



1 **ASTA**
2 DEANNA L. FORBUSH, ESQ.
3 Nevada Bar No. 6646
4 dforbush@foxrothschild.com
5 COLLEEN E. MCCARTY, ESQ.
6 Nevada Bar No. 13186
7 cmccarty@foxrothschild.com
8 **FOX ROTHSCHILD LLP**
9 1980 Festival Plaza Drive, Suite 700
10 Las Vegas, Nevada 89135
11 Telephone: (702) 262-6899
12 Facsimile: (702) 597-5503
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.: VIII

CASE APPEAL STATEMENT

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 Plaintiff Nevada Policy Research Institute (“NPRI” or “Appellant”), by and through its
19 attorneys of record, Deanna L. Forbush, Esq. and Colleen E. McCarty, Esq., of Fox Rothschild LLP,
20 hereby submits its Case Appeal Statement, pursuant to Rule 3(f) of the Nevada Rules of Appellate
21 Procedure, as follows:

22 **(A) The district court case number and caption showing the names of all parties to
23 the proceeding below:**

24 The district court case number and caption are stated above.

25 **(B) Identify the judge issuing the decision, judgment, or order appealed from:**

26 The Honorable Jim Crockett.

27 **(C) Identify each appellant and the name and address of counsel for each appellant:**

28 Nevada Policy Research Institute
Deanna L. Forbush, Esq.
Colleen E. McCarty, Esq.
Fox Rothschild LLP
1980 Festival Plaza Drive, Suite 700
Las Vegas, Nevada 89135
Attorneys for Appellant

1 **(D) Identify of each respondent and the name and address of appellate counsel, if**
2 **known, for each respondent (if the name of a respondent's appellate counsel is unknown,**
3 **indicate as much and provide the name and address of that respondent's trial counsel):**

4 The Respondents are Nicole J. Cannizzaro, Jason Frierson, Heidi Seevers Gansert, Glen
5 Leavitt, Brittney Miller, Dina Neal, James Ohrenschall, Melanie Scheible, Jill Tolles, and Selena
6 Torres. Defendants Teresa Benitez-Thompson, Osvaldo Fumo, and Kasina Douglas-Boone were
7 voluntarily dismissed below.

8 Berna L. Rhodes-Ford, General Counsel
9 Nevada State College
10 1300 Nevada State Drive, RSC 374
11 Henderson, Nevada 89002
12 Attorneys for Defendants Heidi Seevers Gansert,
13 Dina Neal and Jill Tolles

14 Gary A. Cardinal, Assistant General Counsel
15 University of Nevada, Reno
16 1664 North Virginia Street/MS 0550
17 Reno, Nevada 89557-0550
18 Attorneys for Defendants Heidi Seevers Gansert,
19 Dina Neal and Jill Tolles

20 Bradley Schragar, Esq.
21 Daniel Bravo, Esq.
22 Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP
23 3556 E. Russell Road, Second Floor
24 Las Vegas, Nevada 89120
25 Attorneys for Defendants Brittney Miller and Selena Torres

26 Jonathan D. Blum, Esq.
27 Wiley Petersen
28 1050 Indigo Drive, Suite 200B
Las Vegas, Nevada 89145
Attorneys for Defendant Jason Frierson, Nicole Cannizzaro,
and Melanie Scheible

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

1 **(E) Indicate whether any attorney identified above in response to question 3 or 4 is**
2 **not licensed to practice law in Nevada and, if so, whether the district court granted that**
3 **attorney permission to appear under SCR 42 (attach a copy of any district court order**
4 **granting such permission):**

5 Not applicable.

6 **(F) Indicate whether appellant was represented by appointed or retained counsel in**
7 **the district court, and whether appellant is represented by appointed or retained counsel on**
8 **appeal:**

9 Appellant was represented by retained counsel in the district court and is represented by the
10 same retained counsel on appeal.

