Nevada Commission on Ethics
REQUEST FOR OPINION
No. 11-48C

NEVADA COMMISSION ON ETHICS
THIRD PARTY REQUEST FOR OPINION
(ETHICS COMPLAINT)
NRS 281A.440.2
Please print or complete online.

RECEIVED
JUN 28 2011
COMMISSION ON ETHICS

1. Provide the name, title, public agency, address, and telephone number for the public officer or employee you allege violated the Nevada Ethics in Government Law, NRS 281A. ***(If more than one public officer or employee is alleged to have violated the law, use a separate form for each individual.)***

Name & Title:	Roy Edgington, Jr. Councilman Ward 3		
Public Agency:	City of Fernley		
Address:	595 Silver Lace Blvd.		
City, State, Zip:	Fernley, NV 89408	Telephone:	775-784-9800

2. Describe in specific detail the conduct of the public officer or employee identified above that you allege violated the provision(s) of chapter 281A of NRS. ***(You must include specific facts and circumstances to support your allegations – including dates, times, places, and the name and position of each person involved.)***

Check here [x] if additional pages are attached.

Please see the attached pages

3. Identify all persons who might have knowledge of the facts and circumstances you have described, *as well as* the nature of the testimony the person will provide. Include the address and telephone number for each person.

Check here [x] if additional pages are attached.

Name & Title:	Please see the attached pages		
Address:		Telephone:	
City, State, Zip:			
Nature of Testimony:			

4. Attach two copies of all documents or items you believe provide credible evidence to support your allegations. NRS 281A.440.2(b)(1) requires you to submit all related evidence to support your allegations. NAC 281A.435.3 defines credible evidence as a minimal level of any reliable and competent form of proof provided by witnesses, records, documents, exhibits, minutes, agendas, videotapes, photographs, concrete objects, or other similar items that would reasonably support the allegations made within the complaint. Credible evidence does not include a newspaper article or other media report if the article or report is offered by itself.

State the total number of additional pages attached (including evidence) 39 . plus 2 audio discs

REQUESTER'S INFORMATION:

NAME: Janice Prichard	E-MAIL: prchrdj@sbcglobal.net
ADDRESS: P O Box 1668 790 G street	
CITY, STATE, ZIP: Fernley, NV 89408	
TELEPHONE 775-575-4249	CELL PHONE: 775-771-1683

By my signature below, I do affirm that the facts set forth in the foregoing complaint and attachments thereto are true and correct to the best of my knowledge and belief and I am willing to provide sworn testimony if necessary regarding these allegations.

Signature

6-27-11
Date

Print Name: Janice Prichard

Please return an original signed form, two copies of the form, and three copies of the supporting documents and evidence to:

Executive Director
Nevada Commission on Ethics
704 W. Nye Lane, Suite 204
Carson City, Nevada 89703

Forms submitted by facsimile will not be considered as properly filed with the Commission.
NAC 281A.255.3

#2. On April 20, 2011, the Acting City Manager removed agenda item #11 from the agenda to be addressed at the May 4, 2011 city council meeting. This agenda item read:

DISCUSSION AND POSSIBLE DIRECTION TO STAFF REGARDING POSSIBLE CHANGES TO EXISTING CITY OF FERNLEY BOARDS, COMMISSIONS, AND/OR COMMITTEES TO INCLUDE BUT NOT LIMITED TO, PREPARING AND/OR AMENDING ORDINANCES AND/OR RESOLUTIONS FOR THE CONSOLIDATION AND/OR CHANGE IN STATUS OF EXISTING BOARDS, COMMISSIONS AND/OR COMMITTEES. (Exhibit A)

On May 4, 2011, this agenda item was re-agendized as item #18 and read:

DISCUSSION AND POSSIBLE DIRECTION TO CITY MANAGER TO INCLUDE BUT NOT LIMITED TO PREPARING AND/OR AMENDING ORDINANCES AND/OR RESOLUTIONS REGARDING EXISTING BOARDS, COMMISSIONS AND/OR COMMITTEES FOR POSSIBLE CHANGES TO EXISTING CITY OF FERNLEY BOARDS, COMMISSIONS, OR COMMITTEES; INCLUDING, BUT NOT LIMITED TO POSSIBLE CONSOLIDATION, MODIFICATION, OR ELIMINATION OF THE FOLLOWING BOARDS: (Exhibit B)

A. ARTS AND CULTURE COMMISSION

B. AUDIT COMMITTEE

C. BUILDING BOARD OF APPEALS

D. CONVENTION AND TOURISM AUTHORITY

E. PLANNING COMMISSION

After the reading of this agenda item into the record and a brief report given by City Clerk Lena Shumway, Councilmen Eilrich and Chaffin and Councilwoman Malloy made disclosures. Councilman Roy Edgington said nothing. These disclosures are on Tape 2, 1:19:14 through approximately 1:20:20.

NRS 281A.420 requires a public officer to disclose any conflict of interest and abstain from voting on certain types of conflicts on a commitment in a private capacity to the interests of others. One such conflict is addressed in NRS 281A.420 (8)(A) (4) which is a substantial and continuing business relationship. Councilman Edgington did not disclose nor did he abstain from the vote on the Arts and Culture Commission. Per the Secretary of State, Councilman Edgington is in an ongoing business relationship with Dinah Eilrich. **(Exhibit C)** Dinah Eilrich is a member of the Arts and Culture Commission. **(Exhibit D)** (It should also be noted he is also in a continuing business relationship with Councilman Eilrich, Ward 5.)

Further substantiation that Councilman Edgington should have abstained from voting is the United States Supreme Court ruling in ***Nevada Commission on Ethics v Carrigan.*** The U S Supreme Court upheld the ethics statues NRS 281A.420 (1)(C) and NRS 281A.420(8)(A) (4). **(Exhibit E)**

Thus, based upon the attached documentation, it is herby alleged that Councilman Edgington violated ethics statutes NRS 281A.420 (1)(C), NRS281A.420(3)(C), and NRS 281A.420(8)(A) (4).

NRS 281A.420 Requirements regarding disclosure of conflicts of interest and abstention from voting because of certain types of conflicts; effect of abstention on quorum and voting requirements; exceptions.

1. Except as otherwise provided in this section, a public officer or employee shall not approve, disapprove, vote, abstain from voting or otherwise act upon a matter:

(a) Regarding which the public officer or employee has accepted a gift or loan;

(b) In which the public officer or employee has a pecuniary interest; or

(c) Which would reasonably be affected by the public officer's or employee's commitment in a private capacity to the interest of others,

➥ without disclosing sufficient information concerning the gift, loan, interest or commitment to inform the public of the potential effect of the action or abstention upon the person who provided the gift or loan, upon the public officer's or employee's pecuniary interest, or upon the persons to whom the public officer or employee has a commitment in a private capacity. Such a disclosure must be made at the time the matter is considered. If the public officer or employee is a member of a body which makes decisions, the public officer or employee shall make the disclosure in public to the chair and other members of the body. If the public officer or employee is not a member of such a body and holds an appointive office, the public officer or employee shall make the disclosure to the supervisory head of the public officer's or employee's organization or, if the public officer holds an elective office, to the general public in the area from which the public officer is elected.

2. The provisions of subsection 1 do not require a public officer to disclose:

(a) Any campaign contributions that the public officer reported in a timely manner pursuant to NRS 294A.120 or 294A.125; or

(b) Any contributions to a legal defense fund that the public officer reported in a timely manner pursuant to NRS 294A.286.

3. Except as otherwise provided in this section, in addition to the requirements of subsection 1, a public officer shall not vote upon or advocate the passage or failure of, but may otherwise participate in the consideration of, a matter with respect to which the independence of judgment of a reasonable person in the public officer's situation would be materially affected by:

(a) The public officer's acceptance of a gift or loan;

(b) The public officer's pecuniary interest; or

(c) The public officer's commitment in a private capacity to the interests of others.

4. In interpreting and applying the provisions of subsection 3:

(a) It must be presumed that the independence of judgment of a reasonable person in the public officer's situation would not be materially affected by the public officer's pecuniary interest or the public officer's commitment in a private capacity to the interests of others where the resulting benefit or detriment accruing to the public officer, or if the public officer has a commitment in a private capacity to the interests of others, accruing to the other persons, is not greater than that accruing to any other member of the general business, profession, occupation or group that is affected by the matter. The presumption set forth in this paragraph does not affect the applicability of the requirements set forth in subsection 1 relating to the disclosure of the pecuniary interest or commitment in a private capacity to the interests of others.

