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6 **IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
7 **IN AND FOR CARSON CITY**

9 WILLIAM POJUNIS;

10 Plaintiff,

11 vs.

12 MOISES DENIS; THE PUBLIC UTILITIES COMMISSION
13 OF NEVADA; and THE STATE OF NEVADA on
14 Relation of The Public Utilities Commission of Nevada,

15 Defendants

Case No. 11-OC-003941 B
Dept. No. 1

**PLAINTIFF'S OPPOSITION TO
DEFENDANT DENIS' MOTION(S):
TO DISMISS PURSUANT TO NRCP
12(b)(1) AND 12(b)(5), OR IN THE
ALTERNATIVE, FOR A MORE
DEFINITE STATEMENT PURSUANT
TO NRCP 12(e), AND TO
STRIKE PRAYER FOR RELIEF**

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19 COMES NOW Plaintiff WILLIAM POJUNIS (hereinafter "POJUNIS") by and through his counsel of
20 record, NPRI'S CENTER FOR JUSTICE AND CONSTITUTIONAL LITIGATION, and hereby
21 respectfully requests that this Court deny: Defendant DENIS' Motions to Dismiss Pursuant to
22 NRCP 12(b)(1) and 12(b)(5), Defendant DENIS' Motion for a More Definite Statement Pursuant to
23 NRCP 12(e), and Defendant DENIS' Motion to Strike Prayer for Relief, based upon the following
24 Memorandum of Points and Authorities.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2
3 **I. STATEMENT OF THE FACTS**

4 On November 30, 2011, Plaintiff POJUNIS filed a Complaint for Declaratory Judgment and
5 Injunctive Relief with this Court asserting that Defendant Moises Denis (hereinafter “DENIS”),
6 in holding the position of Computer Technician in the Nevada State executive department (i.e.
7 the Public Utilities Commission of Nevada) while serving in the Nevada State Senate
8 (legislative department), was in violation of the Nevada Constitution, Article 3, § 1, which reads
9 in relevant part:

10 The powers of the Government of the State of Nevada shall be divided into three
11 separate departments, the Legislative, the Executive, and the Judicial; and no
12 persons charged with the exercise of powers properly belonging to one of these
13 departments shall exercise *any functions* pertaining to either of the others . . .

14 Although claiming his actions had nothing to do with Plaintiff’s filing of the Complaint, on
15 December 19, 2011, within hours of being served with a copy thereof, DENIS publicly
16 announced his resignation from his executive department position with the Public Utilities
17 Commission of Nevada, effective on December 28, 2011; and, on December 20, 2011,
18 Defendant Denis filed a Motion to Dismiss Pursuant to NRCP 12(b)(1) and 12(b)(5), a Motion
19 for a More Definite Statement Pursuant to NRCP 12(e), and a Motion to Strike Prayer for
20 Relief.

21 **II. INTRODUCTION**

22 Contrary to DENIS’ Motions of December 20, 2011, Plaintiff’s case is neither moot,
23 indefinite in its allegations, nor otherwise legally infirm.

24 Although the well-established exceptions to mootness were neither mentioned nor
25 discussed in Defendants’ Motion to Dismiss, even if, *arguendo*, the case were mooted by
26 DENIS’ resignation, Plaintiff’s case survives under several of those well-established exceptions
27 to the “mootness doctrine.”

28 Secondly, Plaintiff’s Complaint is quite specific and well pled and easily conforms to the
liberal requirements of NRCP 8(a) “being a short and plain statement of the claim showing the

1 pleader is entitled to relief” in his description of how DENIS, a *state actor* who is simultaneously
2 exercising functions in both the executive and legislative departments, violates both the state
3 and federal constitutions. Arguably, Defendant DENIS’ understanding of the essence of the
4 Complaint is self-evident, given his almost-immediate resignation from his executive branch
5 employment (and a *de facto* admission on the merits) upon being served with the
6 aforementioned Summons and Complaint.

7 Lastly, Plaintiff POJUNIS’ status as a Nevada resident and taxpayer provide standing for
8 his constitutional claim and Request for Relief thereon that money unconstitutionally expended
9 by way of Defendant DENIS’ salary and benefits should be returned to the Nevada State
10 Treasury.

