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September 23, 2020

Sent via U.S. Mail and E-mail: kpowers@lcb.state.nv.us

Kevin C. Powers, General Counsel
Nevada Legislative Counsel Bureau, Legal Division
401 S. Carson Street
Carson City, NV 89701

Re: NPRI v. Cannizzaro, et al.; Eighth Judicial District Court Case No.: A-20-817757-C

Dear Mr. Powers:

Thank you for reaching out and for advising us of the Resolution of the Legislative Commission (“Resolution”), adopted September 18, 2020. Upon review of the Resolution and the statutes referenced therein, and in your email correspondence dated September 21, 2020, we respectfully disagree with the position of LCB Legal and are not amenable to the proposed stipulation and order.

As set forth in the Amended Complaint in *Nevada Policy Research Institute v. Nicole Cannizzaro et al.*, our client, the Nevada Policy Research Institute (“NPRI”), seeks to address the ongoing constitutional violations under Nevada Const. Art. 3, §1, ¶1 by the named Defendants, who are engaging in dual employment by simultaneously holding elected offices in the Nevada State Legislature and paid positions with the State of Nevada or local governments. We do not believe the suit implicates the official interests of the Legislature, rather it examines the personal decisions of individual lawmakers to engage in conflicted dual employment. Further, in addition to its references to the public policy surrounding “citizen Legislators,” NRS 281A.020 speaks at length regarding the duties of public officers to avoid conflicts between their private interests and those of the general public, which is what the instant lawsuit seeks to resolve. Accordingly, we can ascertain no official interest of the Legislature as a public body implicated by the instant litigation.

Further, the Resolution and your email appear to omit key language from NRS 218F.720 which precludes the Legislature’s intervention as a matter of right. NRS 218F.720(2)(b) states in full:



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2. If a party to any action or proceeding before any court, agency or officer:
 - (a) Alleges that the Legislature, by its actions or failure to act, has violated the Constitution, treaties or laws of the United States or the Constitution or laws of this State; or
 - (b) Challenges, contests or raises as an issue, either in law or in equity, in whole or in part, or facially or as applied, the meaning, intent, purpose, scope, applicability, validity, enforceability or constitutionality of any law, resolution, initiative, referendum or other legislative or constitutional measure, including, without limitation, on grounds that it is ambiguous, unclear, uncertain, imprecise, indefinite or vague, is preempted by federal law or is otherwise inapplicable, invalid, unenforceable or unconstitutional, the Legislature may elect to intervene in the action or proceeding by filing a motion or request to intervene in the form required by the rules, laws or regulations applicable to the action or proceeding. The motion or request to intervene must be accompanied by an appropriate pleading, brief or dispositive motion setting forth the Legislature's arguments, claims, objections or defenses, in law or fact, or by a motion or request to file such a pleading, brief or dispositive motion at a later time.

(Emphasis added.) Contrary to LCB Legal's analysis, NPRI interprets this statute to apply to challenges to the efficacy of a constitutional provision, as opposed to challenges regarding how a constitutional provision may be interpreted. To be clear, NPRI is not challenging the constitutional provision in question as it is written, NPRI is challenging each individual Legislators' decision to engage in dual employment and whether this is permissible pursuant to Nevada Const. Art. 3, §1, ¶1. NPRI does not believe the Legislature has an unconditional right to intervene in these specific circumstances.

Accordingly, should the Legislature wish to intervene in the litigation at issue, we respectfully request that a motion be filed, as contemplated under NRS 218F.720.

Sincerely,

FOX ROTHSCHILD LLP

/s/ Colleen E. McCarty

Colleen E. McCarty

cc: Client