of the government, of a public power, trust or duty. NRS 281.005(1).

“Defendant [sic] French does not allege that Defendant Gansert’s position is established by the Nevada Constitution, by statute or is a public officer position. Defendant Gansert’s position as

Executive Director, External Relations is not a public office. **There are only two groups of people in NSHE that have been determined to be public officers: members of the Board of Regents and presidents of the universities, state colleges and community colleges.** *Univ. & Cmty. Coll. Sys. v. DR Partners*, 117 Nev. 195, 205, 18 P.3d 1042, 1048 (2001) (“the sovereign functions of higher education repose in the Board of Regents, which has been constitutionally entrusted to control and manage the University”); NRS 281A.182 (a president of a university, state college or community college within the NSHE system is a public officer for purpose of Chapter 281A).” (emphasis added)

French v. Gansert, at *6-7

The same result is required here. The Amended Complaint in this matter merely alleges that Neal is an adjunct professor. It does not allege that Neal is an officer or public official. It does not allege that she exercises constitutional or sovereign powers of the executive branch of the state as an adjunct professor. Moreover, the Amended Complaint is completely devoid of any factual allegations describing the job duties and responsibilities of Neal such that there is no factual basis from which to draw an inference that Neal falls into the category of public officer to which the constitutional prohibition stated in Article 3, §1, ¶1 would apply. Nor could it because, of course, Neal is neither a member of the Board of Regents nor the president of her institution who is considered a public officer only for the limited purpose of the Ethics Law.

Due to the absence of any allegations that Neal is a public official or that she exercises sovereign or constitutional powers because Neal holds no public office with the NSHE System, and because there are no factual allegations from which such

conclusions might reasonably be drawn, the District Court properly dismissed this case for NPRI's failure to state a claim.

3. Regardless of the basis of the court's decision, it is correct and should be affirmed

NPRI contends that the District Court improperly relied on the common law doctrine of compatibility in reaching its decision. In applying the common law doctrine of incompatible offices, the District Court relied on three prongs: (1) whether the dual roles are compatible based on the common law doctrine of incompatible offices; (2) whether the individual legislator's employment is with a state entity or a local political subdivision; and (3) if the roles are compatible and the individual works for a state entity, whether the position with the state entity is that of an employee or officer. (2 AA pp. AA000359-AA000376.)

As set forth above, this Court will decide the issue de novo and may look to the common law doctrine or other laws to affirm the District Court. There is, however, no basis for overturning the District Court's interpretation because the decision is supported by Nevada caselaw.

In its decision, the District Court relied on precedent to determine whether the offices are compatible. (2 AA p. AA0003602 (citing *State v. Second Jud. Dist. Ct. in & for Cnty. Of Washoe (Hearn)*, 134 Nev. 783, 787-88, 432 P.3d. 154, 159 (2018)). In citing to *Hearn*, the District Court relied on the theory of prohibiting one

branch of government from impinging on functions of another. *Id.* In certain circumstances, roles would be considered to impinge on functions of another and in certain roles, they would not. Importantly, as it relates to Neal, the District Court determined that her role as an adjunct professor would not impinge on the functions of her legislative position. Accordingly, regardless of whether the District Court applied the doctrine of incompatible offices, the same result would be required under existing Nevada case law.

Under the second prong of the District Court's decision, the court focused on whether the individual legislator's employment was with a state entity or local political subdivision. The NSHE institutions that employ Neal are state entities. There can be no dispute that this fact could have been determined without reliance on the common law doctrine of incompatible offices.

Finally, under the third prong, the District Court analyzed whether the position within the state entity is that of an employee or an officer. The findings under this prong are supported by Nevada caselaw and have been argued by Neal since the outset of this case. (2 AA pp. AA000369-AA000377.)

In sum, this Court could reach the same decision as the District Court with or without relying on the common law doctrine of incompatible offices. Nevada caselaw supports the same result and the District Court decision should be affirmed.

