In the
Supreme Court of the State of Nevada

NEVADA POLICY RESEARCH INSTITUTE, a Nevada domestic nonprofit corporation,

Appellant,

vs.

NICOLE J. CANNIZZARO, an individual engaging in dual employment with the Nevada State Senate and Clark County District Attorney; KASINA DOUGLASS-BOONE, an individual engaging in dual employment with the Nevada State Assembly and Clark County School District; JASON FRIERSON, an individual engaging in dual 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

Case No. 82341
District Court Case No.:
A-20-817757-C

RESPONDENTS BRITTNEY MILLER, SELENA TORRES, JASON FRIERSON, NICOLE CANNIZZARO, AND MELANIE SCHEIBLE'S JOINT ANSWERING BRIEF

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 individual engaging in dual employment with the Nevada State Assembly and Nevada State College; JAMES OHRENSCHALL, an individual engaging in dual employment with the Nevada State Senate and Clark County Public Defender; MELANIE SCHEIBLE an individual engaging in dual employment with the Nevada State Senate and Clark County District Attorney; TERESA BENITEZTHOMPSON, an individual engaging in dual employment with the Nevada State Assembly and University of Nevada, Reno; JILL TOLLES, an individual engaging in dual employment with the Nevada State Assembly and University of Nevada, Reno; and SELENA TORRES, an individual engaging in dual employment with the Nevada State Assembly and Clark County School District,

Respondents.

RESPONDENTS BRITTNEY MILLER, SELENA TORRES, JASON FRIERSON, NICOLE CANNIZZARO, AND MELANIE SCHEIBLE'S JOINT ANSWERING BRIEF

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N.R.A.P. 26.1 DISCLOSURE

Pursuant to N.R.A.P. 26.1, the undersigned counsel of record certifies that there are no persons or entities as described in N.R.A.P. 26.1(a) that must be disclosed.

DATED this 22nd day of July, 2021.

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OBJECTION TO APPELLANT'S ROUTING STATEMENT

Appellant, the Nevada Policy Research Institute ("NPRI" or "Appellant"), conflates merits issues with the questions actually on appeal in this matter. The district court dismissed the Amended Complaint below for lack of standing, pursuant to this Court's rule in *Schwartz v. Lopez*, 132 Nev. 732, 382 P.3d 886 (2016). NPRI assigns error to that decision on appeal, as well as to the resolution of two other of its pre-answer motions dealing with straightforward matters—a grant of intervention to the Nevada Legislature supported by a lengthy order, and the denial of a motion to disqualify the attorneys representing those Respondents who are employees of the Nevada System of Higher Education ("NSHE"). As a simple matter of error correction—and because none of the enumerated N.R.A.P. 17 categories require retention by the Nevada Supreme Court—the matter is presumptively assigned to the Court of Appeals.

It is certainly within the purview of this Court to retain or assign the present matter, but it is important to identify specifically the questions under review in this appeal, the nature of none of which exclude assignment to the Court of Appeals. If the Court determines

that NPRI's plea to extend and revise the *Schwartz* exception to Nevada's standards for standing is, indeed, a matter of constitutional first impression warranting retention by the High Court, that is its prerogative, but that would elevate every such contention to that status, which cannot be the appropriate meaning of N.R.A.P. 17(a)(11), 17(a)(12), for that matter.

I. INTRODUCTION

This appeal, at least as far as concerns Respondents, Brittney Miller, Selena Torres, Jason Frierson, Nicole Cannizzaro, and Melanie Scheible (collectively, "Respondents"), raises a single discrete issue: Has NPRI established standing to proceed with its claims in district court? There are no substantive merits before the Court, and no other questions are appropriate.