11 III. LEGAL ARGUMENT

12 A. Even if *Arguendo*, the Case Were Moot, it Meets at Least Four Widely Recognized 13 Exceptions to the Mootness Doctrine.

14 Defendant DENIS, by and through his attorney would have this Court render moot and
15 dismiss this case due, in part, to DENIS resigning his position with the Public Utilities
16 Commission of Nevada, reportedly effective on December 28, 2011.

17 As a general rule, Nevada courts only decide “cases that present live controversies.”
18 *University Systems v Nevadans for Sound Government*, 120 Nev. 712, 720, 100 P.3d 179, 186
19 (2004). However, even when a case is moot, it may be considered by the Court when it
20 involves a matter of “widespread importance.” *Personhood Nevada v. Bristol*, ___ Nev. ___,
21 ___, 245 P.3d 572, 574 (2010). In fact, “[i]t is within the inherent discretion of this Court to
22 consider issues of substantial public importance which are likely to recur, in spite of any
23 intervening event during the pendency of an appeal which has rendered the matter moot.”
24 *State v. Glusman*, 98 Nev 412, 418, 651 P.2d 639, 643 (1982).

25 Federal Courts generally recognize four exceptions to the mootness doctrine¹ whereas
26 state courts, unrestrained by the federal Constitution’s Article III case and controversy

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28 ¹ “There are four major exceptions to the mootness doctrine, for (1) collateral legal consequences, (2)
wrongs capable of repetition yet evading review, (3) voluntary cessation, and (4) class actions where the

1 requirements, also recognize the “Public Interest” exception to mootness. 5 AM. JUR. 2D
2 *Appellate Review* § 604 (updated 2011). Thus, in total, there are five widely recognized
3 exceptions to the mootness doctrine, four of which are satisfied by the particulars of this case.

4 They include the (1) “public interest” exception; (2) the “voluntary cessation” exception; (3)
5 the “capable-of-repetition-yet-evading-review” exception; and the (4) ongoing collateral damage
6 exception.

7 **1. The Case is Justiciable as it Satisfies the Public Interest Exception to**
8 **Mootness.**

9 “One exception to the mootness doctrine allows a court to resolve an otherwise moot issue
10 if that issue involves a substantial public interest. The criteria for application of the public
11 interest exception to the mootness doctrine are: (a) the question is of a public nature; (b) an
12 authoritative resolution of the question is desirable to guide public officers; and (c) the question
13 is likely to recur.” *Cinkus v. Village of Stickney Municipal Officers Electoral Bd.*, 228 Ill.2d 200,
14 208, 886 N.E.2d 1011, 1017 (2008).

15 Although a case of statutory (rather than constitutional) interpretation, relying upon criteria
16 similar to *Cinkus*, the Nevada Supreme Court applied a public interest exception in determining
17 that a case, while technically moot, should proceed, holding that where: “the potential for
18 recurring disputes . . . is great . . . with significant prospects for evading review” and “continuing
19 uncertainty . . . presents substantial and vexing problems to agencies charged with meeting the
20 . . . needs of government, . . . the mootness doctrine must yield in *the public interest* to the
21 more pressing expedient of statutory interpretation.” *Board of County Com’rs Clark County v.*
22 *White*, 102 Nev. 587, 589, 729 P.2d 1347, 1349 (1986) (emphasis added). The instant case is
23 the quintessential “poster child” for the public interest exception denoted in both *Cinkus* and
24 *Board of County Com’rs*.

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27 named party ceases to represent the class.” *E.E.O.C. v. Federal Exp. Corp.*, 558 F.3d 842, 847 (9th Cir.
28 2009).

1 (a) *The Case is of a Very “Public Nature.”*

2 It is difficult to imagine a case with a more fundamental and “public” legal issue. This case
3 potentially resolves, in part, the important state constitutional question of certain qualifications
4 as to who may hold public employment and/or public office in each of the three branches of the
5 Nevada state government. In fact, “[i]t is axiomatic that the qualifications of a declared
6 candidate for public office is a public issue.” *Matson v. Dvorak*, 40 Cal. App.4th 539, 548, 46
7 Cal.Rptr.2d 880, 885-86 (1995).