(b) The Commission must give appropriate weight and proper deference to the public policy of this State which favors the right of a public officer to perform the duties for which the public officer was elected or appointed and to vote or otherwise act upon a matter, provided the public officer has properly disclosed the public officer's acceptance of a gift or loan, the public officer's pecuniary interest or the public officer's commitment in a private capacity to the interests of others in the manner required by subsection 1. Because abstention by a public officer disrupts the normal course of representative government and deprives the public and the public officer's constituents of a voice in governmental affairs, the provisions of this section are intended to require abstention only in clear cases where the independence of judgment of a reasonable person in the public officer's situation would be materially affected by the public officer's acceptance of a gift or loan, the public officer's pecuniary interest or the public officer's commitment in a private capacity to the interests of others.

5. Except as otherwise provided in NRS 241.0355, if a public officer declares to the body or committee in which the vote is to be taken that the public officer will abstain from voting because of the requirements of this section, the necessary quorum to act upon and the number of votes necessary to act upon the matter, as fixed by any statute, ordinance or rule, is reduced as though the member abstaining were not a member of the body or committee.

6. The provisions of this section do not, under any circumstances:

(a) Prohibit a member of a local legislative body from requesting or introducing a legislative measure; or

(b) Require a member of a local legislative body to take any particular action before or while requesting or introducing a legislative measure.

7. The provisions of this section do not, under any circumstances, apply to State Legislators or allow the Commission to exercise jurisdiction or authority over State Legislators. The responsibility of a State Legislator to make disclosures concerning gifts, loans, interests or commitments and the responsibility of a State Legislator to abstain from voting upon or advocating the passage or failure of a matter are governed by the Standing Rules of the Legislative Department of State Government which are adopted, administered and enforced exclusively by the appropriate bodies of the Legislative Department of State Government pursuant to Section 6 of Article 4 of the Nevada Constitution.

8. As used in this section:

(a) "Commitment in a private capacity to the interests of others" means a commitment to a person:

(1) Who is a member of the public officer's or employee's household;

(2) Who is related to the public officer or employee by blood, adoption or marriage within the third degree of consanguinity or affinity;

(3) Who employs the public officer or employee or a member of the public officer's or employee's household;

(4) With whom the public officer or employee has a substantial and continuing business relationship; or

(5) Any other commitment or relationship that is substantially similar to a commitment or relationship described in subparagraphs (1) to (4), inclusive, of this paragraph.

(b) "Public officer" and "public employee" do not include a State Legislator.

(Added to NRS by 1977, 1106; A 1987, 2095; 1991, 1597; 1995, 1083; 1997, 3326; 1999, 2738; 2003, 818, 1735, 3389; 2007, 3372; 2009, 1055, 1057)—(Substituted in revision for NRS 281.501)

#3

Don Parsons, Councilman Ward 2
595 Silver Lace Blvd.
Fernley, NV 89408
775-784-9800

Testimony to include his presence at the meeting wherein he will testify that Councilman Edgington made no disclosures, heard all statements made by Councilman Edgington, including his vote.

Kelly Malloy, Councilwoman Ward 1
595 Silver Lace Blvd.
Fernley, NV 89408
775-784-9800

Testimony to include her presence at the meeting wherein she made her own disclosure, will testify that Councilman Edgington made no disclosures, and heard all statements made by Councilman Edgington, including his vote.

LeRoy Goodman, Mayor *Kelly Malloy, Ward 1* *Don Parsons, Ward 2* *Roy Edgington, Ward 3* *Curt Chaffin, Ward 4* *Cal Eilrich, Ward 5*	**FERNLEY CITY COUNCIL MEETING** ***AGENDA*** **Fernley City Hall** 595 Silver Lace Blvd. • Fernley, NV 89408 Phone: (775) 784-9830 • Fax: (775) 784-9839

FCC Meeting: ***WEDNESDAY, April 20, 2011***

ITEMS MAY BE REMOVED OR ADDRESSED OUT OF SEQUENCE. ACTION MAY BE TAKEN ON ALL ITEMS EXCEPT WHERE NOTED.

Time Certain: Time certain designates a definite time for the start time of that item. The time certain item may **NOT** begin earlier than the designated time certain. It may begin later than the designated time, but not earlier.

5:00 p.m. OPEN MEETING – PLEDGE OF ALLEGIANCE

Mayor's statement: "To avoid meeting disruptions, please place cell phones and beepers in the silent mode or turn them off during the meeting. All meetings are recorded. When addressing the Council please speak clearly into the microphone. Thank you for your understanding."

1. **ROLL CALL.**

2. **APPROVAL OF THE AGENDA.**

3. **PUBLIC INPUT**. Public comment is limited to five (5) minutes per person. Items not agendized for this meeting cannot be acted upon other than to place them on future agendas. Public input is prohibited regarding comments, which are not relevant to, or within the authority of, the public body, or if the content of the comments is willfully disruptive of the meeting by being irrelevant, repetitious, slanderous, offensive, inflammatory, irrational or amounting to personal attacks or interfering, with the rights of other speakers.

4. **RECOGNITION OF EMPLOYEES.**

5. **CONSENT AGENDA**: (PLEASE NOTE: All matters listed under the consent agenda are considered routine, and may be acted upon by the Council members in one motion, and without an extensive hearing. Any member of the Council or member of the public may request that an item be taken from the consent agenda, discussed, and acted upon separately during this meeting.)

   A. **ACCEPT VOUCHERS REPORT.**

   B. **APPROVAL OF MINUTES – 03/09/2011 & 03/16/2011**

   C. **APPROVAL OF A SETTLEMENT AGREEMENT FOR THE CASE OF REYNOLDS V. CITY OF FERNLEY AND LYON COUNTY AND RELATED LITIGATION.**

   {END OF CONSENT AGENDA}

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6. **LEGISLATIVE UPDATE FROM NEVADA BUSINESS STRATEGIES INCLUDING, BUT NOT LIMITED TO, PROPOSED SENATE AND ASSEMBLY BILLS, CONSOLIDATED**

EXHIBIT A-1

TAX, AND OTHER LEGISLATIVE ISSUES THAT RELATE TO THE CITY OF FERNLEY (LIST OF BDRS, ABS AND SBS IS AVAILABLE UPON REQUEST AND CAN BE VIEWED ON-LINE).

7. **DISCUSSION AND POSSIBLE APPROVAL OF A CONTRACT WITH UPSTAR ENERGY, LLC FOR THE INSTALLATION, LEASE AND MAINTENANCE OF A WIND GENERATION FACILITY LOCATED AT EAST WASTEWATER TREATMENT FACILITY (APN 021-201-11 AND 24) USING NV ENERGY RENEWABLE ENERGY REBATES.**
8. **DISCUSSION AND POSSIBLE APPROVAL OF THE BUSINESS IMPACT STATEMENT AS IT RELATES TO INCREASE OF FRANCHISE/BUSINESS LICENSE FEES FOR PUBLIC UTILITIES PROVIDING SERVICES WITHIN THE CITY OF FERNLEY.**
9. **PUBLIC HEARING: DISCUSSION AND POSSIBLE PROPOSAL OF BILL #165 MODIFYING FRANCHISE/BUSINESS LICENSE FEES FOR PUBLIC UTILITIES PROVIDING SERVICES WITHIN THE CITY OF FERNLEY.**
10. **PUBLIC HEARING: DISCUSSION AND POSSIBLE DIRECTION TO STAFF REGARDING A TEMPORARY BOND DEBT ASSESSMENT FOR UTILITY WATER USERS AND OTHER MATTERS PROPERLY RELATED THERETO.**
11. **DISCUSSION AND POSSIBLE DIRECTION TO STAFF REGARDING POSSIBLE CHANGES TO EXISTING CITY OF FERNLEY BOARDS, COMMISSIONS, AND/OR COMMITTEES TO INCLUDE BUT NOT LIMITED TO, PREPARING AND/OR AMENDING ORDINANCES AND/OR RESOLUTIONS FOR THE CONSOLIDATION AND/OR CHANGE IN STATUS OF EXISTING BOARDS, COMMISSIONS AND/OR COMMITTEES.**

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12. **REPORTS BY CITY STAFF, CITY COUNCIL AND MAYOR.** This item is for various public entity representatives to provide general information to the Council and public. No action will be taken.