It is not debatable that NPRI, as a litigant itself, does not meet the longstanding requirement that it demonstrate particularized harm stemming from an alleged constitutional violation, beyond that of any ordinary taxpayer. Indeed, NPRI does not make this assertion. Its only avenues of recourse on appeal, therefore, are either to establish that the district court incorrectly ruled that it also does not have standing pursuant to the public-interest exception announced by this Court in *Schwartz*, or to persuade this Court to extend and revise the *Schwartz* exception to include the claims here. It can do neither.

The district court's order of dismissal is directly on point, both in its findings and conclusions. Joint Appendix ("JA"), at 539-556. NPRI cannot meet the elements of the *Schwartz* exception to standing rules—

even if one were to grant, *arguendo,* the public importance prong—as it neither challenges a legislative expenditure or appropriation on the basis that it violates a specific constitutional provision, and NPRI is not, itself, the appropriate party to bring this litigation. In its Opening Brief, NPRI mischaracterizes the express requirements of both those prongs, and its plea for this Court to extend the *Schwartz* exception beyond its current bounds is not coherent as a matter of legal reasoning. The district court's order should be affirmed in its entirety.

II. ARGUMENT

A. This Court Will Not Reach The Underlying Merits Of An Appeal Situated In This Manner

Zeal is an admirable trait; zealotry is less so. It is flatly inconceivable to credit NPRI's suggestion that this Court should pronounce upon the merits of its appeal at this stage of the litigation, and the notion should be rejected out of hand. No defendant has filed an answer yet. No record exists beyond that supporting the dismissal of NPRI's claims for lack of standing. No ruling has been made, or even indicated, in any order of the district court, touching upon any aspect of the merits of Appellant's causes of action. NPRI has filed no suit that falls within the extremely narrow categories of matters for which this

Court will exercise original jurisdiction. There is, in short, nothing for this Court to review at present apart from the question of standing.

If, in fact, the issues in this case are as important to a functioning state government as NPRI maintains they are, there is all the more reason for this Court to await upon an appropriately brought and maintained lawsuit, seen to its conclusion by a district court, complete with findings and conclusions pertinent to the circumstances of any individual defendant. Apparently, NPRI would prefer to stand upon homilies and press releases than to undertake what a case of this nature requires—individual plaintiffs with legally-protected interests sufficient to establish standing to sue; specific, fact-based inquiries, developed fully in adversarial proceedings, regarding the circumstances of Respondents' functions as employees; and an application of the constitutional provision at issue, in keeping with history, custom, and legal reasoning, to the resultant findings. For a think-tank ostensibly concerned with constitutional propriety, its notion of due process in this lawsuit is remarkably deficient.

Questions of dual service require intensive development of facts in specific circumstances, and resolution turns on issues unique to each

plaintiff and defendant. S*ee State v. Evans*, 735 P.2d 29, 33 (Utah 1987) (holding that the constitutionality of simultaneous service in two branches requires an examination of the "nature and scope" of the respective job duties). This Court quoted *Evans* approvingly on this point in *Heller v. Legislature*, 120 Nev. 456, 467, 93 P.3d 746, 754 (2004), directing that an action of this nature should be one "where a full record can be developed regarding the nature and scope of the [defendants'] employment duties." This is precisely *because* of the particular language of Article III, Section 1 of the Nevada Constitution. That provision does not say, as NPRI would have it, that no person may exercise functions *relating* to multiple branches of government and does not even, by its express terms, bar public employment by a legislator. *See, e.g.*, Op. Br., at 7, 8. What Article III, Section 1 does say is that "no persons charged with the exercise of powers properly belonging to one of these departments shall exercise any functions, appertaining to either of the others." Nev. Const. art. III, § 1 (emphasis supplied). NPRI, and presumably any other litigant raising a dual-employment claim, must wrestle, finally, with what it means for a particular job function to

"appertain" to a particular governmental branch.[1] It is not sufficient to state merely that Respondents Miller and Torres, for example, are employed as educators in public or charter schools and have therefore violated the Nevada Constitution; NPRI must prove that precise job functions a legislator-cum-public employee exercises belong, as a matter of constitutional right, to another branch of government and cannot be exercised lawfully by a legislator.[2] It must show, in this Court's words, that the employee in question is exercising "sovereign power" reserved explicitly to another branch. *Heller*, 120 Nev. at 472. Furthermore, the employment of a legislator in a political subdivision of the state, for example, or indirectly through a contract with a board or agency of the

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[1] *Merriam-Webster.com Dictionary*, "Appertain" (Merriam-Webster, https://www.merriam-webster.com/dictionary/appertain) (Last Accessed July 15, 2021).