8 (b) *An Authoritative Resolution of the Question is Desirable to Guide Public Officers.*

9 Dating back to at least 1911, no fewer than fourteen conflicting Nevada Attorney General
10 Advisory Opinions have been issued strongly relating to this point of law.² As recently as 2004,
11 such an Opinion was issued on this precise question of law, concluding that “Article 3, Section
12 1 of the Nevada Constitution bars any employee from serving in the executive branch of
13 government and simultaneously serving as a member of the Nevada State Legislature.” Op.
14 Nev. Att’y Gen. No. 3 (March 1, 2004).

15 Even more recently, Brian Sandoval, (former Nevada Attorney General (in 2004)), now
16 sitting Governor of the State of Nevada, reportedly commented on the instant case stating that
17 it “brings up a very important constitutional issue” and “[w]hat is important is there be a final
18 adjudication of that constitutional question by our Nevada Supreme Court. Settle it once and
19 for all.”³

20 (c) *The Question is Likely to Recur and is, in Fact, Already Occurring/Recurring.*

21 The aforementioned historical string of Nevada Attorney General Advisory Opinions is
22 strong empirical evidence that this question is almost certain to recur going forward. However,
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24 ² Op. Nev. Att’y Gen. (Jan. 30, 1911). Op. Nev. Att’y Gen. No. 39 (April 23, 1913). Op. Nev. Att’y Gen. No.
25 28 (March 12, 1951). Op. Nev. Att’y Gen. No. 183 (July 9, 1952). Op. Nev. Att’y Gen. No. 3 (Dec. 22, 1954).
26 Op. Nev. Att’y Gen. No. 353 (November 24, 1954). Op. Nev. Att’y Gen. No. 212 (Sep. 21, 1956). Op. Nev.
27 Att’y Gen. No. 379 (April 30, 1958). Op. Nev. Att’y Gen. No. 95 (September 28, 1959). Op. Nev. Att’y Gen.
28 No. 207 (Feb. 26, 1965). Op. Nev. Att’y Gen. No. 401 (April 20, 1967). Op. Nev. Att’y Gen. No. 4 (Jan. 26,
1971). Op. Nev. Att’y Gen. No. 168 (May 22, 1974). Op. Nev. Att’y Gen. No. 3 (March 1, 2004).

³ Ray Hagar, *Sandoval Says State is Seeing Gains*, Reno Gazette Journal (December 19, 2011)
<http://www.rgj.com/article/20111220/NEWS/112180357/Sandoval-says-state-seeing-gains-> .

1 it is unnecessary to rely on historical data and empirics in an attempt to predict future
2 recurrences given that no fewer than seven legislators are currently exercising functions in
3 either the executive or judicial branch, or political subdivisions thereof.⁴ At least one sitting
4 legislator left her job in the state executive branch upon being elected as a result of the lack of
5 clarity on this point of law.⁵ It would, of course, be a most inefficient use of judicial resources to
6 file declaratory actions against each individual so situated only to have them subsequently
7 resign upon being served with a summons and complaint (and then possibly re-hired).

8 Because the issue presented by this case is unquestionably of a public nature, resolution of
9 the question is most desirable to guide citizens and public officers going forward; and because
10 more instances of the issue raised are already occurring and likely to recur, this case survives
11 dismissal and is justiciable under the public interest exception to the mootness doctrine.

12 **2. The Case is Justiciable as it Satisfies the Voluntary Cessation Exception to**
13 **Mootness.**

14 "It is well settled that the voluntary cessation of allegedly unlawful conduct does not moot a
15 case in which the legality of that conduct is challenged." *Christian Legal Soc. Chapter of the*
16 *University of California, Hastings College of the Law v. Martinez*, ___ U.S. ___, 130 S.Ct.
17 2971, 3010 (2010). "Voluntary Cessation does not moot a case or controversy unless
18 subsequent events make it absolutely clear that the allegedly wrongful behavior could not
19 reasonably be expected to recur." *Parents Involved in Community Schools v. Seattle School*
20 *Dist. No. 1*, 551 U.S.701, 719 (2007) (citing *Friends of the Earth v. Laidlaw Environmental*
21 *Services (TOC), Inc.*, 528 U.S. 167, 189 (2000)). According to the U.S. Supreme Court in
22 *Parents Involved*, demonstrating that allegedly wrongful behavior is not likely to recur is a
23 "heavy burden" on the moving party. *Parents Involved* at 719.