    A. **REPORTS BY LYON COUNTY SHERIFF'S DEPARTMENT, NORTH LYON COUNTY FIRE PROTECTION DISTRICT AND ADDITIONAL REPORTS AS RECOGNIZED BY THE MAYOR.**

    B. **REPORTS BY CITY STAFF, CITY COUNCIL AND MAYOR.**

13. **ADDRESS REQUEST(S) FOR FUTURE AGENDA ITEMS.**

14. **ADJOURNMENT.**

This notice and agenda is being posted before 9:00 a.m.,04/15/2011, in accordance with NRS 241.020 at the following locations: www.cityoffernley.org, Fernley Post Office at 315 Main Street, Lyon County Library at 575 Silver Lace Blvd., Senior Citizen's Center at 1170 W. Newlands Drive, and Fernley City Hall at 595 Silver Lace Blvd. Notice to persons with disabilities: Members of the public who are disabled and require special assistance or accommodations at the meeting are requested to notify the Fernley City Hall, at least 24 hours in advance, at 784-9830.

EXHIBIT A-2

Mr. Shawn Desruiseaux, Fernley resident, had asked to make a presentation regarding what other cities and counties are doing to deal with the debt. He suggested looking into efforts by Arizona and consideration should be given to possibly privatizing services. He was distrustful of government because he was seeing a lack of responsibility. He asked the Council to put a little more effort into finding a solution for this problem.

Mr. Steven Mayheart, Fernley resident, said development is upside down and does not pay for itself. He asked the Council to compare City operations to those of private business, if a company was losing $600,000 a year, would they still keep it? He asked the City to take on at least 50% of the burden.

Mr. William Chadick, Fernley resident, said it takes years of planning and negotiations to attract businesses to the City. It takes a lot of work to bring companies to the area and have the proper infrastructure in place. He felt the City needed to have people working towards those goals now.

Mr. Carl Steinberg, Fernley resident, said it was stated that between the franchise fee increase and the temporary assessment increases to residents would be between $28 to $32. He asked the Council to consider slightly increasing the temporary assessment. It would save the residents around $5 a month.

Eilrich stated $18 a month would generate approximately $2 million a year, which would go a long way to meeting the shortfall. The City would still need to carefully look at budgets, but he didn't see any other option to plug the hole. He was not in favor of cutting Community Development. **Motion:** MOVED TO DIRECT STAFF TO PREPARE AN $18 PER MONTH ASSESSMENT TEMPORARY, **Action:** Approve, **Moved by** Councilman Eilrich, **Seconded by** Councilman Edgington.

Vote: Motion passed (**summary:** Yes = 3, No = 2, Abstain = 0).

Yes: Councilman Chaffin, Councilman Edgington, Councilman Eilrich.

No: Councilman Parsons, Councilwoman Malloy.

Mayor Pro Tem Chaffin asked if the payments could be adjusted so residents were not as affected during the summer months.

11. DISCUSSION AND POSSIBLE DIRECTION TO STAFF REGARDING POSSIBLE CHANGES TO EXISTING CITY OF FERNLEY BOARDS, COMMISSIONS, AND/OR

COMMITTEES TO INCLUDE BUT NOT LIMITED TO, PREPARING AND/OR AMENDING ORDINANCES AND/OR RESOLUTIONS FOR THE CONSOLIDATION AND/OR CHANGE IN STATUS OF EXISTING BOARDS, COMMISSIONS AND/OR COMMITTEES.

This item had been removed at the request of the City Manager and would be addressed on May 4th.

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12. REPORTS BY CITY STAFF, CITY COUNCIL AND MAYOR.

A. REPORTS BY LYON COUNTY SHERIFF'S DEPARTMENT, NORTH LYON COUNTY FIRE PROTECTION DISTRICT AND ADDITIONAL REPORTS AS RECOGNIZED BY THE MAYOR.

B. REPORTS BY CITY STAFF, CITY COUNCIL AND MAYOR.

City Attorney Brandi Jensen showed the Council a brochure her office had drafted about the Truckee Canal.

Interim City Manager Fred Turnier relayed information about the second annual Mayor's Community Clean Up. He also explained in the City's efforts to update the website, some information may reappear on the website that was previously deleted. He had asked the Clerk's Office to remove the Community Development pages until the update was completed.

Councilman Parsons said he informally was tracking how many employees were at City Hall at 7am. He requested a time clock be installed to show employee arrival and departure, it would also be downloaded to calculate payroll. He asked to have it on a future agenda.

Item 5.C. was addressed next.

North Lyon County Fire Protection District Chief Darryl Cleveland provided the monthly statistics for fire and ambulance services. The average response time was 6.1 minutes. He cautioned everyone to be mindful that they were entering wild land fire season.

13. ADDRESS REQUEST(S) FOR FUTURE AGENDA ITEMS.

Councilman Parsons asked to discuss the installation of time clocks for all City employees during the second meeting in May. He asked to discuss during the first meeting in May changes to Ordinance #001 and possible changes to the tentative budget.

Councilwoman Malloy reiterated her request to reduce the budget for Community Development for the remainder of the current fiscal year and the next fiscal year. She also would like to discuss Ordinance #1 – specifically what happens if agenda items requested by Council are not

LeRoy Goodman, Mayor *Kelly Malloy, Ward 1* *Don Parsons, Ward 2* *Roy Edgington, Ward 3* *Curt Chaffin, Ward 4* *Cal Eilrich, Ward 5*	**FERNLEY CITY COUNCIL MEETING** ***AGENDA*** **Fernley City Hall** 595 Silver Lace Blvd. • Fernley, NV 89408 Phone: (775) 784-9830 • Fax: (775) 784-9839

FCC Meeting: ***WEDNESDAY, May 4, 2011***

ITEMS MAY BE REMOVED OR ADDRESSED OUT OF SEQUENCE.
ACTION MAY BE TAKEN ON ALL ITEMS EXCEPT WHERE NOTED.

Time Certain: Time certain designates a definite time for the start time of that item. The time certain item may **NOT** begin earlier than the designated time certain. It may begin later than the designated time, but not earlier.

4:00 p.m. OPEN MEETING – PLEDGE OF ALLEGIANCE

Mayor's statement: "To avoid meeting disruptions, please place cell phones and beepers in the silent mode or turn them off during the meeting. All meetings are recorded. When addressing the Council please speak clearly into the microphone. Thank you for your understanding."

1. **ROLL CALL.**

2. **APPROVAL OF THE AGENDA.**

BUDGET WORKSHOP:

3. **PRESENTATION AND POSSIBLE DISCUSSION OF GENERAL, WATER AND SEWER FUNDS OF 2011-2012 FISCAL YEAR BUDGET INCLUDING BUT NOT LIMITED TO STAFF RECOMMENDATIONS.**

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4. **DISCUSSION AND POSSIBLE DIRECTION TO STAFF REGARDING THE GENERAL WATER AND SEWER FUNDS PORTION OF 2011-2012 FISCAL YEAR BUDGET.**

5. **PUBLIC INPUT.** Public comment is limited to five (5) minutes per person. Items not agendized for this meeting cannot be acted upon other than to place them on future agendas. Public input is prohibited regarding comments, which are not relevant to, or within the authority of, the public body, or if the content of the comments is willfully disruptive of the meeting by being irrelevant, repetitious, slanderous, offensive, inflammatory, irrational or amounting to personal attacks or interfering, with the rights of other speakers.

6. **PROCLAMATIONS BY THE MAYOR.**

7. **RECOGNITION OF EMPLOYEES.**

EXHIBIT B-1

8. **CONSENT AGENDA:** (PLEASE NOTE: All matters listed under the consent agenda are considered routine, and may be acted upon by the Council members in one motion, and without an extensive hearing. Any member of the Council or member of the public may request that an item be taken from the consent agenda, discussed, and acted upon separately during this meeting.)