11 **(G) Indicate whether appellant was granted leave to proceed in forma pauperis, and**
12 **the date of entry of the district court order granting such leave:**

13 Not applicable.

14 **(H) Indicate the date the proceedings commenced in the district court (e.g., date**
15 **complaint, indictment, information, or petition was filed):**

16 NPRI commenced proceedings in the district court by filing its Complaint on July 9, 2020.
17 NPRI filed the operative Amended Complaint thereafter on July 23, 2020.

18 **(I) Provide a brief description of the nature of the action and result in the district**
19 **court, including the type of judgment or order being appealed and the relief granted by the**
20 **district court:**

21 On July 23, 2020, NPRI filed the operative Amended Complaint for Declaratory and
22 Injunctive Relief in the public interest to address the ongoing constitutional violations, pursuant to
23 Nevada Const. Art. 3, §1, ¶1, by Defendants, and each of them, for engaging in dual employment by
24 simultaneously holding elected offices in the Nevada State Legislature and paid positions with
25 Nevada State or local governments. The Amended Complaint alleges that Defendants' dual
26 employment expressly violates the Separation of Powers requirement of Nevada Const. Art. 3, §1, ¶1
27 and undermines the ethics of their legislative service by creating conflicts, concentrating power, and
28 diluting the separation of powers.

1 On September 18, 2020, Defendant Brittney Miller filed a Motion to Dismiss Complaint
2 (“Miller MTD”). On September 24, 2020, Defendants Osvaldo Fumo, Heidi Seevers Gansert and
3 Dina Neal filed a Motion to Dismiss Pursuant to NRCP 12(b)(5) and NRCP 12(b)(6) (“NSHE
4 Defendants’ MTD”). On October 5, 2020, Defendant Jason Frierson filed a Motion to Dismiss
5 (“Frierson MTD”). On October 19, 2020, Defendant Nicole Cannizzaro filed a Motion to Dismiss
6 (“Cannizzaro MTD,” and with the Miller MTD, the NSHE Defendants’ MTD and the Frierson
7 MTD, collectively, the “Motions to Dismiss”). The Motions to Dismiss argued in pertinent part that
8 NPRI lacked standing to bring its claims because it failed to meet the public importance exception
9 set forth by this Court in *Schwartz v. Lopez*, 132 Nev. 732, 743, 382 P.3d 886, 894 (2016) or to
10 articulate its own particularized injury.

11 Thereafter, Defendants Fumo, Gansert and Neal joined the Miller MTD on September 24,
12 2019. On October 5, 2020, Defendant Frierson joined the Miller MTD and the NSHE Defendants’
13 MTD. On October 6, 2020, Defendant Torres joined the Miller MTD and Defendants Torres and
14 Miller collectively joined the NSHE Defendants’ MTD and the Frierson MTD. And, on October 19,
15 2020, Defendant Cannizzaro joined the Miller MTD and the NSHE Defendants’ MTD.

16 On September 25, 2020, following the appearance of in-house counsel with the Nevada
17 System of Higher Education (“NSHE”) on behalf of Defendants Osvaldo Fumo, Heidi Seevers
18 Gansert and Dina Neal (“NSHE Defendants”), NPRI filed Plaintiff’s Motion to Disqualify the
19 Official Attorneys from Representing Defendants Osvaldo Fumo, Heidi Seevers Gansert, and Dina
20 Neal (“Motion to Disqualify”). NPRI argued that the NSHE Defendants were sued solely because of
21 their alleged individual actions to engage in dual employment in violation of Article 3 of the Nevada
22 Constitution, and not in any official capacity that would constitute a circumstance under which an
23 official government attorney is permitted to provide their defense at the State’s expense.

24 On September 30, 2020, the Nevada Legislature moved to intervene in the matter below and
25 filed Nevada Legislature’s Motion to Intervene as Defendant (“Motion to Intervene”). Attorneys for
26 the Legislative Counsel Bureau argued on behalf of the Legislature that the Legislature had an
27 unconditional right and standing to intervene pursuant to NRCP 24(a) and (b) and NRS 218F.720.