[2] As an illustration, in a previous case brought by an individual plaintiff and represented by legal counsel for NPRI, the defendant in *Pojunis v. Denis*, 130 Nev. 1231 (2014) (unpublished; offered here only for purposes of example, not for the binding or persuasive nature of any aspect of that decision), former state senator Moises Denis, was a computer technician performing I.T. functions for offices in the executive branch. The appeal in that matter was mooted before final resolution, but the central question in that action would not have been whether he was employed by a public entity—clearly he was—but rather, under the Nevada Constitution, whether the functions of a computer technician were of a nature such that they <u>appertained</u> solely to a single, co-ordinate branch of state government.

state, raises further distinguishing and constitutionally-germane issues that must be fleshed out in any legal proceeding before any judgment may be had or any rule pronounced. *See* 2004 Nev. Op. Att'y Gen. No. 03 (Mar. 1, 2004). All of this is entirely commonplace civil and constitutional procedure, with which NPRI apparently wishes to dispense summarily.

The Nevada Supreme Court does not issue advisory opinions, no matter how badly a particular litigant wants their questions answered. Nev. Const. art. VI, § 4; *Applebaum v. Applebaum*, 97 Nev. 11, 12, 621 P.2d 1110, 1110 (1981) ("This court will not render advisory opinions on moot or abstract questions."); *Personhood Nevada v. Bristol*, 126 Nev. 599, 603, 245 P.3d 572 (2010). The cases NPRI cites in urging the Court to reach down and resolve the lawsuit below on its merits do not provide a legitimate basis to do so. *Valdez-Jimenez v. District Court*, 136 Nev. 155, 460 P.3d 976 (2020), dealt with exceptions to the mootness doctrine in an extraordinary writ proceeding, not with incomplete cases lacking a judgment on the merits, as here, and there was no question that petitioners there had standing to assert their claims. Furthermore, the Court in *Valdez-Jimenez* had a record before it that permitted proper

appellate review. In *Archon Corp. v. District Court*, 133 Nev. 816, 407 P.3d 702 (2017), not only was the proceeding, again, one of an extraordinary writ, but the Court declined to exercise its prerogative—rarely, if ever, exercised, in any event—to issue an advisory mandamus ruling. Pursuant to the discussion in *Archon Corp.*, not only is the present matter not in the nature of mandamus, it is not the kind of issue that is likely to evade appellate review after final judgment below. In that case, just as in this one, this Court recognized that if it is to "resolve such an important issue of law…" it requires "a well-developed district court record, including legal positions fully argued by the parties and a merits-based decision by the district court judge." *Archon Corp.*, 133 Nev. at 823. In other words, *Archon Corp.* argues directly *against* NPRI's position in its brief.

The standing question is all this Court can and should resolve at the present time. The remainder of NPRI's arguments regarding the merits of its position in the Opening Brief may be discarded as irrelevant.

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B. NPRI Did Not Establish That It Meets The Elements Of The *Schwartz* Exception to Nevada's Standing Requirements

In Nevada, the fundamental requisite for bringing a lawsuit is that a party must show a personal, particularized injury and not merely a general interest that is common to all members of the public. *See, e.g., Doe v. Bryan*, 102 Nev. 523, 525-26, 728 P.2d 443, 444-45 (1986); *Blanding v. City of Las Vegas*, 52 Nev. 52, 69, 280 P. 644, 648 (1929). While Nevada state courts do not have a strict requirement of federal constitutional Article III standing, "Nevada has a long history of requiring an actual justiciable controversy as a predicate to judicial relief." *Doe*, 102 Nev. at 525. As stated, there are no grounds for arguing that NPRI meets this basic standard, and indeed it does not so argue. Its approach is, instead, to claim that the district court erred in ruling that NPRI did not meet the three prongs of the *Schwartz* exception to the particularized injury requirement.