**C. The District Court properly denied NPRI's Motion to Strike
Defendants' Motions to Dismiss and Joinders**

NPRI argues that the District Court improperly denied its Motion to Strike multiple motions to dismiss and joinders. The court did not. NPRI contends that the motions run afoul of NRCP 12(g)(2), which states that a party that makes a motion under this rule may not make another motion under this rule raising a defense or objection that was available to the party but omitted from its earlier motion. But Neal complied with the rules. And NPRI's Motion to Strike her Motion to Dismiss is disfavored. The District Court properly disposed of the motions by denying NPRI's motion to strike and granting Neal's Motion to Dismiss. Doing so not only was supported by prior caselaw, but also ensured that procedure would not unduly delay a just, speedy, and inexpensive determination by the court. NEV. R. CIV. P. 1. For these reasons, the Court should affirm the District Court's decision to deny NPRI's Motion to Strike.

**1. Motions to Strike are not Proper Vehicles to Address
Motions to Dismiss and Joinders Thereto**

Motions to strike other motions are disfavored. *Afriat v. Afriat*, 61 Nev. 321, 117 P2d 83, 84 (1941). In fact, this Court has "repeatedly held that it is bad practice to file a motion to strike a motion." *Lamb v. Lamb*, 55 Nev. 437, 38 P.2d 659, 659

(1934) (citations omitted). Rather, the proper practice for the court is to deny the motion to strike and dispose of the motions as filed with the court. *Id.*

In this case, the District Court followed years of precedent regarding motions to strike other motions. Specifically, the District Court denied the Motion to Strike and addressed the merits of the motions. Given the longstanding guidance on this issue, the District Court properly denied NPRI's Motion to Strike.

2. Neal complied with the Rules

Striking Neal's Motion to Dismiss would have been improper. NRCP 12(g) states: "A motion under this rule may be joined with any other motion allowed by this rule." Under the heading "Limitation on Further Motions", Rule 12(g) also states: "Except as provided in Rule 12(h)(2) or (3), a party that makes a motion under this rule must not make another motion under this rule raising a defense or objection that was available to the party but omitted from its earlier motion." (emphasis added)

On September 28, 2020, Neal filed a Motion to Dismiss seeking dismissal under Rule 12(b)(5) for failure to state a claim under the asserted causes of action. (NA pp. NA00031-NA00065.) Within that Motion, Neal referenced her joinder to Miller's Motion to Dismiss for lack of standing filed on September 18, 2020. As noted by the District Court, each of the defendants that filed a motion to dismiss also filed a joinder to the other motions to dismiss.

The court granted all defendants’ motions to dismiss on standing under Rule 12(b)(1) and therefore did not consider the arguments presented under Rule 12(b)(5). The District Court stated “Standing is the controlling issue here and while other issues are discussed, standing is the determinative issue above all else.” (NA p. NA00088.) The court did not reach the merits of the case or any other issues raised by defendants. After remand, Neal renewed her motion to dismiss under Rule 12(b)(5)—something she was procedurally proper in doing.

a) Neal did not omit arguments from her earlier motion

In her September 28, 2020 Motion to Dismiss, Neal argued that NPRI could not state a claim for violation of the separation of powers clause under the Nevada Constitution pursuant to Rule 12(b)(5). (NA p. NA00035-NA00040.) Neal made the same argument under Rule 12(b)(5) in her June 30, 2022 Motion to Dismiss. (1 AA pp. AA000013-AA000039.) Rule 12(g) prohibits a party from filing a motion that raises a defense or objection that was available to the party but omitted from its earlier motion.⁹ Neal has consistently made the same arguments throughout this case. As a result, Rule 12(g) is not violated because there is no argument that was omitted from an earlier motion that Neal now seeks to assert.

⁹ It is also worthy of note that the Rule contemplates that a party can file more than one motion. In particular, the Rule allows a party to make “another motion” as long as it does not raise a defense or objection that was available to the party but omitted from its earlier motion.

**b) This Court decided the prior appeal only on standing, allowing
other issues to be considered on remand**

As set forth above, the District Court granted all defendants' motions to dismiss based on standing. The court did not reach the merits of the case or any other issues raised by defendants. (NA p. NA00088) ("Standing is the controlling issue here and while other issues are discussed, standing is the determinative issue above all else."); (NA p. NA00109) ("Consequently, having dismissed all Defendants based on NPRI's lack of standing, the Court enters a final judgment in favor of all Defendants based on NPRI's lack of standing, and the Court does not address the merits of NPRI's constitutional claims.") Additionally, a defense under NRCP 12(b)(5) may be asserted at any time. *Clark Cnty. Sch. Dist. v. Richardson Const., Inc.*, 123 Nev. 382, 395, 168 P.3d 87, 96 (2007). Because the case was dismissed for lack of standing and a party may bring a defense under Rule 12(b)(5) at any time, Neal properly asserted her motion under different grounds in a new motion. And even if this was procedurally improper as NPRI suggests, the District Court had the discretion to consider the motion as one for judgment on the pleadings and decide the matter on the merits to further the purposes of Rule 1, which ensures that the rules "should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action." NEV. R. CIV. P. 1. There is no reversible error.