24
25 _____
26 ⁴ (Sen. Mo Denis, Public Utilities Commission); Sen. Sheila Leslie, Second Judicial District Court;
27 Assemblyman Kelvin Atkinson, Clark County; Assemblywoman Olivia Diaz, Clark County School District;
Assemblyman Jason Frierson, Clark County; Assemblyman Scott Hammond, Clark County School District;
Assemblywoman Melissa Woodbury, Clark County School District.

28 ⁵ Nevada Attorney Lucy Flores, reportedly resigned her position with the Nevada System of Higher Education
upon election to the Nevada State Assembly to avoid the controversy surrounding this issue.

1 In this case, after seventeen years on the job at the Public Utilities Commission of Nevada
2 and six years in the Nevada State Assembly, it is not “absolutely clear” that Defendant DENIS
3 “could not reasonably be expected” to return to his job at the Public Utilities Commission of
4 Nevada from which he has reportedly resigned or accept another position within either the
5 executive or judicial departments of the State of Nevada. Defendant DENIS has certainly not
6 met the “heavy burden” required to evade the Voluntary Cessation exception. Thus, the facts
7 of this case bring it within the Voluntary Cessation exception to the mootness doctrine and it
8 remains justiciable by this Court.

9 **3. The Case is Justiciable as it Satisfies the Capable-of-Repetition-Yet-Evading-
10 Review Exception to Mootness.**

11 “If the underlying dispute is ‘capable of repetition, yet evading review,’ it is not moot.”
12 *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 563 (1980) (internal quotations omitted).
13 Although some jurisdictions hold that this exception is only applicable when “there is a
14 reasonable expectation that the same complaining party will be subjected to the same action
15 again,” *Foster v. Carson*, 347 F.3d 742, 746 (9th Cir. 2003), the modern trend is that under the
16 *capable of repetition yet evading review* exception, a case is justiciable even though the
17 potentially repetitive act may never again involve those parties before the court. The issue
18 must simply be a matter of *public interest* that will likely continue to arise yet become moot
19 before the Court has an opportunity to review it. *See generally Yancy v. Shatzer*, 337 Or. 345,
20 375-83, 97 P.3d 1161, 1177-81 (2004)(Case Appendix).

21 In this case, Defendant DENIS, with seventeen years of state employment could easily
22 return to a state position in either the executive or judicial departments if the case is dismissed.
23 Moreover, as noted above, there are already numerous, similarly situated, potential defendants
24 currently violating the same constitutional provision by serving functions in more than one
25 branch simultaneously. It would be imprudent and a waste of judicial resources if additional
26 cases needed to be brought to accomplish a final judicial resolution of the constitutional
27 question in this case when, instead, this Court could grant declaratory and injunctive relief
28

1 barring the State from employing those serving functions in the legislative branch from
2 simultaneously serving functions in either the executive or judicial branches.

3 **4. The Case is Not Moot as it Satisfies the “Ongoing Collateral Legal**
4 **Consequences Exception” to Mootness.**

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

12 Moreover, rather than immediate dismissal, at a minimum Plaintiff should be entitled to
13 discover the extent of the lingering collateral damage including potential lucrative retirement
14 benefits and, otherwise, the extent to which Defendant DENIS’ unconstitutional employment
15 will result in continuing injury.

16 Because this case satisfies the conditions of each of the aforementioned exceptions to the
17 mootness doctrine, even if, *arguendo*, the case were otherwise moot, it remains justiciable
18 under these exceptions.