In *Schwartz*, this Court recognized, for the first time, "an exception to this injury requirement in certain cases involving issues of significant public importance."

> Under this public-importance exception, we may grant standing to a Nevada citizen to raise constitutional

> challenges to legislative expenditures or appropriations without a showing of a special or personal injury. We stress, as have other jurisdictions recognizing a similar exception to the general standing requirements, that this public-importance exception is narrow and available only if the following criteria are met. First, the case must involve an issue of significant public importance. Second, the case must involve a challenge to a legislative expenditure or appropriation on the basis that it violates a specific provision of the Nevada Constitution. And third, the plaintiff must be an "appropriate" party, meaning that there is no one else in a better position who will likely bring an action and that the plaintiff is capable of fully advocating his or her position in court.

Schwartz, 132 Nev. at 743 (internal citations omitted). The Court was at pains to explain "that this public-importance exception is narrow and available only if the … criteria are met." *Id.*

NPRI complains that the district court failed to articulate the basis for its ruling that it failed to meet the elements of this exception, but a simple reading of the text of the order dispels this assertion.[3] The district court very carefully addressed all three of the *Schwartz* factors in turn, and did so in a thorough and even-handed manner. The order is sound, the grant of the respective motions to dismiss was correct, and

[3] Furthermore, NPRI's assertion that the district court's order was effected without its input is cynical. NPRI's counsel refused to participate in the process, as indicated in the signature blocks in the order itself, and it also refused to submit an alternative order of its own.

none of NPRI's arguments on appeal persuade otherwise.

1. The public importance prong

In the briefing on the multiple motions to dismiss below—and in the district court's eventual order—the question of whether the case raised significant issue of public importance was essentially assumed, *arguendo*. JA, at 514. While Respondents do not intend to waive this issue when and if this matter arises again either in district court proceedings or on some future appeal, solely for the purposes of this appeal Respondents grant the issue, for sake of brevity and clarity.

2. The legislative expenditure or appropriation prong

The second prong of the *Schwartz* exception to the injury requirement is that "the case must involve a challenge to a legislative expenditure or appropriation on the basis that it violates a specific provision of the Nevada Constitution." *Schwartz*, 132 Nev. at 743. As the district court found and ruled, NPRI's case fails this factor.

In *Schwartz*, the challenged legislative expenditure was an unlawful and unconstitutional diversion of education funds. In other words, the entire basis for the establishment of the exception to the injury requirement for standing was the claim that the Legislature had

expended or appropriated public monies in an unconstitutional manner, a claim this Court upheld. *Schwartz*, 132 Nev. 738-742. The district court case itself concerned the unlawful nature of that expenditure; it was not some incidental aspect of the legal theory or the claims for relief. *Id*.

Here, NPRI makes no similar claim. Instead, it asserts that legislative *per diems* and salaries satisfy this prong of the *Schwartz* exception, because they result from legislative expenditures or appropriations.

Even if one were to grant that legislators' pay stems from an expenditure, or must be appropriated in order to be disbursed, this fails to meet the necessary requirement. The district court had it exactly right on this issue. JA, at 541-542. NPRI is not suing to enjoin legislative pay or *per diem* allowances, and no issuer of such funds has been named or implicated by the claims for relief in the Amended Complaint. It is not even suing these defendants as legislators.[4] There

[4] It is worth noting, as did the district court, that it is not entirely clear in what capacity NPRI is suing these defendants. JA, at 542. It claims not to be suing Respondents in their official capacities as legislators (an option foreclosed by *Heller*, and by Nev. Const. art. IV, Sec. 6, in any event), and at the same time state it is not suing

is no claim whatsoever here to challenge a legislative expenditure, much less an argument that legislator pay "on the basis that it violates a specific provision of the Nevada Constitution." *Schwartz*, 132 Nev. at 743.

