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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 NICOLE J. CANNIZZARO, an individual engaging  
22 in dual employment with the Nevada State Senate  
23 and Clark County District Attorney; KASINA  
24 DOUGLASS-BOONE, an individual engaging in  
25 dual employment with the Nevada State Assembly  
26 and Clark County School District; JASON  
27 FRIERSON, an individual engaging in dual  
28 employment with the Nevada State Assembly and  
Clark County Public Defender; OSVALDO FUMO,  
an individual engaging in dual employment with the  
Nevada State Assembly and University of Nevada,  
Las Vegas; HEIDI SEEVERS GANSERT, an  
individual engaging in dual employment with the  
Nevada State Senate and University of Nevada  
Reno; GLEN LEAVITT, an individual engaging in  
dual employment with the Nevada State Assembly  
and Regional Transportation Commission;  
BRITTNEY MILLER, an individual engaging in  
dual employment with the Nevada State Assembly  
and Clark County School District; DINA NEAL, an

Case No.: A-20-817757-C

Dept. No.: I

**PLAINTIFF'S OPPOSITION TO  
MOTION TO DISMISS FILED BY  
DEFENDANT BRITTNEY MILLER,  
AND THE JOINDER THERETO  
FILED BY DEFENDANTS OSVALDO  
FUMO, HEIDI SEEVERS GANSERT,  
AND DINA NEAL<sup>1</sup>**

Date of Hearing: October 28, 2020

Time of Hearing: 9:00 a.m.

<sup>1</sup> On September 25, 2020, NPRI filed a Motion to Disqualify the Official Attorneys from Representing Defendants Osvaldo Fumo, Heidi Seevers Gansert and Dina Neal, which hearing is pending. The outcome of that motion, however, does not substantively impact the challenged counsels' Joinder to Defendant Brittney Miller's Motion to Dismiss Complaint, as the Joinder merely adopts and incorporates by reference therein the identical arguments.

1 individual engaging in dual employment with the  
2 Nevada State Assembly and Nevada State College;  
3 JAMES OHRENSCHALL, an individual engaging  
4 in dual employment with the Nevada State Senate  
5 and Clark County Public Defender; MELANIE  
6 SCHEIBLE an individual engaging in dual  
7 employment with the Nevada State Senate and Clark  
8 County District Attorney; TERESA BENITEZ-  
9 THOMPSON, an individual engaging in dual  
10 employment with the Nevada State Assembly and  
11 University of Nevada, Reno; JILL TOLLES, an  
12 individual engaging in dual employment with the  
13 Nevada State Assembly and University of Nevada,  
14 Reno; and SELENA TORRES, an individual  
15 engaging in dual employment with the Nevada State  
16 Assembly and Clark County School District,

17 Defendants.

18 Nevada Policy Research Institute (“NPRI”), by and through its attorneys of record, Deanna  
19 L. Forbush, Esq. and Colleen E. McCarty, Esq., of Fox Rothschild LLP, hereby files its Opposition  
20 to the Motion to Dismiss Complaint filed on September 18, 2020 by Defendant, Brittney Miller  
21 (“Defendant Miller”), and the Joinder incorporating the same arguments therein by reference filed on  
22 September 24, 2020 by Defendants Osvaldo Fumo, Heidi Seevers Gansert, and Dina Neal (the  
23 “Joinder Defendants”).

24 This Opposition is based on the following Memorandum of Points and Authorities, the  
25 papers and pleadings on file, and any oral argument the Court permits at the hearing of this matter.

26 Dated this 2nd day of October, 2020.

27 **FOX ROTHSCHILD LLP**

28 By: /s/ Deanna L. Forbush

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2  
3 **I.**

4 **INTRODUCTION**

5 Three words are conspicuously absent from Defendant Miller’s motion to dismiss:  
6 Separation of Powers. When the time is appropriate, this entire case will boil down to one primary  
7 determination by the factfinder and that is whether Defendant Miller’s dual employment with the  
8 Nevada State Legislature and the Clark County School District violates Nevada’s Separation of  
9 Powers doctrine, which expressly prohibits any one branch of government from encroaching on the  
10 functions of another. This is without question an issue of significant public importance, and as much  
11 is assumed by Defendant Miller in her motion. *See* Motion at 8:5-6. It is also a matter that can only  
12 be determined upon a future review of the factual evidence, which is entirely precluded at this stage  
13 of the litigation.