19 **B. Government Activities Are Always Carried Out by Some Individual (or Group of**
20 **Individuals) and it is Well-Established That State Employees Are Proper Parties With**
21 **Respect to Constitutional Claims.**

22 Defendant DENIS next argues that even if the case is not mooted by Defendant DENIS’
23 departure from his executive branch job, in the alternative, the case should be dismissed for
24 failure to state a claim under Rule 12(b)(5) because the state and federal constitutions only limit
25 actions by state and federal governments and Defendant Denis is not a state actor. Defendant
26 DENIS’ Motion to Dismiss (hereinafter “MOTION”), pp. 6-10.

27 It is unclear from Defendant DENIS’ Motion whether he raises this argument simply
28 because DENIS reportedly no longer works in his executive branch position. If this is indeed
the basis of Defendant’s 12(b)(5) motion, Plaintiff would merely refer the Court back to Section

1 III (A)(1-4) and Plaintiff's discussion of the mootness and justiciability issues therein.

2 Additionally, although not initially sued in his capacity as a state legislator, Defendant DENIS
3 remains a sitting State Senator and is, thus, a state actor in that capacity.

4 If, on the other hand, Defendant DENIS moves for dismissal on 12(b)(5) grounds because
5 he believes that only DENIS' direct employer and the State of Nevada itself may be sued
6 (despite DENIS himself being the person whose actions are in direct violation of the Nevada
7 constitutional provision), Plaintiff asserts this position is both legally and practically untenable.

8 As a practical matter, only individuals (and groups of individuals) act. If individuals carrying
9 out state functions were beyond the grasp in constitutional challenges, no practical or
10 efficacious means of checking government abuse would ever be available.

11 As for being legally untenable, to constitute state action, it is well established (and
12 conceded) that "the deprivation must be caused by the exercise of some right or privilege
13 created by the State ... *or by a person for whom the State is responsible,*" and "the party
14 charged with the deprivation must be a person who may fairly be said to be a state actor.
15 [S]tate employment is generally sufficient to render the defendant a state actor." *West v.*
16 *Atkins*, 487 U.S. 42, 49-50 (1988)(emphasis added)(internal citations omitted). "Thus,
17 generally, a public employee acts under color of state law while acting in his official capacity or
18 while exercising his responsibilities pursuant to state law. *Id* at 50. *See also Lugar v.*
19 *Edmondson Oil Co., Inc.*, 457 U.S. 922 (1982).

20 In fact, it is now well-settled that a "state employee may be sued in two capacities: official,
21 which results in the State's liability for any judgment; and individual, which results in the
22 employee's personal liability for any judgment." *See e.g. Travland v. Ector County, Texas*, 39
23 F.3d 319 (5th Cir. 1994).

24 Secondly, on this point, the Complaint mirrors the requirements laid out by the Nevada
25 Supreme Court in *Heller v. Legislature of State of Nev.*, 120 Nev. 456, 473, 93 P.3d 746, 757
26 (2004) as to Plaintiff's seeking the executive branch position held by the legislator and the
27 Nevada Supreme Court's explicit guidance that "[i]ndividual legislators would need to be named
28 as . . . declaratory relief defendants." *Id*. Thus, in order to challenge the unconstitutional action

1 which forms the basis of Plaintiff's Complaint, the Nevada Supreme Court is already on record
2 as having advised that Defendant DENIS is precisely the proper party to be named in a
3 challenge of this nature.

4 In summary, because actions of government are necessarily carried out by individual actors,
5 state employees are state actors and proper parties to constitutional challenges, both in their
6 official capacities and even in their personal capacities, and because the Nevada Supreme
7 Court has held that state employees are proper parties to exactly such a challenge as in the
8 instant case, Defendant DENIS' Motion to Dismiss under NRCP 12(b)(5) should be denied.

9
10 **C. Plaintiff's Complaint is Sufficiently Definite As Set Forth in NRCP 8(a).**

11 **1. Motions for a More Definite Statement Are Generally Disfavored and Rarely
12 Granted.**

13 NRCP 12(e) provides that if a pleading is "so vague and ambiguous" that a party cannot
14 frame a responsive pleading, the party may move for a more definite statement, pointing out
15 the defects and details desired. As long as Defendant DENIS is able to respond, even if only
16 with a simple denial based on a lack of "knowledge or information sufficient to form a belief as
17 to the truth of an averment," the complaint is deemed sufficient. *Cellars v. Pacific Coast
18 Packaging, Inc.*, 189 F.R.D. 575, 578 (N.D. Cal. 1999).