Instead, NPRI seems to be identifying, as best it can, some monies—*any* monies—that go from the public fisc to these Respondents. But that is not the meaning of the second prong of the *Schwartz* exception, which does not function as a mere procedural box-checking exercise, but as a substantive requirement of the suit being brought. NPRI states no nexus between legislator pay and the claims it is making regarding dual employment, much less does it mount the sort of challenge to a discrete expenditure, on constitutional grounds, of a type similar in any way to the contested expenditures at stake in *Schwartz*. On this basis alone, NPRI fails to meet the requirements set out as an exception to the injury requirement for standing in Nevada.

3. The "appropriate party" prong

Because NPRI has fallen at the expenditure hurdle of the

Respondents as public employees, either, in aid of their attempt to disqualify institutional counsel from representing their clients. NPRI appears, in the words of the order of dismissal, "to create a wholly-new and separate category of defendant here …" *Id*.

Schwartz exception, the Court need not reach the question of whether NPRI meets the final element, that of demonstrating that it is "an 'appropriate' party, meaning that there is no one else in a better position who will likely bring an action and that the plaintiff is capable of fully advocating his or her position in court." *Schwartz*, 132 Nev. 743. But, as the district court determined, NPRI cannot meet that requirement, either.

This Court, in *Heller*, was very careful to lay out its understanding of how a dual-employment challenge would be brought by a party other than the Attorney General seeking a writ of *quo warranto*, in a section of its opinion entitled, "The proper forum and parties for the dual service issue." *Heller*, 120 Nev. at 472. In pertinent part, the Court stated that "the party with the clearest standing to bring the … declaratory relief [action]" would be "someone with a 'legally protectible interest,' such as a person seeking the executive branch position held by the legislator." *Id.*, 120 Nev. at 472-473.

NPRI does not fit any part of that description. In fact, NPRI has represented plaintiffs in these actions over the years, and has never tried simply to short-circuit the process and step into the shoes of

multiple plaintiffs—who would likely have standing—in order to act as the litigation party itself. In 2011, its legal arm acted as counsel in *Pojunis v Denis*, First Judicial District Court, Case No. 11 OC 00394 (filed Nov. 30, 2011). JA, at 44-47. In *Pojunis*, the plaintiff argued that he "is duly qualified, holds the job requirements established by the Public Utilities Commission of Nevada, and earnestly seeks the position of Computer Technician currently held by Defendant MOISES DENIS." JA, at 45. In 2017, NPRI, again as plaintiff's counsel, brought the case of *French v. Gansert*, First Judicial District Court, Case No. 17 OC 00231B (filed May 1, 2017). JA, at 49-54. There, the plaintiff challenged State Senator Heidi Seevers Gansert's former employment with the University of Nevada, Reno. Again, it was argued at the time that Mr. French "is duly qualified, holds the job requirements for and earnestly seeks the position of Executive Director, External Relations at the University of Nevada, Reno, currently held by Defendant HEIDI GANSERT." JA, at 50.

In other words, NPRI has shown previously that it understands this issue; in these previous suits, *Pojunis* and *French*, it presented plaintiffs that arguably had standing to sue—or at least were not

challenged for failure to demonstrate standing. NPRI cannot now claim that such a task is overwhelmingly difficult, or that plaintiffs are impossible to find—it has found them before. Here, NPRI was under no obligation to sue thirteen sitting legislators all at once, and it cannot claim that the rules of standing ought to be foregone or refigured simply because it chose to frame its suit in this fashion. In fact, in its papers below, it told the district court that it has "a number of supporters [whom] are duly qualified, hold the job requirements for, and earnestly seek the paid positions with state or local government held by Defendants." JA, at 209. So NPRI says it has identified, or can identify, the very sorts of prospective plaintiffs this kind of suit requires in order to proceed, but for some reason has not filed suit on their behalves, instead preferring a route where itself, an entity, acts as the party seeking relief.