   A. ACCEPT VOUCHERS REPORT.

   B. APPROVAL OF MINUTES – 03/16/2011 CLOSED SESSION, 03/30/2011 & 04/06/2011

   C. APPROVAL OF LIQUOR LICENSE FOR SIERRA DISCOUNT MARKET (NEW OWNER); LOCATED AT 882 US HIGHWAY 95A

   {END OF CONSENT AGENDA}

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9. **LEGISLATIVE UPDATE FROM NEVADA BUSINESS STRATEGIES INCLUDING, BUT NOT LIMITED TO, PROPOSED SENATE AND ASSEMBLY BILLS, CONSOLIDATED TAX, AND OTHER LEGISLATIVE ISSUES THAT RELATE TO THE CITY OF FERNLEY (LIST OF BDRS, ABS AND SBS IS AVAILABLE UPON REQUEST AND CAN BE VIEWED ON-LINE).**

10. **PRESENTATION AND POSSIBLE ACCEPTANCE OF THE CITY OF FERNLEY COMMUNITY ASSESSMENT FINAL REPORT.**

11. **DISCUSSION AND POSSIBLE DIRECTION TO THE CITY MANAGER REGARDING A WATER DEDICATION INCENTIVE PROGRAM FOR THE CITY OF FERNLEY AND OTHER MATTERS PROPERLY RELATED THERETO.**

12. **DISCUSSION AND POSSIBLE DIRECTION TO THE CITY MANAGER TO ENTER INTO WATER LEASE NEGOTIATIONS WITH THE PYRAMID LAKE PAIUTE TRIBE FOR THE 2011 IRRIGATION SEASON AND OTHER MATTERS PROPERLY RELATED THERETO.**

13. **DISCUSSION AND POSSIBLE DIRECTION TO THE CITY MANAGER REGARDING PRIORITIES FOR WATER RIGHTS RELATED MATTERS IN FY11/12, INCLUDING, BUT NOT LIMITED TO:**

    - **WATER DEDICATION RATE REDUCTION**
    - **DEDICATION INCENTIVES PROGRAM**
    - **AQUIFER STORAGE AND RECOVERY (ASR) PROGRAM**
    - **TRUCKEE CANAL ACCESS**
    - **DONNER LAKE STORAGE NEGOTIATIONS**
    - **PYRAMID LAKE PAIUTE TRIBE WATER LEASE NEGOTIATIONS**
    - **OTHER SECONDARY ISSUES**
        - **UPSTREAM STORAGE CONTRACT NEGOTIATIONS WITH UNITED STATES**
        - **EXPANDING GROUNDWATER RESOURCES**
        - **ONGOING TRUCKEE RIVER OPERATING AGREEMENT (TROA) LITIGATION**
        - **LYON COUNTY ROAD WATER**
        - **TRUCKEE CARSON IRRIGATION DISTRICT (TCID) OWNED WATER**

14. **PUBLIC HEARING: DISCUSSION AND ADOPTION OF BILL #165, AN ORDINANCE MODIFYING FRANCHISE/BUSINESS LICENSE FEES FOR PUBLIC UTILITIES PROVIDING SERVICES WITHIN THE CITY OF FERNLEY AND MODIFYING TITLE 3 (BUSINESS LICENSE REGULATIONS), CHAPTER 1 (GENERAL BUSINESS LICENSE PROVISIONS) OF THE FERNLEY MUNICIPAL CODE, AND OTHER MATTERS PROPERLY RELATING THERETO.**

15. **PUBLIC HEARING: DISCUSSION AND POSSIBLE ACTION ON SUP 11-26, A REQUEST FOR A SPECIAL USE PERMIT FOR THE EXPANSION OF A LEGALLY ESTABLISHED NON-CONFORMING TELECOMMUNICATIONS FACILITY, WITH MODIFICATIONS INCLUDING ADDITION OF TWELVE PANEL ANTENNAS, ONE MICROWAVE DISH, AND A 12-FOOT BY 16-FOOT EQUIPMENT SHELTER AND STANDBY DIESEL GENERATOR. THE PROPERTY IS ZONED M1, (GENERAL INDUSTRIAL), AND IS LOCATED AT 5550 US HWY 50A, (APN: 21-392-10).**

16. **DISCUSSION AND POSSIBLE APPROVAL OF AWARD OF WATER MODEL UPDATES, CALIBRATION AND INFRASTRUCTURE VERIFICATION TO FARR WEST ENGINEERING IN AN AMOUNT NOT TO EXCEED $20,625.00.**

17. **DISCUSSION AND POSSIBLE ACTION TO APPROVE A BICYCLE MOTOCROSS (BMX) PARK ON CITY OWNED PROPERTY, FUNDED BY RESIDENTIAL CONSTRUCTION TAX (RCT) REVENUE.**

18. **DISCUSSION AND POSSIBLE DIRECTION TO CITY MANAGER TO INCLUDE BUT NOT LIMITED TO, PREPARING AND/OR AMENDING ORDINANCES AND/OR RESOLUTIONS REGARDING EXISTING BOARDS, COMMISSIONS AND/OR COMMITTEES FOR POSSIBLE CHANGES TO EXISTING CITY OF FERNLEY BOARDS, COMMISSIONS, AND/OR COMMITTEES; INCLUDING, BUT NOT LIMITED TO POSSIBLE CONSOLIDATION, MODIFICATION, OR ELIMINATION OF THE FOLLOWING BOARDS:**

    A. **ARTS AND CULTURE COMMISSION**

    B. **AUDIT COMMITTEE**

    C. **BUILDING BOARD OF APPEALS**

    D. **CONVENTION AND TOURISM AUTHORITY**

    E. **PLANNING COMMISSION**

19. **DISCUSSION AND POSSIBLE ACTION TO ENTER INTO AN EMPLOYMENT SERVICES AGREEMENT WITH THE INTERIM CITY MANAGER.**

20. **DISCUSSION AND POSSIBLE DIRECTION TO THE CITY MANAGER REGARDING CHANGES TO THE ORDINANCE #1(PER COUNCILMAN PARSON'S AND COUNCILWOMAN MALLOY'S REQUEST).**

21. **DISCUSSION TO THE CITY MANAGER REGARDING REDUCTION IN COMMUNITY DEVELOPMENT DEPARTMENT BUDGET FOR THIS FISCAL YEAR AND THE NEXT FISCAL YEAR (PER COUNCILWOMAN MALLOY'S REQUEST).**

EXHIBIT B-3

22. DISCUSSION TO THE CITY MANAGER REGARDING CONSOLIDATION OF CITY DEPARTMENTS WITH LYON COUNTY INCLUDING COMMUNITY DEVELOPMENT, CITY CLERK'S OFFICE, CITY TREASURER AND HUMAN RESOURCES DEPARTMENT (PER COUNCILWOMAN MALLOY'S REQUEST).

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23. REPORTS BY CITY STAFF, CITY COUNCIL AND MAYOR. This item is for various public entity representatives to provide general information to the Council and public. No action will be taken.

24. ADDRESS REQUEST(S) FOR FUTURE AGENDA ITEMS.

25. ADJOURNMENT.

This notice and agenda is being posted before 9:00 a.m.,04/28/2011, in accordance with NRS 241.020 at the following locations: www.cityoffernley.org, Fernley Post Office at 315 Main Street, North Lyon County Fire Protection District 195 E Main Street, Lyon County Library at 575 Silver Lace Blvd., Senior Citizen's Center at 1170 W. Newlands Drive, Fernley Swimming Pool District 300 Cottonwood Lane, and Fernley City Hall at 595 Silver Lace Blvd. Notice to persons with disabilities: Members of the public who are disabled and require special assistance or accommodations at the meeting are requested to notify the Fernley City Hall, at least 24 hours in advance, at 784-9830.

earmarked for the resurfacing of the tennis court and some other projects. Councilman Eilrich agreed safe places were needed for kids; he was pleased to see the volunteer efforts working along with tax money to make this park happen. **Motion:** MOVED TO APPROVE PUBLIC WORKS DEPARTMENT TO PROCEED WITH THE CONSTRUCTION OF A BICYCLE BMX PARK ON CITY PROPERTY FUNDED BY THE RESIDENTIAL CONSTRUCTION TAX (RCT) REVENUE, **Action:** Approve, **Moved by** Councilman Parsons, **Seconded by** Councilman Chaffin. **Vote:** Motion carried by unanimous roll call vote (**summary:** Yes = 5).

Yes: Councilman Chaffin, Councilman Edgington, Councilman Eilrich, Councilman Parsons, Councilwoman Malloy.