14 By way of the instant motion, Defendant Miller and the Joinder Defendants first argue that  
15 NPRI lacks standing to sue because it cannot show a particularized injury and otherwise fails to meet  
16 the public importance exception to the injury requirement, as set forth in *Schwartz v. Lopez*, 132  
17 Nev. 732, 743, 382 P.3d 886, 894 (2016), because it is not challenging a legislative appropriation or  
18 expenditure and it is otherwise unable to be considered an appropriate party. *See* Motion at 3:5-9.  
19 The Court obviously cannot make any of these key factual determinations without the parties putting  
20 forward evidence, which is fatal to a request for dismissal under all applicable legal standards.  
21 Indeed, the motion is rife with factual assumptions made by Defendant Miller including, but not  
22 limited to, that NPRI can show no specific injury for purposes of standing, that Defendant Miller  
23 does not receive compensation by way of legislative appropriation or expenditure, and that another  
24 party is in a better position than NPRI to bring the instant case, to name but a few. In fact, as shown  
25 herein, NPRI not only qualifies for the public-importance standing exception under *Schwartz v.*  
26 *Lopez*, it can articulate its own particularized injury, and, regardless, the constitutionality of the dual  
27 employment of Defendant Miller and her co-Defendants is a factual matter that clearly requires  
28 substantive adjudication.

1 Defendant Miller and the Joinder Defendants also argue, in the alternative, that NPRI's  
2 Amended Complaint must fail because the State or a political subdivision is not also named as a  
3 party defendant. As argued herein, the provisions of NRS Chapter 41 cited in the motion do not  
4 apply in the instant case because the case is not based on any alleged act or omission in furtherance  
5 of the Defendants' public duties or employment. On the contrary, Defendant Miller and her co-  
6 Defendants were sued solely as a result of their individual actions to hold simultaneous positions  
7 with the Nevada State Legislature and another branch of government, in violation of Article 3,  
8 Section 1 of the Nevada Constitution, and not in any official capacity that would constitute a  
9 circumstance under which an official government attorney would be permitted to provide a defense  
10 or the State or political subdivision itself is required to be named.

11 In sum, because the Court must assume to be true all facts alleged in the Amended Complaint  
12 when addressing the instant motion to dismiss, and NPRI has met its burden to set forth cognizable  
13 legal theories based on those facts, the strenuous debate over the merits of NPRI's Amended  
14 Complaint must be left for another day, and this case must be allowed to proceed forward in the  
15 normal course.

## 16 II.

### 17 FACTUAL ALLEGATIONS

18 The facts properly at issue with regard to the motion are those set forth in NPRI's Amended  
19 Complaint filed on July 28, 2020, a copy of which is attached hereto as **Exhibit 1** for ease of  
20 reference. In the interest of judicial and party economy, NPRI will not repeat and reallege those  
21 facts herein, except as necessary in support of the arguments that follow.

## 22 III.

### 23 STANDARD OF REVIEW

#### 24 A. NRCP 12(b)(5) Dismissals Are Subject to Rigorous Review.

25 A district court's decision to dismiss a complaint for failure to state a claim will be subject to  
26 a rigorous, de novo appellate review. See *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224,  
27 227, 181 P.3d 670, 672 (2008). A motion brought pursuant to NRCP 12(b)(5) may, in fact, only be  
28 granted if the claimant would be entitled to no relief under the facts set forth in the pleading. *Morris*

1 v. *Bank of America Nevada*, 110 Nev. 1274, 1277, 886 P.2d 454, 457 (1994) (citing *Edgar v.*  
2 *Wagner*, 101 Nev. 226, 227-28, 699 P.2d 110, 111-12 (1985)). Nevada remains a notice-pleading  
3 jurisdiction, where all that is required is for a pleading provide fair notice to the adverse party of the  
4 nature of the claims stated therein, and the basis or grounds for such claims. *Crucil v. Carson City*,  
5 95 Nev. 583, 585, 600 P.2d 216, 217 (1979); *see also Western States Constr. v. Michoff*, 108 Nev.  
6 931, 936, 840 P.2d 1220, 1223 (1992). And, “notice pleading” simply requires a claimant to set  
7 forth a general recitation of facts that support a cognizable legal theory. *See Liston v. Las Vegas*  
8 *Metropolitan Police Dept.*, 111 Nev. 1575, 1579, 908 P.2d 720, 723 (1995) (citing *Swartz v. Adams*,  
9 93 Nev. 240, 245, 563 P.2d 74, 77 (1977)). NPRI has clearly met this pleading standard.