19 Motions for a more definite statement are disfavored by the courts and are rarely granted.
20 *Id.* "The class of pleadings that are appropriate subjects for a motion under Rule 12(e) is quite
21 small – the pleading must be sufficiently unintelligible for the court to be able to make out one
22 or more potentially viable legal theories on which the claimant might proceed." 5A CHARLES A.
23 WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1376 (1990). Accordingly,
24 a motion for a more definite statement is granted only to correct unintelligibility in a pleading,
25 not merely for a claimed lack of detail, and if the moving party can obtain the missing fine detail
26 through discovery, the motion for more definite statement should be denied. *Cromwell v. Ward*,
27 425 F.Supp. 97, 99 (W.D.N.Y. 1977); *Davison ex rel. Sims v. Santa Barbara High School Dist.*,
28 48 F.Supp. 2d 1255, 1228 (C.D. Cal. 1998). Thus, as in the case at hand, a motion for more

1 definite statement should be denied where the plaintiff gives to the defendant fair notice of the
2 nature and basis of the claim, a general indication of the type of litigation involved, and a
3 statement of the relief sought. *McClanahan v. Mathews*, 292 F.Supp. 737, 738 (E.D. Ky.
4 1968).

5 Furthermore, a motion for a more definite statement should not be granted if the pleading
6 meets the minimal requirement of NRCP 8, the rule which determines whether the defendant
7 can reasonably be expected to respond to the claims asserted. See *U.S. v. Metro*
8 *Development Corp.*, 61 F.R.D. 83, 86 (N.D. Ga. 1973). NRCP requires of POJUNIS only a
9 “short and plain statement of the claim showing that the pleader is entitled to relief.” Details of
10 both fact and law come later. NRCP 8(a)(1); *Bartholet v. Reishauer A.G.*, 953 F.2d 1073,
11 1077-78 (7th Cir. 1992). Rule 12(e) is not intended to frustrate the concept of notice pleading.
12 The benefits of notice pleading encouraged by NRCP Rule 8 would be lost entirely if Rule 12(e)
13 is liberally interpreted. See *Braden v. Allaway*, 4 F.R.D. 147, 148 (E.D. Tenn. 1943); *U.S. by*
14 *Clark v. Georgia Power Co.*, 301 F.Supp. 538, 544 (N.D. Ga. 1969).

15 Defendant DENIS puts forth no legal authority to justify that Plaintiff POJUNIS file a more
16 definite statement but, rather, states “the Complaint is simply not written in a manner that
17 allows him to make that determination [of what conduct is complained of] or to make a proper
18 responsive pleading. MOTION, p. 10, lines 15-18.

19 **2. Plaintiff POJUNIS Has Sufficiently Pled Claims of Unconstitutionality.**

20 In this case, it would be nearly impossible to plead insufficiently. Moreover, Plaintiff has not
21 achieved the near-impossible. First, the provision of the Nevada constitution which Plaintiff
22 asserts was violated, is so all-inclusive, merely alleging that Defendant Denis simultaneously
23 exercised “any function[s]” in more than one branch suffices as a pleading. Here, for the
24 purpose of demonstrating standing, Plaintiff POJUNIS even directs Defendant Denis’ (and the
25 Court’s) attention to the specific “function” of computer technician which Defendant DENIS
26 performs in the executive branch whilst serving as a State Senator in the legislative branch.
27 Because the Plaintiff includes in ¶ 8 of the Complaint the constitutional language reading “no
28 persons charged with the exercise of powers properly belonging to one of these departments

1 shall exercise *any functions, appertaining to either of the others*” (emphasis added) and in ¶¶ 1
2 and 4 identifies the two positions simultaneously held by Defendant Denis, one of which is
3 specifically identified as in the executive branch, the other of which is specifically identified as
4 in the legislative branch, the pleading is more than sufficient.