Councilman Parsons asked what would be done to provide restroom facilities at the site. City Engineer Whalen said in the short-time they would be using portable toilets open during the hours of operation. **Item 9 was addressed next.**

18. DISCUSSION AND POSSIBLE DIRECTION TO CITY MANAGER TO INCLUDE BUT NOT LIMITED TO, PREPARING AND/OR AMENDING ORDINANCES AND/OR RESOLUTIONS REGARDING EXISTING BOARDS, COMMISSIONS AND/OR COMMITTEES FOR POSSIBLE CHANGES TO EXISTING CITY OF FERNLEY BOARDS, COMMISSIONS, AND/OR COMMITTEES; INCLUDING, BUT NOT LIMITED TO POSSIBLE CONSOLIDATION, MODIFICATION, OR ELIMINATION OF THE FOLLOWING BOARDS:

- **A. ARTS AND CULTURE COMMISSION**
- **B. AUDIT COMMITTEE**
- **C. BUILDING BOARD OF APPEALS**
- **D. CONVENTION AND TOURISM AUTHORITY**
- **E. PLANNING COMMISSION**

City Clerk Lena Shumway said as part of the direction given during the budget workshop on March 30th, Staff evaluated all the City Boards and Commissions looking for possible efficiency and/or consolidation to better suit existing Staff workloads. A number of items were considered including: the amount of time spent administering each Board, statutory requirements, cost to the City for Board events, and other possible budgetary impacts such as overtime. Based on the evaluation two Boards were identified as requiring significant Staff time to prepare meeting materials and to coordinate Board efforts. A recommendation was made to change the status of the Arts & Culture Commission from an official City Commission to a volunteer organization and to also dissolve the Fernley Convention and Tourism Board and shift the responsibilities back to the City Council. If the Council decided to move forward with the recommendations, changes

would be needed to the ordinances creating the Boards. City Clerk Shumway quickly reviewed the time requirements of the other three Boards.

Councilman Eilrich disclosed that his wife serves on the current Arts & Culture Commission; he assured that her position would affect his professional opinion and making a decision in the best interest of the City. Councilman Chaffin disclosed that he as a member of the City Council sits on the FCTA; whether the Board continues or is dissolved he would be voting the same. He did not think there was a conflict of interest. Councilwoman Malloy disclosed that she sits on the Audit Committee as a member of the City Council. She said the Audit Committee was formed because of the result of audit findings and did not think it should be disbanded. She asked how much time was going into Staff preparing for these Boards as Staff would still have to prepare reports for the City Council. City Clerk Shumway responded that by disbanding the Boards, it would eliminate time coordinating between Board members and providing administrative support to Board members. It would save time in the elimination of preparing and posting a separate agenda and providing additional Staff time to attend meetings and prepare minutes.

Councilman Parsons had reservations about taking over some of the duties of the Arts & Culture Commission and the FCTA. He thought it would create an additional meeting each month or couple of months. He thought it worked great the way it was organized currently and didn't see any reason to change. He didn't see any benefit to the City to eliminate any of the Boards.

Mayor Goodman explained the recommendation was to make the Arts & Culture Commission a volunteer organization. The FCTA meets once a quarter, while most Room Tax Boards meet bi-annually. Interim City Manager Fred Turnier reiterated this item was being proposed to improve efficiencies.

Arts & Culture Commissioner Dinah Eilrich said speaking for just herself and past Chairman of the Arts & Culture Commission, said there were some disadvantages to being an official City Commission. Sometimes the Open Meeting Law guidelines were a little stifling and it could be very frustrating. She did feel that the Commission may lose some clout by not being recognized as an official City Board. However the shift to a volunteer organization would free up the Commission and allow them to get things done quickly and not require the division of Commissioners into separate teams. No matter what the Council decided, she would like to see the organization stay intact as they had a cohesive, hard working group. She understood Staff

was short-handed and thought they were doing an amazing job and thanked Staff for their support.

Arts & Culture Commission Chairman Nancy Campbell agreed that sometimes the Open Meeting Law can sometimes stifle the activities of the group. She felt as artists, the group often has different ideas and thoughts and the restrictions tend to slow them down and make them proceed in a more organized fashion. She relayed a story in which she sat next to a State Assemblyman on a flight to Reno. She was proud to be able to pull out a card associating her with the Commission and the City of Fernley, she felt it leveled the playing the field and opened doors for her and the Commission. She was able to garner a program for art in the schools by exchanging cards with another gentleman with Sierra Arts and thought the title served the organization well. She would like the group stay as it is, if possible.

Motion: MOVE TO DIRECT THE CITY MANAGER TO TAKE ACTION FOR THE ARTS & CULTURE COMMISSION ONLY TO BE CHANGED TO A VOLUNTEER ORGANIZATION, **Action:** Approve, **Moved by** Councilwoman Malloy, **Seconded by** Councilman Parsons. Councilman Eilrich liked the idea of changing the organization to the Arts & Culture Society. He reminded the Council there was a line item to support these types of organizations. The group could still remain sponsored by the City. **Vote:** Motion carried by unanimous roll call vote (**summary:** Yes = 5). **Yes:** Councilman Chaffin, Councilman Edgington, Councilman Eilrich, Councilman Parsons, Councilwoman Malloy.

Councilman Parsons thought if the FCTA does cost the City money to have this Board, they should possibly reduce their meetings too bi-annually. He thought they were doing a good job after only being in existence for eight months. City Clerk Lena Shumway explained the funding cycle was bi-annual. The current Board established quarterly meetings, should the duties shift back to the City Council they would meet bi-annually to review applications in each grant cycle. Councilman Eilrich said he preferred the City Council to take over the function of the transient lodging tax board similar to the actions of the Lyon County Commission acting as the Liquor Board. He thought doing so would help to make things more efficient and burn less Staff time. Councilwoman Malloy asked how many applications were being received. City Clerk Shumway said approximately 20 applications were received in the last two grant cycles. Applicants were given three to five minutes to give presentations. Current meetings last two to three hours and include a lot of administrative functions related to procedures, forms and items requested by the

FERNLEY HILLS SHOOTING RANGE

Business Entity Information

Status:	Active	File Date:	4/29/2003
Type:	Domestic Non-Profit Corporation	Entity Number:	C10202-2003
Qualifying State:	NV	List of Officers Due:	4/30/2012
Managed By:		Expiration Date:	
NV Business ID:	NV20031335461	Business License Exp:	

Additional Information

Central Index Key:	

Registered Agent Information

Name:	ROBERT G. HARTMANN	Address 1:	1010 12TH ST STE 107
Address 2:		City:	SPARKS
State:	NV	Zip Code:	89431
Phone:		Fax:	
Mailing Address 1:		Mailing Address 2:	
Mailing City:		Mailing State:	
Mailing Zip Code:			
Agent Type:	Noncommercial Registered Agent		

Financial Information

No Par Share Count:	0	Capital Amount:	$ 0

No stock records found for this company

Officers

☐ Include Inactive Officers

Director - ROY EDINGTON			
Address 1:	PO BOX 210	Address 2:	
City:	FERNLEY	State:	NV
Zip Code:	89408	Country:	
Status:	Active	Email:	
President - CAL EILRICH			
Address 1:	PO BOX 1980	Address 2:	
City:	FERNLEY	State:	NV
Zip Code:	89408	Country:	
Status:	Active	Email:	
Treasurer - CAL EILRICH			
Address 1:	PO BOX 1980	Address 2:	
City:	FERNLEY	State:	NV
Zip Code:	89408	Country:	
Status:	Active	Email:	
Secretary - DINAH EILRICH			
Address 1:	PO BOX 1980	Address 2:	
City:	FERNLEY	State:	NV

Zip Code:	89408	Country:	
Status:	Active	Email:	

Actions\Amendments

Action Type:	Articles of Incorporation		
Document Number:	C10202-2003-001	# of Pages:	11
File Date:	4/29/2003	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	C10202-2003-003	# of Pages:	2
File Date:	3/24/2004	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	C10202-2003-002	# of Pages:	1
File Date:	7/30/2004	Effective Date:	
List of Officers for 2004 to 2005			
Action Type:	Annual List		
Document Number:	20050153616-99	# of Pages:	1
File Date:	4/27/2005	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20060188835-91	# of Pages:	1
File Date:	3/27/2006	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20070138280-51	# of Pages:	1
File Date:	2/23/2007	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20080255218-93	# of Pages:	1
File Date:	4/11/2008	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20090388214-87	# of Pages:	1
File Date:	4/27/2009	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20100290128-95	# of Pages:	1
File Date:	4/29/2010	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20110313755-08	# of Pages:	1
File Date:	4/27/2011	Effective Date:	
(No notes for this action)			

EXHIBIT C-2

AGENDA
REGULAR MEETING
FERNLEY ARTS & CULTURE COMMISSION
JUNE 29, 2011 4:00 PM
CITY COUNCIL CHAMBERS
595 SILVER LACE BLVD.,
FERNLEY, NEVADA 89408

This notice and agenda is posted before 9:00a.m. 6/24/2011, in accordance with NRS 241.020 at the following locations: Fernley Post Office at 315 Main Street, Lyon County Library at 575 Silver Lace Blvd., Senior Citizen's Center at 1170 W. Newlands Drive, and Fernley City Hall at 595 Silver Lace Blvd. Further, in compliance with NRS 241.020, this notice has been posted on the official website for the CITY OF FERNLEY, www.cityoffernley.org.

