



1 **ASTA**  
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14 Nevada Policy Research Institute

10 **DISTRICT COURT**  
11 **CLARK COUNTY, NEVADA**

13 NEVADA POLICY RESEARCH INSTITUTE, a  
14 Nevada domestic nonprofit corporation,

14 Plaintiff,

15 vs.

16 NICOLE J. CANNIZZARO, an individual engaging  
17 in dual employment with the Nevada State Senate  
18 and Clark County District Attorney; KASINA  
19 DOUGLASS-BOONE, an individual engaging in  
20 dual employment with the Nevada State Assembly  
21 and Clark County School District; JASON  
22 FRIERSON, an individual engaging in dual  
23 employment with the Nevada State Assembly and  
24 Clark County Public Defender; OSVALDO FUMO,  
25 an individual engaging in dual employment with the  
26 Nevada State Assembly and University of Nevada,  
27 Las Vegas; HEIDI SEEVERS GANSERT, an  
28 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; and SELENA  
12 TORRES, an individual engaging in dual  
13 employment with the Nevada State Assembly and  
14 Clark County School District,

15 Defendants,

16 and Legislature of the State of Nevada,

17 Intervenor-Defendant.

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 **1. Name of appellant filing this case appeal statement:**

23 Nevada Policy Research Institute

24 **2. Identify the judge issuing the decision, judgment, or order appealed from:**

25 The Honorable Jessica K. Peterson.

26 **3. Identify each appellant and the name and address of counsel for each appellant:**

27 Appellant is Nevada Policy Research Institute.

28 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           **4. Identity 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           Respondents are Brittney Miller, Dina Neal, James Ohrenschall, Selena Torres, and the  
5 Legislature of the State of Nevada.

6           Berna L. Rhodes-Ford, General Counsel  
7 Nevada State College  
8 1300 Nevada State Drive, RSC 374  
9 Henderson, Nevada 89002  
Attorney for Defendant, Dina Neal

10          Bradley Schragar, Esq.  
11 Royi Moas, Esq.  
12 Daniel Bravo, Esq.  
13 Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP  
14 3556 E. Russell Road, Second Floor  
Las Vegas, Nevada 89120  
Attorneys for Defendants Brittney Miller and Selena Torres

15          Jonathan D. Blum, Esq.  
16 Wiley Petersen  
17 1050 Indigo Drive, Suite 200B  
Las Vegas, Nevada 89145  
Attorneys for Defendant James Ohrenschall

18          Kevin C. Powers, General Counsel  
19 Legislative Counsel Bureau, Legal Division  
20 401 S. Carson Street  
Carson City, Nevada 89701  
Attorneys for Legislature of the State of Nevada

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

25           Not applicable.

26           **6. Indicate whether appellant was represented by appointed or retained counsel in the**  
27 **district court:**

28           Retained counsel represented Appellant in the district court.

1           **7. Indicate whether appellant is represented by appointed or retained counsel on**  
2 **appeal:**

3           Retained counsel represents Appellant on appeal.

4           **8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the**  
5 **date of entry of the district court order granting such leave:**

6           Not applicable.

7           **9. Indicate the date the proceedings commenced in the district court (e.g., date**  
8 **complaint, indictment, information, or petition was filed):**

9           NPRI filed its Amended Complaint for Declaratory and Injunctive Relief, the second  
10 dismissal of which is the subject of the current appeal, on July 28, 2020.

11           **10. Provide a brief description of the nature of the action and result in the district court,**  
12 **including the type of judgment or order being appealed and the relief granted by the district**  
13 **court:**

14           Appellant, NPRI, filed the underlying Amended Complaint for Declaratory and Injunctive  
15 Relief (“Amended Complaint”) in the public interest to address the ongoing constitutional violations  
16 pursuant to Nevada Const. Art. 3, §1, ¶1, by Defendants, and each of them, for engaging in dual  
17 employment by simultaneously holding elected offices in the Nevada State Legislature and paid  
18 positions with Nevada State or local governments. Art. 3, §1, ¶1 prohibits those “persons charged  
19 with the exercise of powers properly belonging to one” branch of government from “exercising any  
20 functions appertaining to either of the others.” The Amended Complaint alleges that Defendants’  
21 dual employment expressly violates the Separation of Powers requirement of Nevada Const. Art. 3,  
22 §1, ¶1 and undermines the ethics of their legislative service by creating conflicts, concentrating  
23 power, and diluting the separation of powers.