10 **B. NRCP 12(b)(1) Dismissals Are Held to an Equally High Standard.**

11 The Supreme Court reviews dismissal of a complaint for lack of standing under the same  
12 rigorous, de novo standard as dismissal for failure to state a claim upon which relief may be granted.  
13 *See Citizens for Cold Springs v. City of Reno*, 125 Nev. 625, 629, 218 P.3d 847, 850 (2009).  
14 Defendant Miller acknowledges this as well. *See Motion at 4:1-5.* With regard to legal standing  
15 specifically, under Nevada law an action commenced by a real party in interest is not generally  
16 subject to dismissal. *See, e.g., El Rancho, Inc. v. First Nat. Bank of Nev.*, 406 F.2d 1205, 1209 (9th  
17 Cir. 1968). A real party in interest with standing to sue is one who possesses the right to enforce the  
18 claim and has a significant interest in the litigation. *Arguello v. Sunset Station, Inc.*, 127 Nev. 365,  
19 368, 252 P.3d 206, 208 (2011) (citation omitted). And, as such, it is axiomatic that if a party has  
20 standing to assert its claims, the court has subject matter jurisdiction to hear those claims. *See, e.g.,*  
21 *Neuse River Found., Inc. v. Smithfield Foods, Inc.*, 155 N.C.App. 110, 113, 574 S.E.2d 48, 51 (2002)  
22 (holding defendants’ standing argument implicates Rule 12(b)(1) (citation omitted).

23 According to the standards stated above, Defendant Miller and the Joinder Defendants are  
24 not entitled to dismissal of NPRI’s Amended Complaint, and their respective motion to dismiss and  
25 joinder thereto should each be denied in its entirety.

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IV.

**ARGUMENT**

**A. The Public-Importance Exception Grants NPRI Standing to Raise the Instant Constitutional Challenge.**

As the Supreme Court held in *Schwartz v. Lopez*, cases of significant public importance such as the instant matter enjoy an exception to the basic standing requirement of showing a particularized injury. *Schwartz*, 132 Nev. at 743, 382 P.3d at 894. Defendant Miller and the Joinder Defendants would argue that this recent holding creates only a “very narrow” exception, to which NPRI is not entitled. *See* Motion at 3:8. On the contrary, although the exception is identified as being narrow, the Supreme Court ultimately set forth three very clear criteria for the application of the exception, each of which applies to NPRI in the instant case.

***1. Significant Public Importance.***

First, for the public-importance standing exception to apply, the case must involve an issue of significant public importance. *Schwartz*, 132 Nev. at 743, 382 P.3d at 894 (citation omitted). The motion purposefully glosses over the first criteria by stating that, even if it is assumed to apply, NPRI fails to meet the other two criteria. *See* Motion at 8:5-6. NPRI addresses the obvious applicability of the other two below. The applicability—and significant importance—of the first criteria, however, cannot be overstated.

As the Supreme Court articulated in *Commission on Ethics v. Hardy*, 125 Nev. 285, 212 P.3d 1098 (2009), “states are not required to structure their governments to incorporate the separation of powers doctrine (citation omitted), but Nevada has embraced this doctrine and incorporated it into its constitution.” *Hardy*, 125 Nev. at 291, 212 P.3d at 1103. The Court further found that “[t]he purpose of the separation of powers doctrine is to prevent one branch of government from encroaching on the powers of another branch.” *Id.* (citation omitted). Finally, the Court articulated the true importance of the separation of powers doctrine in Nevada when it found that “[u]nlike the United States Constitution, which expresses separation of powers through the establishment of the three branches of government (citation omitted), Nevada’s Constitution goes one step further; it contains an express provision prohibiting any one branch of government from impinging on the

1 functions of another.” *Id.* (citing *Secretary of State v. Nevada State Legislature*, 120 Nev. 456, 466,  
2 93 P.3d 746, 753 (2004) (noting that Nevada’s separation of powers provision is contained in Article  
3 3, Section 1 of the Nevada Constitution and that separation of powers “works by preventing the  
4 accumulation of power in any one branch of government”)).

5 To the extent NPRI has alleged herein that Defendant Miller and her co-Defendants are  
6 violating Nevada’s Separation of Powers doctrine, i.e. the express constitutional provision  
7 prohibiting any one branch of government from encroaching on the other, by the engagement in dual  
8 employment with Nevada’s Legislature and another branch of government, the significant public  
9 importance of the factfinder making such a determination and imposing the appropriate remedy  
10 could not be more clear.

