



CENTER FOR JUSTICE AND CONSTITUTIONAL LITIGATION

At the Nevada Policy Research Institute

For Immediate Release
February 20, 2012

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Separation-of-powers case should move forward, says new CJCL brief

CARSON CITY, Nev. — Clear and compelling legal precedents show that Nevada’s First Judicial District Court should reject state efforts to prevent a court decision on the meaning of the Nevada constitution’s separation-of-powers clause, says a new brief filed by NPRI’s Center for Justice and Constitutional Litigation.

The brief opposes dismissal motions filed by the Public Utilities Commission of Nevada (PUCN) and the State of Nevada — defendants in the case [*Pojunis v. State of Nevada, et al.*](#) The motions argue that the question of executive-branch employees also being members of the Nevada Legislature is now “moot.”

“Article 3, Section 1, of Nevada’s constitution is perfectly clear — if someone is serving in the legislature, he or she cannot constitutionally perform any function in another branch of government,” said Joseph Becker, chief legal officer and director of CJCL. “It is hard to imagine a more fundamental and ‘public’ legal issue than upholding the constitution’s separation-of-powers clause, which is a bedrock principle of Nevada’s constitution.”

Within hours of being served with this lawsuit in December 2011, State Sen. Mo Denis resigned from his executive-branch employment with the PUCN. Becker called that a *de facto* admission of the merits of the case.

Becker noted that in the commission’s motion to dismiss, it claims that executive-branch hiring decisions are not subject to judicial review. It also cites, as authority for the executive branch to ignore the constitution, the record of the legislature in passing statutes that ignored Article 3, Section 1.

“In its motion, the Public Utilities Commission of Nevada relies on an unconstitutional act of the legislative branch to justify its unconstitutional, and now-former, employment of a sitting state Senator,” said Becker. “Along with being without legal merit, this argument shows exactly why it is in the public interest for the court to rule on and defend the separation-of-powers provision.

“Without being checked by an appropriate use of judicial review, the PUCN is trying to use one unconstitutional act to justify its own unconstitutional actions. As is the case with the legislature judging the qualifications of its members, there is no constitutional provision that prohibits the court from exercising judicial review over hiring by the executive or judicial branches, and it is in the public interest for the court to stop this cycle.”

The brief also details how, until she resigned from the Senate last week, former-Sen. Sheila Leslie was also clearly violating Article 3, Section 1, by working in the Legislature and the judicial branch simultaneously. Leslie has declared she is running for another state Senate seat but has announced no plans to resign from her judicial-branch employment.

“As this brief makes clear, there is ample legal precedent and pressing reasons — including an issue raised in the PUCN’s own motion to dismiss — that the case remains justiciable and why the court should and can enforce the separation-of-powers clause in the constitution. 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, and the court needs to enforce that provision,” stated Becker.

The Public Utilities Commission of Nevada and the state of Nevada have 10 days from February 15, 2012, to file replies to this brief.

[CJCL’s second 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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