24           The Honorable Jim Crockett initially dismissed the district court litigation on December 8,  
25 2020, based on a finding that NPRI lacked standing to bring the lawsuit. NPRI appealed the district  
26 court’s first dismissal, and the Supreme Court reversed and remanded the matter on April 21, 2022,  
27 after electing to apply the public-importance exception and confer standing on NPRI, finding NPRI  
28 is an appropriate party and the issue in this case implicates separation of powers under the Nevada

1 Constitution, is likely to recur, and is of such significant public importance as to require resolution  
2 for future guidance.

3       Upon remand, the four (4) remaining Defendants, whom the district court identified as either  
4 an educator or a public defender, filed motions to dismiss and joinders thereto, seeking a second  
5 dismissal of the litigation on various procedural grounds. NPRI sought to strike the motions to  
6 dismiss and joinders as successive and impermissible. Two Defendants also sought to have their  
7 claims severed. The district court denied the motion to strike substantively and denied the motion to  
8 sever as moot, but granted the motions to dismiss and joinders thereto, finding the allegations in  
9 NPRI's Amended Complaint insufficient to establish the elements of a claim for relief. In lieu of  
10 addressing the specific arguments of the parties, the Honorable Jessica K. Peterson now presiding,  
11 made a *sua sponte* merits determination based on the legal conclusion that Nevada has no specific  
12 constitutional or statutory prohibition against dual public employment and, thus, required the  
13 evaluation of three (3) factors, inclusive of the common law doctrine of "incompatible offices,"  
14 whether the executive branch employment is with a state entity or local political subdivision, and, if  
15 the employment is with a state entity, whether the position is that of an employee or an officer.

16       Based on its analysis of the factors it identified, the district court held that: (1) no officer or  
17 employee of a state or local government may also serve as a state legislator if the roles are not  
18 compatible, and it is the purview of the court to determine compatibility; (2) those employed by local  
19 government entities are not a part of the state executive branch and therefore may serve in the  
20 legislative branch providing the roles are compatible; and (3) public officers of the state executive  
21 branch may not serve in the legislature; however, those who are public employees may, providing  
22 the roles are compatible. Applying these holdings to dismiss the remaining Defendants, then, the  
23 district court first found that there is no common law incompatibility issue for an individual to be  
24 employed as a county public school teacher, a public defender, or a professor at a state college and  
25 simultaneously serve as a state legislator, as there is no conflict between the positions and no  
26 prejudice suffered by NPRI based on the dual employment. Further, the district court determined  
27 Nevada's separation-of-powers clause does not apply to an employee of local political subdivision  
28 who does not hold an incompatible dual position, or to an employee of a state entity who does not

1 exercise a sovereign function of the executive branch.

2 This appeal of the district court's final judgment dismissing NPRI's Amended Complaint  
3 follows on the pure question of law now ripe for appellate determination of whether Defendants'  
4 dual employment violates Nevada's separation-of-powers clause, Nev. Const. Art. 3, § 1(1).

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

8 This case has previously been the subject of an appeal in Supreme Court Docket No. 82341.

9 **12. Indicate whether this appeal involves child custody or visitation:**

10 Not applicable.

11 **13. Indicate whether this appeal involves the possibility of settlement:**

12 No. This matter seeks to enforce a public official's compliance with Nevada's separation-of-  
13 powers clause and will not benefit from a settlement conference.

14 Dated this 6th day of January, 2023.

15 **FOX ROTHSCHILD LLP**

16  
17 By: /s/ Deanna L. Forbush

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26 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 6th day of January, 2023, the foregoing document entitled **CASE APPEAL STATEMENT** was  
4 caused to be served upon each of the parties, listed below, via electronic service through the Eighth  
5 Judicial District Court’s Odyssey E-File and Serve system.  
6

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21 *Selena Torres*

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22 */s/ Deborah L. Pressley*  
23 \_\_\_\_\_  
24 An Employee of Fox Rothschild LLP  
25  
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27  
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