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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.: XXIV

**PLAINTIFF'S MOTION FOR THE
COURT'S CLARIFICATION OF ITS
DECISION TO GRANT
DEFENDANTS' MOTIONS TO
DISMISS BASED ON PLAINTIFF'S
LACK OF STANDING**

ON ORDER SHORTENING TIME

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,

Defendants.

12 Plaintiff Nevada Policy Research Institute (“NPRI”), by and through its attorneys of record,
13 Deanna L. Forbush, Esq. and Colleen E. McCarty, Esq., of Fox Rothschild LLP, hereby submits its
14 Motion for the Court’s Clarification of Its Decision to Grant Defendants’ Motions to Dismiss Based
15 on Plaintiff’s Lack of Standing (“Motion for Clarification”), on Order Shortening Time.

16 The instant Motion is made and based on the following Memorandum of Points and
17 Authorities; the Declaration of Deanna L. Forbush, Esq. included therein; all pleadings and papers
18 already on file; and any oral argument the Court may permit at a hearing of this matter.

19 Dated this 1st day of December, 2020.

20
21 **FOX ROTHSCHILD LLP**

22
23 By: /s/ Deanna L. Forbush

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1 **ORDER SHORTENING TIME**

2 GOOD CAUSE APPEARING, it is hereby ORDERED that the time for hearing the above-
3 captioned **PLAINTIFF'S MOTION FOR CLARIFICATION OF DECISION TO GRANT**
4 **DEFENDANTS' MOTIONS TO DISMISS BASED ON LACK OF STANDING** will be
5 shortened and heard on the 17th day of December, 2020 at 9:00 am a.m./p.m., or as soon
6 thereafter as the matter may be heard.

7 Opposition by Defendants must be filed and served by December 7, 2020.

8 Reply by Plaintiff must be filed and served by December 14, 2020.

Dated this 1st day of December, 2020

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13 Respectfully submitted by:

14 **FOX ROTHSCHILD LLP**

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918 558 0AED EC64
Jim Crockett
District Court Judge

By: /s/ Deanna L. Forbush

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**DECLARATION OF COUNSEL IN SUPPORT OF MOTION FOR CLARIFICATION
ON ORDER SHORTENING TIME**

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

1. I am an attorney licensed to practice law in the State of Nevada, and I am a partner with Fox Rothschild LLP, attorneys for Plaintiff, Nevada Policy Research Institute (“NPRI”).

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

3. In the instant litigation, NPRI asserted standing pursuant to the public importance exception to the standing requirement to show particularized injury in order to seek injunctive and declaratory relief in the public interest. The extraordinary relief was specifically sought to address the alleged ongoing constitutional violations of the Separation of Powers requirement of the Nevada Constitution by 13 individually named Defendants, each of whom are engaging in dual employment by simultaneously holding elected offices in the Nevada State Legislature and paid positions with Nevada State or local government.

4. On November 18, 2020, the day prior to the scheduled hearings thereon, the Court issued its ruling via minute order on all pending motions, including the 4 pending motions to dismiss and 8 joinders thereto.¹ Therein, the Court specifically granted all motions to dismiss, and although not referenced, presumably all joinders thereto, based on a finding that, “Nevada Policy Research Institute clearly lacks standing to bring this suit and thus the Motion[s] to Dismiss must be GRANTED.”

5. The Court further found that “Nevada Policy Research Institute....does not make persuasive arguments regarding standing,” and that the Court “is not persuaded that Nevada Policy Research Institute comes within the recent Schwartz [public importance] exception.” The Court, however, did not indicate which factor or factors permitting standing to sue under the public importance exception set forth in *Schwartz v. Lopez*, 132 Nev. 732, 743, 382 P.3d 886, 894 (2016)

¹ The Court also denied NPRI’s motion to disqualify the official attorneys and granted the Nevada Legislature’s motion to intervene, but these decisions do not appear to be based on a finding regarding Plaintiff’s standing. To the extent the issue of standing was considered by the Court in rendering its decisions on these additional matters, NPRI respectfully requests the Court indicate same in any clarification given in response to the instant motion.

1 that NPRI failed to meet.