11 **2. Legislative Expenditure or Appropriation.**

12 Second, the public-importance standing exception requires that a case involve a challenge to  
13 a legislative expenditure or appropriation on the basis that it violates a specific provision of the  
14 Nevada Constitution. *Schwartz*, 132 Nev. at 743, 382 P.3d at 894 (citation omitted). The motion  
15 argues for denial of the application of the second criteria in the instant case by claiming that NPRI’s  
16 Amended Complaint focuses only on Defendant Miller’s salary as an employee of the Clark County  
17 School District. *See* Motion at 8:14-16; 9:17-19. This assertion is patently false.

18 The motion cites to certain paragraphs in the Amended Complaint for the contention that  
19 NPRI claims only that “taxpayer monies will be paid to Defendants” but does not “allege or  
20 challenge of [sic] *legislative appropriation or expenditure* in this action.” *See* Motion at 8:11-14  
21 (emphasis in original). In truth, the actual language in each operative Amended Complaint  
22 paragraph reads in pertinent part as follows:

23 5. If allowed to proceed with the dual employment stated herein,  
24 legislative expenditures or appropriations and taxpayer monies will be  
paid to Defendants in violation of Nevada Const. Art. 3, § 1, ¶ 1....

25 . . . .

26 28. Without this Court’s intervention, legislative expenditures or  
27 appropriations and taxpayer monies will be paid to Defendants in violation  
of Nevada Const. Art. 3, § 1, ¶ 1, and irrevocable harm and irreparable  
28 harm will occur to the rights provided under this provision of the Nevada  
Constitution.

1 See Amended Complaint at 3:11-13, 6:13-16 (emphasis added). NPRI trusts Defendant Miller and  
2 the Joinder Defendants were not intentionally seeking to mislead the Court and that their exclusion  
3 of the allegation of legislative expenditures or appropriations being made in violation of a specific  
4 provision of the Nevada Constitution, as required by *Schwartz v. Lopez*, is merely a drafting  
5 oversight. That said, NPRI obviously made the necessary allegation, and this Court may take  
6 judicial notice of the fact that Legislators are compensated by Legislative Department expenditure.

7 Specifically, Legislators are paid a minimum daily salary of \$130 for the first 60 days of a  
8 regular session and for up to 20 days of a special session. NRS 218A.630(1)(a) and (b); *see also*  
9 [https://www.leg.state.nv.us/General/AboutLeg/General\\_Short.html](https://www.leg.state.nv.us/General/AboutLeg/General_Short.html) (last visited Sept. 29, 2020).  
10 Legislators also receive a per diem allowance, paid each day the Legislature is in session, which is  
11 intended to cover, among other things, lodging, meals and incidental expenses. NRS 218A.635, *et*  
12 *seq.* While in session, Legislators are also entitled to allowances for communications, postage,  
13 stationery and travel. *Id.* And, while the Legislature is not in session, each Senator and Assembly  
14 member is entitled to receive a salary and the per diem allowance and travel expenses for each day  
15 of attendance at a conference, training session, meeting, seminar, or other gathering at which the  
16 Legislator officially represents the State or its Legislature. *Id.*

17 To the extent NPRI has alleged herein that Defendant Miller and her co-Defendants are  
18 compensated as a result of legislative expenditure or appropriation and that said compensation  
19 violates Article 3, Section 1 of the Nevada Constitution, the second factor for application of the  
20 public-importance standing exception is also clearly satisfied.

### 21 3. Appropriate Party.

22 Finally, for NPRI to be granted standing under the public-importance exception, it must  
23 show that there is no one better positioned to bring the instant action and that it is fully capable of  
24 advocating its position in court. *Schwartz*, 132 Nev. at 743, 382 P.3d at 894-95 (citation omitted).  
25 The pleading on file, coupled with the instant briefing, should more than satisfy the Court regarding  
26 NPRI's advocacy capabilities. The motion itself focuses only NPRI's ability to bring the instant  
27 case and, in so doing, primarily restates its arguments that NPRI cannot show a particularized injury  
28 to meet the basic requirement for standing. *See* Motion at 6:27-7:1, 11:6-7. NPRI addresses the

1 injury issue below, for purposes of completing the record, but respectfully asserts it is not otherwise  
2 an issue germane to the third prong of the public-interest exception analysis.