28 All of the above-referenced Motions and Joinders were fully briefed and set for hearing on

1 Order Shortening Time on November 19, 2020. On November 18, 2020, without a hearing, the
2 Court issued a Minute Order deciding all pending motions. The trial court specifically granted the
3 Motions to Dismiss, and although not referenced, presumably all joinders thereto, based on a finding
4 that, “Nevada Policy Research Institute clearly lacks standing to bring this suit and thus the
5 Motions[s] to Dismiss must be GRANTED.” The Court further found that “Nevada Policy Research
6 Institute ... does not make persuasive arguments regarding standing,” and that the Court “is not
7 persuaded that Nevada Policy Research Institute comes within the recent Schwartz [public
8 importance] exception.” The Court, however, did not indicate which factor or factors permitting
9 standing to sue under the public importance exception set forth in *Schwartz v. Lopez* that NPRI failed
10 to meet.

11 The trial court further denied the Motion to Disqualify on the same basis. And, the trial court
12 granted the Motion to Intervene finding that the Nevada Legislature was entitled to intervention as a
13 matter of right and that in the event it was only entitled to permissive intervention, the trial court
14 would exercise its discretion to allow it to intervene permissively. The trial court directed the
15 prevailing parties to prepare the Orders.

16 In light of the significant importance, for purposes of the instant appeal, of knowing the trial
17 court’s basis for denying the application of the public importance exception in the instant case, on
18 December 1, 2020, NPRI brought Plaintiff’s Motion for the Court’s Clarification of its Decision to
19 Grant Defendants’ Motions to Dismiss Based on Plaintiff’s Lack of Standing on Order Shortening
20 Time (“Motion for Clarification”). At the time of filing, no prevailing party had timely submitted a
21 proposed order for review by NPRI or the district court, and no future hearings were pending.
22 Further, the imminent retirement of the Honorable Jim Crockett prompted NPRI to move
23 expeditiously.

24 Defendants opposed NPRI’s effort to seek clarification of the trial court’s decision and filed
25 the Joint Opposition to Plaintiff’s Motion for the Court’s Clarification of its Decision to Grant
26 Defendants’ Motions to Dismiss Based on Plaintiff’s Lack of Standing and Countermotion to
27 Dismiss all Remaining Defendants Based on Plaintiff’s Lack of Standing (“Joint Opposition and
28 Countermotion”). Throughout the course of the litigation, Defendants Glen Leavitt, James

1 Orenschall and Melanie Scheible intentionally evaded service and were not included within the
2 district court's disposition in the November 18 Minute Order. Service by publication of all three was
3 effective on December 10, 2020, although Defendant Scheible retained counsel who accepted
4 service on her behalf on December 9, 2020. In the Joint Opposition and Countermotion, filed
5 December 7, 2020, Defendants argued that the Court could not clarify orders that had not yet been
6 entered.

7 The following day, on December 8, 2020, the trial court entered the Omnibus Order Granting
8 Motion to Dismiss, and on December 9, 2020, it entered the Order Denying Plaintiff's Motion to
9 Disqualify Official Attorneys and the Order Granting Legislature's Motion to Intervene as
10 Defendants. On December 14, 2020, NPRI referenced the Orders in Plaintiff Nevada Policy
11 Research Institute's: (1) Notice of Non-Opposition to Joint Countermotion to Dismiss All
12 Remaining Defendants Based on Plaintiff's Lack of Standing and (2) Limited Reply in Support of
13 Motion for the Court's Clarification of its Decision to Grant Defendants' Motions to Dismiss Based
14 on Plaintiff's Lack of Standing ("Non-Opposition and Reply"), which again sought clarification of
15 the trial court's decision and entry of a final judgment as to all remaining Defendants pursuant to
16 NRCP 54(b).