2 6. In light of the significant importance, for purposes of appeal, of knowing the Court's
3 basis for denying application of the public importance standing exception in the instant case, NPRI
4 brings its Motion for Clarification now, in the interest of both judicial and party economy. No
5 prevailing party has submitted a proposed order for review by NPRI, and no future hearings are
6 currently pending before the Court, so while time is of the essence, no prejudice will result if the
7 Court hears and ultimately grants NPRI's clarification request.

8 7. Further, as insufficient time exists for the Court to hear the instant motions and grant
9 the relief requested therein in the normal course, where the Court's retirement is imminent, NPRI
10 respectfully requests the Court provide its clarification on Order Shortening Time at the earliest
11 convenient opportunity, whether at the time of hearing of this matter or by additional minute order
12 issued in advance thereof.

13 8. Concurrently with submitting this Motion for Clarification to chambers, I caused a
14 copy to be served via email to counsel for Defendants. I will also ensure a copy of the signed Order
15 Shortening Time is served on all counsel immediately upon receipt, to provide Defendants the
16 appropriate time to file their oppositions, if any, to Plaintiff's request.

17 9. This Order Shortening Time is made in good faith and without dilatory motive.

18 I declare under penalty of perjury under the laws of the State of Nevada (NRS 53.045)² that
19 the foregoing is true and correct.

20 Dated this 1st day of December, 2020.

21 /s/ Deanna L. Forbush
22 DEANNA L. FORBUSH

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27 ² NRS 53.045. Use of unsworn declaration in lieu of affidavit or other sworn declaration. Any matter whose existence
28 or truth may be established by an affidavit or other sworn declaration may be established with the same effect by an
unsworn declaration of its existence or truth signed by the declarant under penalty of perjury, and dated, in substantially
the prescribed form.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **INTRODUCTION**

4 NPRI's request herein is both a simple and a respectful one. While NPRI had hoped the
5 Court would apply the public importance exception recognized by the Nevada Supreme Court in the
6 recent case *Schwartz v. Lopez*, to permit NPRI to pursue the instant litigation and ultimately obtain
7 the elusive determination of whether Defendants' dual employment violates Separation of Powers
8 clause of the Nevada Constitution, the Court did not agree with NPRI's analysis. NPRI fully
9 respects, and in no way seeks herein to challenge, that decision. NPRI does, however, wish to
10 appeal that decision at the first available opportunity and believes the Court's specific articulation of
11 its analysis of the factors set forth in *Schwartz v. Lopez*, which analysis would in turn be
12 incorporated into the final order of the Court, is both necessary and appropriate to afford complete
13 relief upon appellate review.

14 **II.**

15 **ARGUMENT**

16 **A. Standard for Relief.**

17 The Nevada Supreme Court explicitly recognizes motions for clarification as a procedurally
18 proper vehicle to seek explanation of a Court's prior order. *See, e.g. Bronneke v. Martin Rutherford*,
19 120 Nev. 230, 234, 89 P.3d 40, 43 (2004); *see also State v. Eighth Judicial District Court*, 116 Nev.
20 374, 377, 997 P.2d 126, 129 (2000). Clarification may also be sought under Rule 60 of the Nevada
21 Rules of Civil Procedure ("NRCP"). The Ninth Circuit Court of Appeals has affirmed a party's
22 ability to seek clarification under Rule 60.³ *See Earth Island Inst. v. Ruthenback*, 459 F.3d 954, 966
23 (9th Cir. 2006) (recognizing a party's ability to file a motion for clarification pursuant to Rule 60 in
24 order to determine the scope of an injunction). NRCP 60 also specifically provides that the Court
25 may correct its record on motion or on its own, with or without notice. NRCP 60(a).

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28 ³ The Nevada Supreme Court has repeatedly stated that decisions involving the Federal Rules of Civil Procedure provide persuasive authority for interpreting the NRCP. *See Nelson v. Heer*, 121 Nev. 832, 834, 122 P.3d 1252, 1253 (2005).

1 At this juncture, therefore, this Court has considerable discretion to revisit its November 18,
2 2020 minute order and to clarify the basis for its ruling stated therein to ensure the record is clear for
3 appellate purposes, in the interest of both judicial and party economy.

4 **B. The Court's Decision Requires Clarification Regarding the Basis for Finding**
5 **Plaintiff Lacked Standing to File the Instant Litigation.**

6 As all motions were summarily decided against NPRI in the Court's November 18, 2020
7 minute order, and the opposing parties had argued against NPRI's standing in varying ways, the
8 record as it currently stands is not clear as to which factor or factors for the application of the public
9 importance exception set forth in *Schwartz v. Lopez* the Court believes NPRI failed to sufficiently
10 allege in order to survive Defendants' motions to dismiss.

