

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE INDEPENDENT AMERICAN  
PARTY OF NEVADA,  
Petitioner,

vs.

SENATOR DINA TITUS;  
ASSEMBLYMAN MARK A. MANENDO;  
ASSEMBLYMAN JASON GEDDES;  
ASSEMBLYWOMAN CHRIS  
GIUNCHIGLIANI; AND  
ASSEMBLYMAN RON KNECHT,  
Respondents.

No. 43038

**FILED**

JUL 14 2004

JANE TTE M BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richards*  
CHIEF DEPUTY CLERK

ORDER DENYING PETITION FOR WRIT OF MANDAMUS

This original petition for a writ of mandamus, filed by The Independent American Party of Nevada (IAP), by and through its chairman, Joel Hansen, seeks to compel the respondent state legislators to resign either their membership in the Legislature or their employment in the executive branch. The IAP argues that respondents' dual service is prohibited by Article 3 of the Nevada Constitution, which divides the powers of the Nevada government into three separate departments, and states 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."<sup>1</sup> We conclude that the IAP and its chairman lack standing to advance this argument.

A writ of mandamus may issue to compel the performance of an act that the law requires as a duty resulting from an office, trust or

---

<sup>1</sup>Nev. Const. art. 3, § 1(1).

station, or to control an arbitrary or capricious exercise of discretion.<sup>2</sup> Generally, a petitioner is considered to have standing to seek mandamus relief if that party is “beneficially interested,”<sup>3</sup> in that the petitioner has “some special interest to be served or some particular right to be preserved or protected over and above the interest held in common with the public at large.”<sup>4</sup> Thus, the petitioner must “show [that its] legal rights are injuriously affected by the action being challenged.”<sup>5</sup>

We conclude that the IAP has not demonstrated that it has standing to bring the instant petition. Although the IAP asserts that its members are Nevada citizens “interested . . . in having the laws of Nevada executed and Respondents’ duties enforced,” general constitutional compliance is an interest shared by the public at large. The IAP also cites to our opinion in State of Nevada v. Gracey<sup>6</sup> for the proposition that it need not demonstrate a direct, special interest in writ relief because it is advancing a matter of “public concern.” Gracey, however, concluded that the citizen/taxpayer petitioner was beneficially and specially interested in mandamus relief.

---

<sup>2</sup>NRS 34.160; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 603-04, 637 P.2d 534, 536 (1981).

<sup>3</sup>NRS 34.170; see also State of Nevada v. Gracey, 11 Nev. 223 (1876).

<sup>4</sup>Teamsters Local 70 v. Unempl. Ins. App. Bd., 236 Cal. Rptr. 78, 82 (Ct. App. 1987) (quoting Carsten v. Psychology Examining Com., Etc., 614 P.2d 276, 278 (Cal. 1980)); see also Gracey, 11 Nev. at 230 (concluding that the petitioner’s “direct and special interest” satisfied mandamus’s beneficial interest requirement).

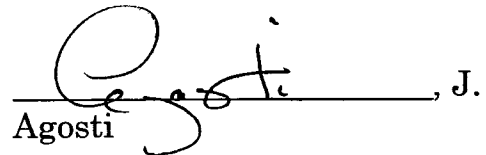
<sup>5</sup>Braude, 276 Cal. Rptr. at 258.

<sup>6</sup>11 Nev. 223, 229-30 (1876).

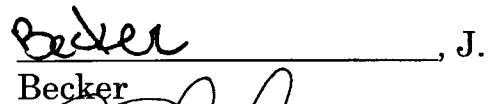
Accordingly, as the IAP has not demonstrated that it has standing to pursue writ relief, we deny the petition.

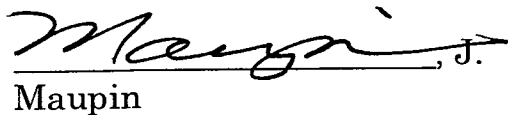
It is so ORDERED.<sup>7</sup>

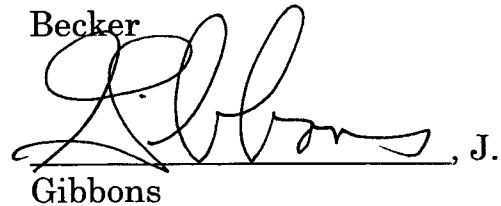
 \_\_\_\_\_, C.J.  
Shearing

 \_\_\_\_\_, J.  
Agosti

 \_\_\_\_\_, J.  
Rose

 \_\_\_\_\_, J.  
Becker

 \_\_\_\_\_, J.  
Maupin

 \_\_\_\_\_, J.  
Gibbons

cc: Hansen & Hansen  
Jason Geddes, Assemblyman, Reno  
Chris Giunchigliani, Assemblywoman, Las Vegas  
Ron Knecht, Assemblyman, Carson City  
Mark A. Manendo, Assemblyman, Las Vegas  
Dina Titus, Senator, Las Vegas  
Brenda J. Erodes, Legislative Counsel  
Attorney General Brian Sandoval

---

<sup>7</sup>The Honorable Michael L. Douglas, Justice, voluntarily recused himself from participation in the decision of this matter.