3 More problematic for Defendant Miller and the Joinder Defendants, however, is the  
4 misplaced reliance in their argument on two prior dual employment challenges brought at the behest  
5 of NPRI, i.e. *Pojunis v. Denis*, First Judicial District Court Case No. 11 OC 00394 (filed November  
6 30, 2011), and *French v. Gansert*, First Judicial District Court Case No. 17 OC 00231B (filed May  
7 1, 2017). *See* Motion at 4:8-5:22. The discussion in the motion of these cases, in fact, makes the  
8 argument for NPRI that it is an appropriate party. First and foremost, as these prior cases illustrate,  
9 NPRI is the only entity to challenge Legislators engaging in dual employment either directly or  
10 indirectly. Defendant Miller and the Joinder Defendants point to no other such litigation and,  
11 indeed, none exists. Additionally, the prior indirect litigation efforts undertaken by NPRI, through  
12 individual plaintiffs alleging an interest in the government position held by a specific Legislator,  
13 never received substantive adjudication. In *Pojunis v. Denis*, the district court dismissed the matter  
14 as moot upon the resignation from government employment by Defendant Denis. And, in *French v.*  
15 *Gansert*, the district court dismissed the matter pursuant to NRCP 19, having determined that joinder  
16 of other legislators engaging in dual employment was both necessary and unable to be accomplished  
17 by the individual plaintiff. It is not reasonably in dispute therefore that there is no one else in a  
18 better position than NPRI to bring this type of action and that NPRI is fully capable of advocating its  
19 position in the instant case.

20 In the alternative, Defendant Miller and the Joinder Defendants cite *Secretary of State v.*  
21 *Nevada State Legislature*, 120 Nev. at 473, 93 P.3d at 757, to advance the argument that the only  
22 “‘appropriate’ parties to cases claiming dual service of legislators in violation of the state’s  
23 constitutional separation of powers clause” are those individuals seeking the government positions  
24 held by such legislators. *See* Motion at 10:12-15. In light of the application of NRCP 19 in *French*  
25 *v. Gansert*, wherein the district court mandated joinder of all parties possibly subject to application  
26 of the Separation of Powers doctrine, NPRI respectfully requests this Court employ its prudential  
27 discretion to expand the application of the public-interest exception and permit NPRI to proceed  
28

1 where, as here, it has named all similarly situated Defendants.<sup>2</sup> This is necessary given the sheer  
2 number of Defendants named herein, which renders implausible if not impossible adherence to the  
3 requirement to procure individual plaintiffs capable of seeking the government positions held by  
4 each Legislator. This is also necessary where the Supreme Court speculates in *Secretary of State*,  
5 120 Nev. at 473, 93 P.3d at 757, that the Nevada Attorney General might pursue a quo warranto  
6 action as a means of challenging dual employment. The Attorney General, however, is a political  
7 figure unlikely to take on this bipartisan problem at the risk to members of his own party, and, in  
8 fact, no Attorney General has ever chosen to do so.

9 **B. NPRI's Organizational and Associational Injuries-in-Fact Further Confer**  
10 **Standing to Raise the Instant Constitutional Challenge.**

11 The motion also cites the holding in *Schwartz v. Lopez*, 132 Nev. at 743, 382 P.3d at 894, for  
12 the general standing requirement of an injury-in-fact, which it claims NPRI lacks. *See* Motion at  
13 6:19-7:4. On the contrary, although NPRI chose to assert standing based on the public-importance  
14 exception in its Amended Complaint, it is certainly not preclusive to NPRI also asserting standing  
15 based on its own organizational and associational injuries-in-fact.

16 For nearly thirty years, NPRI has been involved in litigation and other advocacy in support of  
17 its missions to defend transparency in government and challenge wasteful government spending. To  
18 advance these missions, NPRI uses a combination of research, litigation, advocacy, and public  
19 education. NPRI's research regularly includes filing state public records requests and reviewing the  
20 records obtained. By publicizing the results of its research, NPRI keeps the public informed about  
21 government officials, and in turn, deters violations of law.

22 In the instant case, Defendants' individual and collective violations of the Separation of  
23 Powers doctrine set forth in Article 3, Section 1 of the Nevada Constitution have caused NPRI to  
24 divert and expend its valuable resources specifically to challenge those violations, significantly  
25 impairing its ability to accomplish its stated missions. NPRI has had to challenge Defendants'

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26  
27 <sup>2</sup> The motion argues that "NPRI was under no obligation to sue thirteen sitting legislators all at once." *See* Motion at  
28 10:18-19. On this point, NPRI fully concurs. But NPRI also remains cognizant of the dismissal occasioned by the  
application of NRCP 19 in *French v. Gansert* and, without concession, addresses this argument to make a complete  
record.