Arts & Culture Commissioners:
Sue Alexander
Regina Kay Brush
Nancy Campbell
Dinah Eilrich
Fran McKay
Jerry Mansker
Nick Pasto

Mission Statement:
"To preserve, create, and promote the art and unique culture of Fernley."

Established by the City of Fernley by Ordinance on July 2, 2007

City Hall
595 Silver Lace Blvd
Fernley, NV 89408
Telephone: 775.784.9910
Fax:775.784.9966
www.cityoffernley.org

We are pleased to make reasonable accommodations for members of the public who are disabled and wish to attend the Fernley Arts & Culture Commission meetings. If you require special arrangements for this meeting, please contact the City Clerk's office at (775) 784-9830, at least 24 hours prior to the date of the meeting.

Creating opportunities
Fernley Arts & Culture Commission

ALL ITEMS ARE FOR COMMISSION ACTION UNLESS OTHERWISE NOTED WITH AN ASTERISK (*).
ITEMS MAY BE REMOVED OR ADDRESSED OUT OF SEQUENCE.
ACTION MAY BE TAKEN ON ALL ITEMS EXCEPT WHERE NOTED.

4:00pm Open Meeting and Pledge of Allegiance

1. **Roll Call**
2. **Public Input:** Public comment is limited to five (5) minutes per person. Items not agendized for this meeting cannot be acted upon other than to place them on future agendas. Public input is prohibited regarding comments, which are not relevant to, or within the authority of, the public body, or if the content of the comments is willfully disruptive of the meeting by being irrelevant, repetitious, slanderous, offensive, inflammatory, irrational or amounting to personal attacks or interfering, with the rights of other speakers.
3. **Approval of Minutes – May 16, May 25, & June 9, 2011**
4. ***Reports:**
   (a) Commissioner Reports & Announcements
   (b) Treasurer's Report
   (c) City Staff Reports
5. **Discussion and possible action regarding recognition language for Jackson Ranch Tree Slice plaque.**
6. **Discussion and possible action regarding Concert Event at Vaquero Days.**
7. **Discussion and possible action regarding a Summer Garden Concert series.**
8. **Discussion and possible action regarding the Old Time Photo Exhibit.**
9. **Discussion and possible action regarding the 4th of July Parade.**
10. **Discussion and possible action regarding advertising ACC events.**
11. **Discussion and possible action regarding Friends of Fernley ACC.**
12. **Discussion and possible action regarding Friends of Fernley ACC Dinner and Pillars of the Community Awards Ceremony.**
13. **Discussion and possible action regarding Grants.**
14. **Discussion and possible action regarding Patriotic Quilt Show.**
15. **Adjournment:**

EXHIBIT D

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

NEVADA COMMISSION ON ETHICS *v.* CARRIGAN

CERTIORARI TO THE SUPREME COURT OF NEVADA

No. 10–568. Argued April 27, 2011—Decided June 13, 2011

Nevada's Ethics in Government Law requires public officials to recuse themselves from voting on, or advocating the passage or failure of, "a matter with respect to which the independence of judgment of a reasonable person in his situation would be materially affected by," *inter alia*, "[h]is commitment in a private capacity to the interests of others," Nev. Rev. Stat. §281A.420(2) (2007), which includes a "commitment to a [specified] person," *e.g.*, a member of the officer's household or the officer's relative, §281A.420(8)(a)–(d), and "[a]ny other commitment or relationship that is substantially similar" to one enumerated in paragraphs (a)–(d), §281A.420(8)(e).

Petitioner (Commission) administers and enforces Nevada's law. The Commission investigated respondent Carrigan, an elected local official who voted to approve a hotel/casino project proposed by a company that used Carrigan's long-time friend and campaign manager as a paid consultant. The Commission concluded that Carrigan had a disqualifying conflict of interest under §281A.420(8)(e)'s catchall provision, and censured him for failing to abstain from voting on the project. Carrigan sought judicial review, arguing that the Nevada law violated the First Amendment. The State District Court denied the petition, but the Nevada Supreme Court reversed, holding that voting is protected speech and that §281A.420(8)(e)'s catchall definition is unconstitutionally overbroad.

Held: The Nevada Ethics in Government Law is not unconstitutionally overbroad. Pp. 3–11.

(a) That law prohibits a legislator who has a conflict both from voting on a proposal and from advocating its passage or failure. If it was constitutional to exclude Carrigan from voting, then his exclusion from advocating during a legislative session was not unconstitutional, for it was a reasonable time, place, and manner limitation.

EXHIBIT E-1

Syllabus

See *Clark* v. *Community for Creative Non-Violence*, 468 U. S. 288, 293. Pp. 3–4.

(b) "[A] 'universal and long-established' tradition of prohibiting certain conduct creates 'a strong presumption' that the prohibition is constitutional.'" *Republican Party of Minn.* v. *White*, 536 U. S. 765, 785. Here, dispositive evidence is provided by "early congressional enactments," which offer " 'contemporaneous and weighty evidence of the Constitution's meaning,'" *Printz* v. *United States*, 521 U. S. 898, 905. Within 15 years of the founding, both the House and the Senate adopted recusal rules. Federal conflict-of-interest rules applicable to judges also date back to the founding. The notion that Nevada's recusal rules violate legislators' First Amendment rights is also inconsistent with long-standing traditions in the States, most of which have some type of recusal law. Pp. 4–8.

(c) Restrictions on legislators' voting are not restrictions on legislators' protected speech. A legislator's vote is the commitment of his apportioned share of the legislature's power to the passage or defeat of a particular proposal. He casts his vote "as trustee for his constituents, not as a prerogative of personal power." *Raines* v. *Byrd*, 521 U. S. 811, 821. Moreover, voting is not a symbolic action, and the fact that it is the product of a deeply held or highly unpopular personal belief does not transform it into First Amendment speech. Even if the mere vote itself could express depth of belief (which it cannot), this Court has rejected the notion that the First Amendment confers a right to use governmental mechanics to convey a message. See, *e.g.*, *Timmons* v. *Twin Cities Area New Party*, 520 U. S. 351. *Doe* v. *Reed*, 561 U. S. ___, distinguished. Pp. 8–10.

(d) The additional arguments raised in Carrigan's brief were not decided below or raised in his brief in opposition and are thus considered waived. P. 11.

126 Nev. 28, 236 P. 3d 616, reversed and remanded.

SCALIA, J., delivered the opinion of the Court, in which ROBERTS, C. J., and KENNEDY, THOMAS, GINSBURG, BREYER, SOTOMAYOR, and KAGAN, JJ., joined. KENNEDY, J., filed a concurring opinion. ALITO, J., filed an opinion concurring in part and concurring in the judgment.

EXHIBIT E-2

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

No. 10–568

NEVADA COMMISSION ON ETHICS, PETITIONER *v.* MICHAEL A. CARRIGAN

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF NEVADA

[June 13, 2011]

JUSTICE SCALIA delivered the opinion of the Court.

The Nevada Supreme Court invalidated a recusal provision of the State's Ethics in Government Law as unconstitutionally overbroad in violation of the First Amendment. We consider whether legislators have a personal, First Amendment right to vote on any given matter.

I

Nevada's Ethics in Government Law provides that "a public officer shall not vote upon or advocate the passage or failure of, but may otherwise participate in the consideration of, a matter with respect to which the independence of judgment of a reasonable person in his situation would be materially affected by," *inter alia*, "[h]is commitment in a private capacity to the interests of others." Nev. Rev. Stat. §281A.420(2) (2007).[1] Section

[1] At the time of the relevant events in this case, the disclosure and recusal provisions of the Ethics in Government Law were codified at Nev. Rev. Stat. §281.501 (2003). They were recodified without relevant change in 2007 at §281A.420, and all citations are to that version. The Nevada Legislature further amended the statute in 2009, see Nev. Stats., ch. 257, §9.5, p. 1057, but those changes are not relevant here.

