



CENTER FOR JUSTICE AND CONSTITUTIONAL LITIGATION

At the Nevada Policy Research Institute

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Issues in separation-of-powers lawsuit are vital and not at all ‘moot’, says new brief filed by CJCL

CARSON CITY, Nev. — NPRI’s Center for Justice and Constitutional Litigation has just filed an Opposition brief maintaining that Sen. Mo Denis’ resignation from his executive-branch job does not moot [*Pojunis v. State of Nevada, et al.*](#), because of several well-established exceptions to the “mootness doctrine.” A link to the full brief in opposition is available below.

“Within hours of being served with this separation-of-powers lawsuit, Sen. Mo Denis announced his resignation from his executive-branch job,” notes Joseph Becker, chief legal officer and director of CJCL. “In essence, that resignation constituted a *de facto* admission on the merits of the case — that, according to Article 3, Section 1, of Nevada’s constitution, it is unconstitutional for a legislator to simultaneously exercise any function in the executive or judicial branches.”

As a result of his resignation from the PUC, Denis’ attorney filed several motions claiming, among other things, that the case, *Pojunis v. State of Nevada, et al.*, was moot.

“Even if Denis’ resignation from the PUC means the case does not present a live controversy, the court may still consider the case if it involves a matter of ‘widespread importance,’” said Becker. “There are five well-established exceptions to the ‘mootness doctrine,’ and as our brief details, at least four of those exceptions are applicable in this case.”

The four exceptions are the Public-Interest Exception, the Voluntary-Cessation Exception, the Capable-of-Repetition-Yet-Evading-Review Exception, and the Ongoing-Collateral-Legal-Consequences Exception.

“These well-established exceptions show why this case remains justiciable and why the court should and can uphold the clear words of the constitution — that it is unconstitutional for anyone exercising any function in one branch to simultaneously exercise any functions, appertaining to either of the other branches of government,” stated Becker.

“Even Governor Brian Sandoval, the chief executive of the State of Nevada, which is also a named defendant in the lawsuit, has [stated](#) that this lawsuit ‘brings up a very important constitutional

issue.’ Further, in regards to the separation-of-powers issue raised by this lawsuit, Governor Sandoval has implored the Supreme Court to ‘[s]ettle it once and for all.’”

Becker noted that the separation of powers is one of the most important principles in Nevada’s constitution, because it prevents conflicts of interest, corruption and the accumulation of too much power in one individual or group and that it preserves the checks and balances in Nevada’s government.

Neither the Public Utilities Commission nor the state of Nevada, both of which are named defendants in the lawsuit, has filed a responsive pleading in the case.

From the brief: Legal basis for exceptions to the “mootness doctrine”

- **Public-Interest Exception**

[T]he Nevada Supreme Court applied a public interest exception in determining that a case, while technically moot, should proceed, holding that where: “the potential for recurring disputes ... is great ... with significant prospects for evading review” and “continuing uncertainty ... presents substantial and vexing problems to agencies charged with meeting the ... needs of government, ... the mootness doctrine must yield in *the public interest* to the more pressing expedient of statutory interpretation.” *Board of County Com’rs Clark County v. White*, 102 Nev. 587, 589, 729 P.2d 1347, 1349 (1986) (emphasis added).

- **Voluntary-Cessation Exception**

“It is well settled that the voluntary cessation of allegedly unlawful conduct does not moot a case in which the legality of that conduct is challenged.” *Christian Legal Soc. Chapter of the University of California, Hastings College of the Law v. Martinez*, ___ U.S. ___, 130 S.Ct. 2971, 3010 (2010).

- **Capable-of-Repetition-Yet-Evading-Review Exception**

“If the underlying dispute is ‘capable of repetition, yet evading review,’ it is not moot.” *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 563 (1980) (internal quotations omitted).

- **Ongoing-Collateral-Legal-Consequences Exception**

Among the relief requested by Plaintiff is that the unconstitutional disbursement of funds to Defendant DENIS during his tenure of unconstitutional employment be restored to the state treasury. His reported resignation from the Public Utilities Commission of Nevada, by itself, does nothing to render this issue moot. Only a declaration by the Court as to the constitutionality of Defendant DENIS holding positions simultaneously resolves the issue of whether that disbursement of funds was unconstitutional and should be restored to the State treasury.

[CJCL's Opposition brief in *Pojunis v. State of Nevada, et al.* is available here.](#)

More information on the case, including the original lawsuit, is available at the Center for Justice and Constitutional Litigation's website at <http://justice.npri.org/cases/pojunis-v-state-of-nevada/>.

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