1 violations because they are particularly harmful to NPRI due to its status as a nonprofit, nonpartisan  
2 organization with its unique resources, board of directors, and missions. Further, the time and  
3 resources NPRI has used to challenge Defendants' violations of the Separation of Powers doctrine  
4 were diverted from other legal projects and activities that NPRI would have otherwise engaged.  
5 Except for the expenses involved in preparing for this instant litigation, NPRI would have suffered  
6 the harm described even if it had not filed this case. In addition, NPRI has a specific interest in  
7 challenging Defendants' violations of the Separation of Powers doctrine because a number of its  
8 supporters are duly qualified, hold the job requirements for, and earnestly seek the paid positions  
9 with the state or local government held by Defendants. Defendants' constitutional violations,  
10 therefore, create immediate irreparable harm to the legally protectable interests of its supporters.

11 For all of these reasons, NPRI respectfully asserts it is entitled to pursue the instant case to its  
12 conclusion, regardless of whether the Court determines it is entitled to utilize the public-importance  
13 exception to obtain standing.

14 C. **NPRI's Amended Complaint Does Not Require Compliance With the Provisions**  
15 **of NRS Chapter 41.**

16 As a final matter, the motion argues that NPRI's Amended Complaint fails because it does  
17 not conform to the requirements of NRS 41.0337(2) to name the State or a political subdivision as a  
18 party defendant in certain actions brought against employees of the State. *See* Motion at 11:10-12.  
19 This argument is equally unavailing where NPRI has sued each Defendant individually, solely as a  
20 result of their individual actions to hold simultaneous positions with the Nevada State Legislature  
21 and another branch of government in violation of Article 3, Section 1 of the Nevada Constitution,  
22 and not in any official capacity. And, as such, the provision of NRS Chapter 41 cited by Defendant  
23 Miller and the Joinder Defendants simply does not apply.

24 Indeed, in a substantially similar situation, the Supreme Court ruled as recently as June 2020  
25 that certain State Legislators were not entitled to representation by Legislative Counsel Bureau  
26 attorneys, and thus there was no conflict of interest in their lawsuit against other State Legislators,  
27 because their action in challenging a piece of legislation could not be considered acting on the  
28 Legislature's behalf. *Cf. State of Nevada ex rel. Cannizzaro v. First Jud. Dist. Ct.*, 136 Nev. Adv.

1 Op. 34 (June 26, 2020). As this decision illustrates, the provisions of NRS Chapter 41 may only  
2 apply where Defendants are alleged to have been acting in their official capacities when sued. *Id.* at  
3 \*3.

4 **V.**

5 **CONCLUSION**

6 NPRI adequately pled cognizable claims for declaratory and injunctive relief, Defendant  
7 Miller and the Joinder Defendants are indisputably on notice of the nature of those claims, and NPRI  
8 should now be permitted to proceed with its substantive action in the normal course. NPRI  
9 respectfully requests this Honorable Court deny Defendant Miller's Motion to Dismiss Complaint,  
10 and the Joinder Defendants' Joinder thereto, on all asserted grounds.

11 Dated this 2nd day of October, 2020.

12 **FOX ROTHSCHILD LLP**

13  
14 By: /s/ Deanna L. Forbush

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21 Telephone: (702) 262-6899

22 Attorneys for Plaintiff

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1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCPC 5(b), I certify that I am an employee of Fox Rothschild LLP and that on  
3 this 2nd day of October, 2020, I caused the foregoing document entitled **PLAINTIFF’S**  
4 **OPPOSITION TO MOTION TO DISMISS FILED BY DEFENDANT BRITTNEY MILLER,**  
5 **AND THE JOINDER THERETO FILED BY DEFENDANTS OSVALDO FUMO, HEIDI**  
6 **SEEVERS GANSERT, AND DINA NEAL** to be served upon each of the parties, listed below, via  
7 electronic service through the Eighth Judicial District Court’s Odyssey E-File and Serve system.