11 As the Supreme Court held in *Schwartz v. Lopez*, cases of significant public importance such
12 as the instant matter enjoy an exception to the basic standing requirement of showing a particularized
13 injury. *Schwartz*, 132 Nev. at 743, 382 P.3d at 894. Although the exception is identified as being
14 narrow, the Supreme Court ultimately set forth three clear criteria for the application of the
15 exception, each of which NPRI argued applied in the instant case.

16 First, for the public importance standing exception to apply, the case must involve an issue of
17 significant public importance. *Schwartz*, 132 Nev. at 743, 382 P.3d at 894 (citation omitted). Each
18 motion to dismiss appears to concede the application of this first factor. Second, the public
19 importance standing exception requires that a case involve a challenge to a legislative expenditure or
20 appropriation on the basis that it violates a specific provision of the Nevada Constitution. *Schwartz*,
21 132 Nev. at 743, 382 P.3d at 894 (citation omitted). NPRI argued it made the necessary allegation
22 and asked the Court to take judicial notice of the fact that Legislators are compensated by Legislative
23 Department expenditure. Some Defendants directly opposed NPRI's standing on this point, and
24 others did not. Finally, for a party to be granted standing under the public importance exception, it
25 must show that there is no one better positioned to bring the instant action and that it is fully capable
26 of advocating its position in court. *Schwartz*, 132 Nev. at 743, 382 P.3d at 894-95 (citation omitted).
27 NPRI argued it is the only entity to date to challenge Legislators engaging in dual employment as a
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1 violation of Separation of Powers. Again, some Defendants directly opposed NPRI's standing on
2 this point, and others did not.

3 Accordingly, to avoid any protracted delay resulting from the likelihood of disputed and
4 possibly even conflicting orders resulting from the Court's November 18, 2020 decision, NPRI
5 respectfully requests the Court clarify its determination regarding Plaintiff's standing at the earliest
6 available opportunity. Further, to facilitate timely and meaningful appellate review, NPRI requests
7 the Court find there is no just reason to delay and direct entry of final judgment as to the Defendants,
8 pursuant to NPCR 54(b).

9 **III.**

10 **CONCLUSION**

11 Based on the foregoing, NPRI hereby moves this Honorable Court to clarify its decision to
12 grant Defendants' motions to dismiss based on Plaintiff's lack of standing. Specifically, NPRI seeks
13 for appellate purposes, in the interest of both judicial and party economy, the Court's clear
14 articulation of why it found NPRI had not alleged facts in its Amended Complaint that conferred
15 standing to sue under the public importance exception set forth in *Schwartz v. Lopez*, 132 Nev. 732,
16 743, 382 P.3d 886, 894 (2016).

17 Additionally, NPRI requests the Court direct entry of final judgment as to all motions to
18 dismiss heard by the Court, pursuant to NRCP 54(b).

19 Dated this 1st day of December, 2020.

20 **FOX ROTHSCHILD LLP**

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Attorneys for Plaintiff
Nevada Policy Research Institute

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 1st day of December, 2020, I caused the foregoing document entitled **PLAINTIFF’S MOTION**
4 **FOR THE COURT’S CLARIFICATION OF ITS DECISION TO GRANT DEFENDANTS’**
5 **MOTIONS TO DISMISS BASED ON PLAINTIFF’S LACK OF STANDING** to be served upon
6 each of the parties, listed below, via electronic service through the Eighth Judicial District Court’s
7 Odyssey E-File and Serve system.

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Attorneys for Nevada Legislature

25 */s/ Natasha Martinez*
26 _____
27 An Employee of Fox Rothschild LLP
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1 **CSERV**

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3 DISTRICT COURT
CLARK COUNTY, NEVADA

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6 Nevada Policy Research
Institute, Plaintiff(s)

7 vs.

8
9 Nicole Cannizzaro, Defendant(s)

CASE NO: A-20-817757-C

DEPT. NO. Department 24

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11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District
13 Court. The foregoing Motion for Clarification was served via the court's electronic eFile
system to all recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 12/1/2020

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