EXHIBIT E-3

281A.420(8)(a)–(d) of the law defines the term "commitment in a private capacity to the interests of others" to mean a "commitment to a person" who is a member of the officer's household; is related by blood, adoption, or marriage to the officer; employs the officer or a member of his household; or has a substantial and continuing business relationship with the officer. Paragraph (e) of the same subsection adds a catchall to that definition: "[a]ny other commitment or relationship that is substantially similar" to one of those listed in paragraphs (a)–(d).

The Ethics in Government Law is administered and enforced by the petitioner in this litigation, the Nevada Commission on Ethics. In 2005, the Commission initiated an investigation of Michael Carrigan, an elected member of the City Council of Sparks, Nevada, in response to complaints that Carrigan had violated §281A.420(2) by voting to approve an application for a hotel/casino project known as the "Lazy 8." Carrigan, the complaints asserted, had a disabling conflict in the matter because his longtime friend and campaign manager, Carlos Vasquez, worked as a paid consultant for the Red Hawk Land Company, which had proposed the Lazy 8 project and would benefit from its approval.

Upon completion of its investigation, the Commission concluded that Carrigan had a disqualifying conflict of interest under §281A.420(8)(e)'s catchall provision because his relationship with Vasquez was "substantially similar" to the prohibited relationships listed in §281A.420(8)(a)–(d). Its written decision censured Carrigan for failing to abstain from voting on the Lazy 8 matter, but did not impose a civil penalty because his violation was not willful, see §281A.480. (Before the hearing, Carrigan had consulted the Sparks city attorney, who advised him that disclosing his relationship with Vasquez before voting on the Lazy 8 project, which he did, would satisfy his obligations under the Ethics in Government Law.)

EXHIBIT E-4

Carrigan filed a petition for judicial review in the First Judicial District Court of the State of Nevada, arguing that the provisions of the Ethics in Government Law that he was found to have violated were unconstitutional under the First Amendment. The District Court denied the petition, but a divided Nevada Supreme Court reversed. The majority held that voting was protected by the First Amendment, and, applying strict scrutiny, found that §281A.420(8)(e)'s catchall definition was unconstitutionally overbroad. 126 Nev. 28, ___–___, 236 P. 3d 616, 621–624 (2010).

We granted certiorari, 562 U. S. ___ (2011).

II

The First Amendment prohibits laws "abridging the freedom of speech," which, "'as a general matter . . . means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content.'" *Ashcroft* v. *American Civil Liberties Union*, 535 U. S. 564, 573 (2002) (quoting *Bolger* v. *Youngs Drug Products Corp.*, 463 U. S. 60, 65 (1983)). But the Amendment has no application when what is restricted is not protected speech. See, *e.g.*, *Roth* v. *United States*, 354 U. S. 476, 483 (1957) (obscenity not protected speech). The Nevada Supreme Court thought a legislator's vote to be protected speech because voting "is a core legislative function." 126 Nev., at ___, 236 P. 3d, at 621 (internal quotation marks omitted).

We disagree, for the same reason. But before discussing that issue, we must address a preliminary detail: The challenged law not only prohibits the legislator who has a conflict from voting on the proposal in question, but also forbids him to "advocate the passage or failure" of the proposal—evidently meaning advocating its passage or failure during the legislative debate. Neither Carrigan nor any of his *amici* contend that the prohibition on advo-

EXHIBIT E-5

cating can be unconstitutional if the prohibition on voting is not. And with good reason. Legislative sessions would become massive town-hall meetings if those who had a right to speak were not limited to those who had a right to vote. If Carrigan was constitutionally excluded from voting, his exclusion from "advocat[ing]" at the legislative session was a reasonable time, place and manner limitation. See *Clark* v. *Community for Creative Non-Violence*, 468 U. S. 288, 293 (1984).

III

"[A] universal and long-established tradition of prohibiting certain conduct creates a strong presumption that the prohibition is constitutional: Principles of liberty fundamental enough to have been embodied within constitutional guarantees are not readily erased from the Nation's consciousness." *Republican Party of Minn.* v. *White*, 536 U. S. 765, 785 (2002) (internal quotation marks omitted). Laws punishing libel and obscenity are not thought to violate "the freedom of speech" to which the First Amendment refers because such laws existed in 1791 and have been in place ever since. The same is true of legislative recusal rules. The Nevada Supreme Court and Carrigan have not cited a single decision invalidating a generally applicable conflict-of-interest recusal rule—and such rules have been commonplace for over 200 years.

"[E]arly congressional enactments 'provid[e] contemporaneous and weighty evidence of the Constitution's meaning,'" *Printz* v. *United States*, 521 U. S. 898, 905 (1997) (quoting *Bowsher* v. *Synar*, 478 U. S. 714, 723–724 (1986)). That evidence is dispositive here. Within 15 years of the founding, both the House of Representatives and the Senate adopted recusal rules. The House rule—to which no one is recorded as having objected, on constitutional or other grounds, see D. Currie, The Constitution in Congress: The Federalist Period 1789–1801, p. 10 (1997)—was

EXHIBIT E-6

adopted within a week of that chamber's first achieving a quorum.[2] The rule read: "No member shall vote on any question, in the event of which he is immediately and particularly interested." 1 Annals of Cong. 99 (1789). Members of the House would have been subject to this recusal rule when they voted to submit the First Amendment for ratification; their failure to note any inconsistency between the two suggests that there was none.

The first Senate rules did not include a recusal requirement, but Thomas Jefferson adopted one when he was President of the Senate. His rule provided as follows:

> "Where the private interests of a member are concerned in a bill or question, he is to withdraw. And where such an interest has appeared, his voice [is] disallowed, even after a division. In a case so contrary not only to the laws of decency, but to the fundamental principles of the social compact, which denies to any man to be a judge in his own case, it is for the honor of the house that this rule, of immemorial observance, should be strictly adhered to." A Manual of Parliamentary Practice for the Use of the Senate of the United States 31 (1801).

Contemporaneous treatises on parliamentary procedure track parts of Jefferson's formulation. See, *e.g.*, A. Clark, Manual, Compiled and Prepared for the Use of the [New York] Assembly 99 (1816); L. Cushing, Manual of Parliamentary Practice, Rules of Proceeding and Debate in Deliberative Assemblies 30 (7th ed. 1854).

Federal conflict-of-interest rules applicable to judges also date back to the founding. In 1792, Congress passed a law requiring district court judges to recuse themselves if they had a personal interest in a suit or had been coun-

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[2]The House first achieved a quorum on April 1, 1789, 1 Annals of Cong. 96, and it adopted rules governing its procedures on April 7, 1789, see *id.*, at 98–99.

EXHIBIT E-7

sel to a party appearing before them. Act of May 8, 1792, ch. 36, §11, 1 Stat. 278–279. In 1821, Congress expanded these bases for recusal to include situations in which "the judge . . . is so related to, or connected with, either party, as to render it improper for him, in his opinion, to sit on the trial of such suit." Act of Mar. 3, 1821, ch. 51, 3 Stat. 643. The statute was again expanded in 1911, to make any "personal bias or prejudice" a basis for recusal. Act of Mar. 3, 1911, §21, 36 Stat. 1090. The current version, which retains much of the 1911 version's language, is codified at 28 U. S. C. §144. See generally *Liteky* v. *United States*, 510 U. S. 540, 544 (1994); Frank, Disqualification of Judges, 56 Yale L. J. 605, 626–630 (1947) (hereinafter Frank). There are of course differences between a legislator's vote and a judge's, and thus between legislative and judicial recusal rules; nevertheless, there do not appear to have been any serious challenges to judicial recusal statutes as having unconstitutionally restricted judges' First Amendment rights.[3]

The Nevada Supreme Court's belief that recusal rules violate legislators' First Amendment rights is also inconsistent with long-standing traditions in the States. A number of States, by common-law rule, have long required recusal of public officials with a conflict. See, *e.g.*, *In re Nashua*, 12 N. H. 425, 430 (1841) ("If one of the commissioners be interested, he shall not serve"); *Commissioners' Court* v. *Tarver*, 25 Ala. 480, 481 (1854) ("If any member . . . has a peculiar, personal interest, such member would be disqualified"); *Stubbs* v. *Florida State Finance Co.*, 118 Fla. 450, 451, 159 So. 527, 528 (1935) ("[A] public official cannot legally participate in his official

[3]We have held that restrictions on judges' speech during elections are a different matter. See *Republican Party of Minn.* v. *White*, 536 U. S. 765, 788 (2002) (holding that it violated the First Amendment to prohibit announcement of views on disputed legal and political issues by candidates for judicial election).