8  
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13 *Heidi Seevers Gansert and Dina Neal*

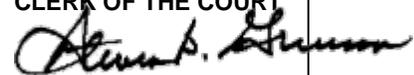
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19 *Attorneys for Defendants Brittney Miller,*  
20 *Kasina Douglas-Boone, and Selena Torres*

21  
22  
23 /s/ Natasha Martinez  
An Employee of Fox Rothschild LLP

# Exhibit 1



1 **ACOM**

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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 NICOLE J. CANNIZZARO, an individual engaging  
22 in dual employment with the Nevada State Senate  
23 and Clark County District Attorney; KASINA  
24 DOUGLASS-BOONE, an individual engaging in  
25 dual employment with the Nevada State Assembly  
26 and Clark County School District; JASON  
27 FRIERSON, an individual engaging in dual  
28 employment with the Nevada State Assembly and  
Clark County Public Defender; OSVALDO FUMO,  
an individual engaging in dual employment with the  
Nevada State Assembly and University of Nevada,  
Las Vegas; HEIDI SEEVERS GANSERT, an  
individual engaging in dual employment with the  
Nevada State Senate and University of Nevada  
Reno; GLEN LEAVITT, an individual engaging in  
dual employment with the Nevada State Assembly  
and Regional Transportation Commission;  
BRITTNEY MILLER, an individual engaging in  
dual employment with the Nevada State Assembly  
and Clark County School District; DINA NEAL, an

Case No.: A-20-817757-C

Dept. No.: II

**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 Assembly and Nevada State College;  
3 JAMES OHRENSCHALL, an individual engaging  
4 in dual employment with the Nevada State Senate  
5 and Clark County Public Defender; MELANIE  
6 SCHEIBLE an individual engaging in dual  
7 employment with the Nevada State Senate and Clark  
8 County District Attorney; TERESA BENITEZ-  
9 THOMPSON, an individual engaging in dual  
10 employment with the Nevada State Assembly and  
11 University of Nevada, Reno; JILL TOLLES, an  
12 individual engaging in dual employment with the  
13 Nevada State Assembly and University of Nevada,  
14 Reno; and SELENA TORRES, an individual  
15 engaging in dual employment with the Nevada State  
16 Assembly and Clark County School District,

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Defendants.

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12 NEVADA POLICY RESEARCH INSTITUTE (“NPRI”), by and through its attorneys of  
13 record, Deanna L. Forbush, Esq. and Colleen E. McCarty, Esq., of Fox Rothschild LLP, hereby  
14 alleges and complains against NICOLE J. CANNIZZARO, KASINA DOUGLASS-BOONE,  
15 JASON FRIERSON, OSVALDO FUMO, HEIDI SEEVERS GANSERT, GLEN LEAVITT,  
16 BRITTNEY MILLER, DINA NEAL, JAMES OHRENSCHALL, MELANIE SCHEIBLE, TERESA  
17 BENITEZ-THOMPSON, JILL TOLLES, and SELENA TORRES (collectively herein  
18 “Defendants”), as follows:

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**FACTS COMMON TO ALL CLAIMS**

1. NPRI files this Complaint for Declaratory and Injunctive Relief in the public interest  
to address the ongoing constitutional violations by Defendants, and each of them, for engaging in  
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.



1           9.       At all relevant times, Defendant Jason Frierson has simultaneously held the elected  
2 office of Nevada State Assemblyperson and the paid government position of Assistant Public  
3 Defender for the County of Clark, State of Nevada.

4           10.       At all relevant times, Defendant Osvaldo Fumo has simultaneously held the elected  
5 office of Nevada State Assemblyperson and the paid government position of Adjunct Instructor for  
6 the University of Nevada, Las Vegas.

7           11.       At all relevant times, Defendant Heidi Seevers Gansert has simultaneously held the  
8 elected office of Nevada State Senator and the paid government position of Executive Director,  
9 External Relations for the University of Nevada, Reno.

10          12.       At all relevant times, Defendant Glen Leavitt has simultaneously held the elected  
11 office of Nevada State Assemblyperson and the paid government position of Public Affairs Analyst  
12 for the Regional Transportation Commission.

13          13.       At all relevant times, Defendant Brittney Miller has simultaneously held the elected  
14 office of Nevada State Assemblyperson and the paid government position of Teacher for the Clark  
15 County School District.

16          14.       At all relevant times, Defendant Dina Neal has simultaneously held the elected office  
17 of Nevada State Assemblyperson and the paid government position of Adjunct Professor for the  
18 Nevada State College.

19          15.       At all relevant times, Defendant James Ohrenschall has simultaneously held the  
20 elected office of Nevada State Senator and the paid government position of Deputy Public Defender  
21 for the County of Clark, State of Nevada.

22          16.       At all relevant times, Defendant Melanie Scheible has simultaneously held the elected  
23 office of Nevada State Senator and the paid government position of Deputy District Attorney for the  
24 County of Clark, State of Nevada.