17 On December 15, 2020, the trial court entered a Minute Order denying the Motion for
18 Clarification on the incorrect basis that "there is no order that has been signed and filed yet and thus
19 the motion is premature since one cannot clarify what does not exist." In its letter of December 16,
20 2020, which was left-side filed into the case, NPRI reminded the trial court that it entered all pending
21 orders on December 8 and 9, 2020, and requested that it either place the Motion for Clarification
22 back on calendar or correct the record and provide the actual basis for its denial of NPRI's request.
23 The following day, again by Minute Order, the trial court revised its basis for denying the Motion for
24 Clarification and stated, "... the Court is of the view that the issue of Standing needs no further
25 clarification and is entirely dispositive of the arguments raised by Plaintiff." The Court entered a
26 final order on the Motion for Clarification and Countermotion on December 28, 2020.

27 This appeal follows seeking this Court's guidance on the pure questions of law of: (i)
28 whether NPRI has standing to challenge Defendants' dual employment pursuant to the Separation of

1 Powers requirement of Nevada Const. Art. 3, §1, ¶1; (ii) whether the NSHE Defendants were
2 entitled to representation by the Official Attorneys; and (iii) whether the Nevada Legislature
3 qualified for intervention, either as a matter of right or permissively.

4 **(J) Indicate whether the case has previously been the subject of an appeal to or**
5 **original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court**
6 **docket number of the prior proceeding:**

7 Not applicable.

8 **(K) Indicate whether this appeal involves child custody or visitation:**

9 Not applicable.

10 **(L) Indicate whether this appeal involves the possibility of settlement:**

11 No. This matter seeks the Court's decision regarding pure questions of law and is not likely
12 to benefit from a settlement conference.

13 Dated this 11th day of January, 2021.

14 **FOX ROTHSCHILD LLP**

15
16 By: /s/ Deanna L. Forbush

17 DEANNA L. FORBUSH

18 Nevada Bar No. 6646

19 COLLEEN E. MCCARTY

20 Nevada Bar No. 13186

21 1980 Festival Plaza Drive, Suite 700

22 Las Vegas, Nevada 89135

23 Telephone: (702) 262-6899

24 Attorneys for Plaintiff

25 Nevada Policy Research Institute

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of Fox Rothschild LLP and that on
3 this 11th day of January, 2021, I caused the foregoing document entitled **CASE APPEAL**
4 **STATEMENT** to be served upon each of the parties, listed below, via electronic service through the
5 Eighth Judicial District Court’s Odyssey E-File and Serve system.

6 Berna L. Rhodes-Ford, General Counsel
7 Nevada State College
8 1300 Nevada State Drive, RSC 374
9 Henderson, Nevada 89002
10 Email: berna.rhodes-ford@nsc.edu
Attorneys for Defendants Osvaldo Fumo,
Heidi Seevers Gansert and Dina Neal

Gary A. Cardinal, Assistant General Counsel
University of Nevada, Reno
1664 North Virginia Street/MS 0550
Reno, Nevada 89557-0550
Email: gcardinal@unr.edu
Attorneys for Defendants Osvaldo Fumo,
Heidi Seevers Gansert and Dina Neal

11 Bradley Schragger, Esq.
12 Daniel Bravo, Esq.
13 Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP
14 3556 E. Russell Road, Second Floor
15 Las Vegas, Nevada 89120
16 Email: bschrager@wrslawyers.com
17 Email: dbravo@wrslawyers.com
Attorneys for Defendants Brittney Miller and
Selena Torres

Jonathan D. Blum, Esq.
Wiley Petersen
1050 Indigo Drive, Suite 200B
Las Vegas, Nevada 89145
Email: jblum@wileypetersenlaw.com
Attorneys for Defendant Jason Frierson and
Nicole Cannizzaro

18 Kevin C. Powers, General Counsel
19 Legislative Counsel Bureau, Legal Division
20 401 S. Carson Street
21 Carson City, Nevada 89701
22 Email: kpowers@lcb.state.nv.us
Attorneys for Nevada Legislature

23 */s/ Natasha Martinez*
24 _____
25 An Employee of Fox Rothschild LLP
26
27
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