5 Secondly, as denoted above, the Complaint precisely mirrors the pleading requirements as
6 laid out by the Nevada Supreme Court in *Heller v. Legislature of State of Nev.*, 120 Nev. 456,
7 473, 93 P.3d 746, 757 (2004), as to Plaintiff’s seeking the executive branch position held by the
8 legislator.

9 Lastly, Defendant DENIS’ understanding of the essence of the Complaint is arguably self-
10 evident, given his almost-immediate, reported resignation from his executive branch
11 employment upon being served with the Summons and the Complaint he now claims is
12 somehow insufficient. In essence, this resignation also constitutes a *de facto* admission on the
13 merits of the case.

14 There is little mystery as to what Plaintiff is claiming or the nature of the relief he seeks.
15 Here, the Complaint meets all the requirements of the rules of procedure. It sets forth “a short
16 and plain statement of the claim” showing that Plaintiff POJUNIS is “entitled to relief and it
17 clearly includes a demand for judgment for the relief sought.” Defendant DENIS need not
18 guess at anything to formulate a proper response to the Complaint. Defendant DENIS’ Motion
19 for a more definite statement is nothing more and nothing less than a transparent attempt to
20 delay the Court in reaching the merits of this case.

21 **D. Unconstitutional Expenditures May Be Enjoined and a Nevada Resident/Taxpayer
22 Has Standing To Raise That Issue.**

23 In arguing that this Court should strike Plaintiff’s request for the injunctive relief of returning
24 funds unconstitutionally disbursed to DENIS by labeling them as “damages,” see MOTION pp.
25 10-11, DENIS apparently misinterprets Plaintiff’s Request for Relief to mean that Plaintiff
26 POJUNIS himself should recover those unconstitutionally disbursed funds and other benefits
27 derived.
28

1 Instead, Plaintiff POJUNIS' prayer for relief merely requests that the Court enjoin Defendant
2 DENIS from retaining the unconstitutionally derived funds and benefits and that they be
3 remitted to the State of Nevada; not that they be remitted to Plaintiff, himself. Contrary to
4 Defendant DENIS' assertion, this is not a claim for "damages" but merely a request for
5 injunctive relief consistent with the declaration that Defendant DENIS violated the Nevada
6 Constitution in holding positions simultaneously in more than one branch of Nevada State
7 government.

8 "The courts in most jurisdictions have generally held or recognized that a taxpayer has the
9 right to attack unlawful appropriations, unlawful expenditures, the misapplication, or waste of
10 public funds raised by taxation, to which the taxpayer has contributed or at least in the absence
11 of legislation restricting such right." 74 AM. JUR. 2D *Taxpayers' Actions* § 23 (updated 2011).

12 "Taxpayers are entitled to maintain an action to enjoin the unlawful or improper diversion of
13 public funds, such as the illegal diversion of municipal and county funds to finance a
14 redevelopment project, or an improper payment of salary to a public official, provided such an
15 act is improper." *Id. (emphasis added)*.

16 **IV. CONCLUSION**

17 For all the aforementioned reasons and authorities, Plaintiff's POJUNIS' case is neither
18 moot, indefinite in its allegations, lacking in justiciable claims, nor otherwise lacking in legal
19 merit, and therefore, each and every one of Defendant DENIS' Motions should be denied.

20
21 Respectfully submitted,
22 NPRI CENTER FOR JUSTICE AND
23 CONSTITUTIONAL LITIGATION

24 BY: _____

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the ____ day of January, 2012, I caused to be deposited in the United States Mail at Reno, Nevada, a true and correct copy of the foregoing PLAINTIFF's OPPOSITION TO DEFENDANT DENIS' MOTION(S): TO DISSMISS PURSUANT TO NRCP 12(b)(1) AND 12(b)(5), OR IN THE ALTERNATIVE, FOR A MORE DEFINITE STATEMENT PURSUANT TO NRCP 12(e), AND TO STRIKE PRAYER FOR RELIEF, enclosed in a sealed envelope upon which first class postage was paid, addressed as follows:

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