25          17.       At all relevant times, Defendant Teresa Benitez-Thompson has simultaneously held  
26 the elected office of Nevada State Assemblyperson and the paid government position of Adjunct  
27 Professor for the University of Nevada, Reno.  
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1 18. At all relevant times, Defendant Jill Tolles has simultaneously held the elected office  
2 of Nevada State Assemblyperson and the paid government position of Adjunct Professor for the  
3 University of Nevada, Reno.

4 19. At all relevant times, Defendant Selena Torres has simultaneously held the elected  
5 office of Nevada State Assemblyperson and the paid government position of Teacher for the Clark  
6 County School District.

### 7 **JURIDICTION AND VENUE**

8 20. The Court has jurisdiction over all parties, where Plaintiff conducts business in the  
9 County of Clark, State of Nevada, and all Defendants either reside in or carry out the duties of their  
10 elected offices throughout the State of Nevada, including in the County of Clark.

11 21. Venue is appropriate because the events giving rise to Plaintiff's causes of action  
12 have occurred, and continue to occur, in the County of Clark, State of Nevada.

### 13 **FIRST CAUSE OF ACTION** 14 **Violation of Separation of Powers** 15 **(Declaratory Relief)**

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

18 23. There is an actual controversy between Plaintiff, acting in the public interest, and the  
19 Defendants and each of them, as to the meaning of the Separation of Powers requirement of Nevada  
20 Const. Art. 3, §1, ¶1 and its application to Defendants and their conduct. Plaintiff has taken the  
21 position that Defendants are persons simultaneously holding elected offices in the Nevada State  
22 Legislature and paid positions with Nevada State or local governments in violation of the Separation  
23 of Powers requirement of Nevada Const. Art. 3, §1, ¶1. Upon information and belief, Defendants  
24 disagree with Plaintiff's position stated above.

25 24. Plaintiff seeks relief pursuant to NRS 30.010, *et seq.*, in the form of a declaration that  
26 Defendants simultaneously holding elected offices in the Nevada State Legislature and paid  
27 positions with Nevada State or local governments violates the Separation of Powers requirement of  
28 Nevada Const. Art. 3, §1, ¶1. A declaration resolving the actual controversy between Plaintiff and

1 Defendants will serve a useful purpose in settling the legal issues in this action and offering relief  
2 from uncertainty for all parties to this action.

3 25. It was necessary for Plaintiff to retain the services of an attorney to bring this cause  
4 of action, and it should be properly compensated therefore.

5 **SECOND CAUSE OF ACTION**  
6 **Violation of Separation of Powers**  
7 **(Injunctive Relief)**

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

10 27. Defendants are persons simultaneously holding elected offices in the Nevada State  
11 Legislature and paid positions with Nevada State or local governments in violation of the Separation  
12 of Powers requirement of Nevada Const. Art. 3, §1, ¶1.

13 28. Without this Court's intervention, legislative expenditures or appropriations and  
14 taxpayer monies will be paid to Defendants in violation of Nevada Const. Art. 3, §1, ¶1, and  
15 irrevocable and irreparable harm will occur to the rights provided under this provision of the Nevada  
16 Constitution.

17 29. There exists no adequate remedy at law to prevent the constitutional violation caused  
18 by Defendants simultaneously holding elected offices in the Nevada State Legislature and paid  
19 positions with Nevada State or local governments in violation of the Separation of Powers  
20 requirement of Nevada Const. Art. 3, §1, ¶1.

21 30. Plaintiff, acting in the public interest, is entitled to injunctive relief to stop and  
22 prevent the Separation of Powers violations by Defendants stated herein. The Court has the power  
23 to grant such relief, pursuant to its inherent ability to grant equitable relief and the provisions of  
24 NRS 33.010, *et seq.*

25 31. It was necessary for Plaintiff to retain the services of an attorney to bring this cause  
26 of action, and it should be properly compensated therefore.

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1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

3 1. For a declaration that Defendants simultaneously holding elected offices in the  
4 Nevada State Legislature and paid positions with Nevada State or local governments violates the  
5 Separation of Powers requirement of Nevada Const. Art. 3, §1, ¶1;

6 2. For an injunction against Defendants prohibiting each and every one of them from  
7 continuing to simultaneously hold elected offices in the Nevada State Legislature and paid positions  
8 with Nevada State or local governments in violation of the Separation of Powers requirement of  
9 Nevada Const. Art. 3, §1, ¶1;

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

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

12 Dated this 28th day of July, 2020.

13 **FOX ROTHSCHILD LLP**

14  
15 By: /s/ Deanna L. Forbush

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17 Nevada Bar No. 6646

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