

Think tank pursues separation-of-powers case in Nevada

By Sean Whaley, Nevada News Bureau

CARSON CITY – A libertarian think tank’s legal team has filed an opening brief in a case before the state Supreme Court seeking to pursue its separation-of-powers lawsuit aimed at state lawmakers who also work in state government jobs.

The Nevada Policy Research Institute’s Center for Justice and Constitutional Litigation filed the brief Friday in its case *Pojunis v. State of Nevada, et al.* – a lawsuit brought to restore adherence to the separation-of-powers clause found in Article 3, Section 1 of Nevada’s constitution. It named then-state employee and current state Sen. Mo Denis, D-Las Vegas.

Shortly after the complaint was filed in November 2011, Denis announced his resignation from his computer technician job with the Public Utilities Commission of Nevada.

Carson City District Court Judge James Russell then ruled the case was made moot by Denis’ resignation.

The CJCL is seeking to have the case reinstated by the Nevada Supreme Court, citing other lawmakers working in state or even local government jobs that could be affected by a decision in the matter.

Joseph Becker, chief legal officer and director of CJCL, said: “NPRI’s Center for Justice and Constitutional Litigation is appealing this case to the Nevada Supreme Court because the separation-of-powers clause at issue in this case is the same clause that the Nevada Supreme Court has written “is probably the most important single principle of government declaring

and guaranteeing the liberties of the people.”

While the interpretation of the separation-of-powers clause may be moot in Denis’ case, Becker is arguing there is a compelling public interest in having the case resolved.

The separation-of-powers clause “makes it perfectly clear that a sitting legislator cannot hold a job in the executive or judicial branch of government, and yet, there are at least 14 conflicting attorney general’s opinions on this issue and no fewer than six current legislators who also hold jobs in the executive or judicial branch of state government,” Becker said.

Even Gov. Sandoval has asked the Supreme Court to “[s]ettle it once and for all,” he said.

“Upholding the Constitution’s separation-of-powers clause is a fundamental and ‘public’ legal issue, and we urge the Nevada Supreme Court to let this case proceed,” Becker said.

The lawsuit was filed by the CJCL on behalf of Las Vegas resident William Pojunis, who said at the time he was unemployed and was qualified for Denis’ position and wanted to apply for the job.

In his District Court filing seeking dismissal, Denis’ attorney said case law shows that Nevada courts only decide “cases that present live controversies.”

“Courts will not retain jurisdiction where ‘a live controversy becomes moot by the occurrence of subsequent events,’ and ‘will not make legal determinations that cannot affect the outcome of the case,’ ” said Denis attorney Bradley Schragar.