By its own words and actions, NPRI has demonstrated that it is not an appropriate party here, pursuant to the meaning of the third prong of the *Schwartz* exception factors. In its brief, it seems to conflate its legal abilities, or those of its counsel, with its appropriateness as a party in the litigation. No one contests the quality of the work; that,

however, is not what *Schwartz* describes. "Appropriateness" in this context describes a party apart from whom "there is no one else in a better position who will likely bring an action and … is capable of fully advocating his or her position in court." *Schwartz*, 132 Nev. at 743. Plaintiffs with legally protectible interests, "such as a person seeking the executive branch position held by the legislator," are clearly in a better position to undertake and prosecute suits of this nature, and having brought such suits before it is also clear those persons (apparently already identified by NPRI) can be considered likely to bring actions and advocate them fully in court. *Heller*, 120 Nev. at 473. NPRI thus fails the third prong of the *Schwartz* injury exception to standing.

C. There Is No Basis For Revising, Extending, Or Revisiting The Parameters Of The *Schwartz* Exception In These Circumstances

Under Nevada law as it stands, NPRI's Amended Complaint was rightly and properly dismissed by the district court, as it cannot meet the elements of standing under any current standard or formula. NPRI, therefore, urges this Court in the alternative to expand the reach of exceptions to the injury requirement for standing beyond the

boundaries announced in *Schwartz*.

The Court in *Schwartz*, of course, made clear that the exception there was meant to be "narrow and available only if the … criteria are met." *Schwartz*, 132 Nev. at 743. Only five years have passed since *Schwartz*, after more than a century and a half of unbroken jurisprudence requiring a particularized injury in order to bring suit. To date, there is not yet a single published Nevada Supreme Court decision applying or analyzing the *Schwartz* factors applied to any actual set of facts, in any depth whatsoever.[5] It would be very odd indeed if the first published decision to mention or discuss the *Schwartz* exception were to alter its contours in a dramatic fashion to accommodate this litigant. It would be all the more strange in these circumstances, where NPRI has long demonstrated that it does, in fact, understand how standing

[5] In *Election Integrity Project of Nevada LLC v. District Court*, 473 P.3d 1021 (Nev. 2020) (unpublished), this Court "assumed without deciding" the appropriateness of the district court's interpretation of the *Schwartz* exception, so that it might resolve the opinion on other pertinent grounds. In *Katz v. Incline Village General Improvement District*, 134 Nev. 967, 414 P.3d 300 (2018) (unpublished), the Court found no standing under *Schwartz* because of a lack of demonstrated pubic importance. And, in *Laborers' International Union of North America, Local 169 v. Douglas County*, 454 P.3d 1259 (Nev. 2019) (unpublished), the exception was not met because the Union did not "allege that Douglas County violated a specific Nevada constitutional provision via an expenditure or appropriation."

functions in dual-employment cases, and continues to maintain that it could—if it needed to—bring forward plaintiffs that would meet not only *Schwartz* exception standing but the historic, undisturbed notion of standing requiring cognizable, particularized injury.