V. CONCLUSION

Existing law in Nevada supports affirming the District Court's dismissal of this case for NPRI's failure to state a claim against Neal that her dual service as a Senator and Adjunct Professor violates the Nevada Constitution. Many courts have addressed the issue of whether *public employees*, as opposed to *public officers or officials*, exercise sovereign functions. Those courts have determined they do not. Moreover, the Second Judicial District Court already decided the specific issue regarding whether a legislator who works at an NSHE institution violates the separation of powers clause of the Nevada Constitution. It determined there is no violation. The same result should follow here. Neal does not exercise any sovereign functions and is neither a regent nor institution president. The dismissal should, therefore, be upheld in her favor.

Further, NPRI's reliance on the principle of party presentation is misplaced as courts have the latitude to apply the relevant law to the case once the parties have framed the issues. And because this case is reviewed *de novo*, this Court may choose to rely on the same doctrine that the District Court relied on or an entirely new theory altogether. Either way, it is clear that service as a legislator and an employee of an NSHE institution except that as a regent or university president does not violate the Nevada Constitution.

Finally, there is no error in the District Court's denial of NPRI's Motion to Strike. In fact, such motions are disfavored, and the proper course of action is to rule on the underlying motion which the District Court did. Importantly, Neal did not raise any defenses in her most recent Motion to Dismiss that were omitted in the prior Motion to Dismiss. Therefore, the rule does not apply, and the District Court denied NPRI's Motion to Strike. The judgment should be affirmed.

Dated August 11, 2023.

/s/ Berna L. Rhodes-Ford
BERNA L. RHODES-FORD
Nevada Bar No. 7879
General Counsel
Nevada State University
1300 Nevada State Dr., RSC 374
Henderson, Nevada 89002
Tel: (702) 992-2378
berna.rhodes-ford@nsc.edu

*Attorney for Respondent
Dina Neal*

CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5), and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14 pt. Times New Roman.

2. I further certify that this brief complies with the type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more, and contains 7,328 words.

3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where

///

///

///

///

///

the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 11th day of August, 2023.

/s/ Berna L. Rhodes-Ford
BERNA L. RHODES-FORD
Nevada Bar No. 7879
General Counsel
Nevada State University
1300 Nevada State Dr., RSC 374
Henderson, Nevada 89002
Tel: (702) 992-2378
berna.rhodes-ford@nsc.edu

Attorney for Respondent
Dina Neal

CERTIFICATE OF SERVICE

I certify that, on the date and time of the electronic service, a copy of the foregoing *Respondent Dina Neal's Opening Brief* was sent via electronic means to the following at their last known email addresses pursuant to NEFCR 9 and NRAP 25(c):

Deanna L. Forbush, Esq.
FOX ROTHSCHILD LLP

Email: forbush@foxrothschild.com
Attorneys for Appellant

Colleen E. McCarty, Esq.

FOX ROTHSCHILD LLP

Email: mccarty@foxrothschild.com
Attorneys for Appellant

Bradley Schrager, Esq.

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

Email: bschrager@wrslawyers.com
*Attorneys for Respondents Brittney
Miller and Selena Torres*

Daniel Bravo, Esq.

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

Email: dbravo@wrslawyers.com
*Attorneys for Respondents Brittney
Miller and Selena Torres*

Jonathan D. Blum, Esq.

WILEY PETERSEN

Email:
jblum@wileypetersenlaw.com
*Attorney for Respondent James
Ohrenschall*

Kevin C. Powers, Esq.

**LEGISLATIVE COUNSEL
BUREAU, LEGAL DIVISION**

Email: kpowers@lcb.state.nv.us
*Attorney for Intervenor-Respondent
Legislature of the State of Nevada*

Dated August 11, 2023

/s/ Edwin B. Maquinto

An employee of Office of General
Counsel, Nevada State University