In common with the cases NPRI cites to urge this Court to move directly to the merits without facts or lower-court determinations of any sort, the cases cited in the Opening Brief urging expansion of the *Schwartz* exception do not provide much, if any support, for the argument. In *Goodyear Farms v. City of Avondale*, 148 Ariz. 216, 223 n.1, 714 P.2d 386 (1986) (citing *State v. B Bar Enterprises*, 13 Ariz. 99, 104 n.2, 649 P.2d 978 (1982)), the Arizona Supreme Court noted that no party to the litigation had raised standing concerns, even if the court itself entertained grave doubts. It certainly was not a matter determined "regardless of standing," as NPRI describes it. Op. Br., at 22. It proceeded with the appeal, however, under a specific Arizona rule regarding a lesser threshold of judicial restraint in matters of significant public importance likely to recur; the issue there was the constitutionality of a municipal annexation ordinance, and the potential for legal and jurisdictional havoc was manifest. Here, given the need for

fact-specific proceedings and findings, as well as the different situations of myriad current and potential defendants, the same urgency to relax judicial restraint is not present. In any event, *Goodyear Farms* provides this Court no grounds to expand *Schwartz* so that NPRI may establish standing in this case.

In *Godfrey v. State*, 752 N.W.2d 413 (Iowa 2008), an exception to the injury requirement for standing was discussed and not established, and furthermore the sort of exception under consideration was of exactly the type this Court established in *Schwartz*. In short, the Iowa Supreme Court in *Godfrey* stopped short of doing what this Court has already done in *Schwartz*, and the case does nothing to press this Court beyond the current state of Nevada's law regarding standing. As for the last of NPRI's cited cases on this point, *Sloan v. Wilkins*, 608 S.E.2d 579 (S.C. 2005), it is certainly true that this Court could announce, as did the South Carolina court, that it will bestow standing upon a litigant, without a showing of injury, at its discretion and without discussion or reasoned analysis beyond underscoring the importance of the question involved. Given the care with which the Court proceeded in *Schwartz*, establishing clear parameters to a narrow exception to a venerable legal

precedent, however, that seems an unlikely outcome.

NPRI cannot meet the basic rule regarding standing. It cannot meet the recently-established exception to the basic rule regarding standing. This Court should not expand its *Schwartz* decision simply to accommodate Appellant, who has paths to bring its claims—complete with appropriate plaintiffs—but simply has not done so. To overhaul the law on standing once more, so soon, would be to act with an unnecessary rashness this Court rarely, if ever, has evinced.

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III. CONCLUSION

"The burden of demonstrating a particularized injury and thus establishing standing falls to the parties bringing the suit." *Schwartz*, 132 Nev. at 743. Here, the district court was exactly correct, both in reasoning and result, as NPRI has failed to make the requisite showing to establish its standing. The order of dismissal should be affirmed.

DATED this 22nd day of July, 2021.

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CERTIFICATE OF COMPLIANCE

1. I certify that this Brief complies with the formatting requirements of N.R.A.P. 32(a)(4), the typeface requirements of N.R.A.P. 32(a)(5) and the type style requirements of N.R.A.P. 32(a)(6) because it has been prepared in a proportionally-spaced typeface, size 14, Century Schoolbook.

2. I further certify that this Brief complies with the type-volume limitations of N.R.A.P. 32(a)(7) because, excluding the parts of the Answer exempted by N.R.A.P. 32(a)(7)(C), it contains 4,938 words.

3. Finally, I hereby certify that I have read this Brief, and to the best of my knowledge, information and belief, it is not frivolous or interposed for any improper purpose. I further certify that this Brief complies with all applicable Nevada Rules of Appellate Procedure, in particular N.R.A.P. 28(e)(1), which requires every assertion in the Answer regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying Brief is not in conformity with the requirements of the Nevada Rules of Appellate

Procedure.

DATED this 22nd day of July, 2021.

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CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of July, 2021, a true and correct copy of the foregoing **RESPONDENTS BRITTNEY MILLER, SELENA TORRES, JASON FRIERSON, NICOLE CANNIZZARO, AND MELANIE SCHEIBLE'S ANSWERING BRIEF** was served upon all counsel of record by electronically filing the document using the Nevada Supreme Court's electronic filing system.

By: /s/ *Dannielle Fresquez*
Dannielle Fresquez, an Employee of
WOLF, RIFKIN, SHAPIRO,
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