EXHIBIT E-8

capacity in the decision of a question in which he is personally and adversely interested").[4] Today, virtually every State has enacted some type of recusal law, many of which, not unlike Nevada's, require public officials to abstain from voting on all matters presenting a conflict of interest. See National Conference of State Legislatures, Voting Recusal Provisions (2009), online at http://www.ncsl.org/?TabID=15357 (as visited June 9, 2011, and available in Clerk of Court's case file).

In an attempt to combat this overwhelming evidence of constitutional acceptability, Carrigan relies on a handful of lower-court cases from the 1980's and afterwards. See Brief for Respondent 25 (citing *Clark* v. *United States*, 886 F. 2d 404 (CADC 1989); *Miller* v. *Hull*, 878 F. 2d 523 (CA1 1989); and *Camacho* v. *Brandon*, 317 F. 3d 153 (CA2 2003)). Even if they were relevant, those cases would be too little and too late to contradict the long-recognized need for legislative recusal. But they are not relevant. The first was vacated as moot, see *Clark* v. *United States*, 915 F. 2d 699, 700, 706 (CADC 1990) (en banc), and the other two involve retaliation amounting to viewpoint discrimination. See *Miller*, *supra*, at 533; *Camacho*, *supra*, at 160. In the past we have applied heightened scrutiny to laws that are viewpoint discriminatory even as to speech *not* protected by the First Amendment, see *R. A. V.* v. *St. Paul*, 505 U. S. 377, 383–386 (1992). Carrigan does

[4] A number of States enacted early judicial recusal laws as well. See, *e.g.*, 1797 Vt. Laws, §23, p. 178 ("[N]o justice of the peace shall take cognizance of any cause, where he shall be within either the first, second, third, or fourth degree of affinity, or consanguinity, to either of the parties, or shall be directly or indirectly interested, in the cause or matter to be determined"); 1818 Mass. Laws, §5, p. 632 ("[W]henever any Judge of Probate shall be interested in the estate of any person deceased, within the county of such Judge, such estate shall be settled in the Probate Court of the most ancient next adjoining county . . ."); *Macon* v. *Huff*, 60 Ga. 221, 223–226 (1878). See generally Frank 609–626.

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not assert that the recusal laws here are viewpoint discriminatory, nor could he: The statute is content-neutral and applies equally to all legislators regardless of party or position.

IV

But how can it be that restrictions upon legislators' voting are not restrictions upon legislators' protected speech? The answer is that a legislator's vote is the commitment of his apportioned share of the legislature's power to the passage or defeat of a particular proposal. The legislative power thus committed is not personal to the legislator but belongs to the people; the legislator has no personal right to it. As we said in *Raines* v. *Byrd*, 521 U. S. 811, 821 (1997), when denying Article III standing to legislators who claimed that their voting power had been diluted by a statute providing for a line-item veto, the legislator casts his vote "as trustee for his constituents, not as a prerogative of personal power." In this respect, voting by a legislator is different from voting by a citizen. While "a voter's franchise is a personal right," "[t]he procedures for voting in legislative assemblies . . . pertain to legislators not as individuals but as political representatives executing the legislative process." *Coleman* v. *Miller*, 307 U. S. 433, 469–470 (1939) (opinion of Frankfurter, J.).

Carrigan and JUSTICE ALITO say that legislators often "'us[e] their votes to express deeply held and highly unpopular views, often at great personal or political peril.'" *Post*, at 1 (opinion concurring in part and concurring in judgment) (quoting Brief for Respondent 23). How do they express those deeply held views, one wonders? Do ballots contain a check-one-of-the-boxes attachment that will be displayed to the public, reading something like "( ) I have a deeply held view about this; ( ) this is probably desirable; ( ) this is the least of the available evils; ( ) my personal view is the other way, but my constituents want this; ( )

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my personal view is the other way, but my big contributors want this; ( ) I don't have the slightest idea what this legislation does, but on my way in to vote the party Whip said vote 'aye'"? There are, to be sure, instances where action conveys a symbolic meaning—such as the burning of a flag to convey disagreement with a country's policies, see *Texas* v. *Johnson*, 491 U. S. 397, 406 (1989). But the act of voting symbolizes nothing. It *discloses*, to be sure, that the legislator wishes (for whatever reason) that the proposition on the floor be adopted, just as a physical assault discloses that the attacker dislikes the victim. But neither the one nor the other is an act of communication. Cf. *Rumsfeld* v. *Forum for Academic and Institutional Rights, Inc.*, 547 U. S. 47, 66 (2006) (expressive value was "not created by the conduct itself but by the speech that accompanies it").

Moreover, the fact that a nonsymbolic act is the product of deeply held personal belief—even if the actor would like it to *convey* his deeply held personal belief—does not transform action into First Amendment speech. Nor does the fact that action may have social consequences—such as the unpopularity that cost John Quincy Adams his Senate seat resulting from his vote in favor of the Embargo Act of 1807, see *post*, at 1. However unpopular Adams' vote may have made him, and however deeply Adams felt that his vote was the right thing to do, the act of voting was still nonsymbolic conduct engaged in for an independent governmental purpose.

Even if it were true that the vote itself could "express deeply held and highly unpopular views," the argument would still miss the mark. This Court has rejected the notion that the First Amendment confers a right to use governmental mechanics to convey a message. For example, in *Timmons* v. *Twin Cities Area New Party*, 520 U. S. 351 (1997), we upheld a State's prohibition on multiple-party or "fusion" candidates for elected office against a

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First Amendment challenge. We admitted that a State's ban on a person's appearing on the ballot as the candidate of more than one party might prevent a party from "using the ballot to communicate to the public it supports a particular candidate who is already another party's candidate," *id.*, at 362; but we nonetheless were "unpersuaded . . . by the party's contention that it has a right to use the ballot itself to send a particularized message." *Id.*, at 362–363; see also *Burdick* v. *Takushi*, 504 U. S. 428, 438 (1992). In like manner, a legislator has no right to use official powers for expressive purposes.

Carrigan and JUSTICE ALITO also cite *Doe* v. *Reed*, 561 U. S. ___ (2010), as establishing "the expressive character of voting." *Post*, at 2; see also Brief for Respondent 26. But *Reed* did no such thing. That case held only that a citizen's signing of a petition—"'core political speech,'" *Meyer* v. *Grant*, 486 U. S. 414, 421–422 (1988)—was not deprived of its protected status simply because, under state law, a petition that garnered a sufficient number of signatures would suspend the state law to which it pertained, pending a referendum. See *Reed*, 561 U. S., at ___ (slip op., at 6); *id.*, at ___ (slip op., at 3) (opinion of SCALIA, J.). It is one thing to say that an inherently expressive act remains so despite its having governmental effect, but it is altogether another thing to say that a governmental act becomes expressive simply because the governmental actor wishes it to be so. We have never said the latter is true.[5]

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[5] JUSTICE ALITO reasons as follows: (1) If an ordinary citizen were to vote in a straw poll on an issue pending before a legislative body, that vote would be speech; (2) if a member of the legislative body were to do the same, it would be no less expressive; therefore (3) the legislator's actual vote must also be expressive. This conclusion does not follow. A legislator voting on a bill is not fairly analogized to one simply discussing that bill or expressing an opinion for or against it. The former is performing a governmental act as a representative of his constituents,

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V

Carrigan raises two additional arguments in his brief: that Nevada's catchall provision unconstitutionally burdens the right of association of officials and supporters, and that the provision is unconstitutionally vague. Whatever the merits of these arguments, we have no occasion to consider them. Neither was decided below: The Nevada Supreme Court made no mention of the former argument and said that it need not address the latter given its resolution of the overbreadth challenge, 126 Nev. ___, n. 4, 236 P. 3d, at 619, n. 4. Nor was either argument raised in Carrigan's brief in opposition to the petition for writ of certiorari. Arguments thus omitted are normally considered waived, see this Court's Rule 15.2; *Baldwin* v. *Reese*, 541 U. S. 27, 34 (2004), and we find no reason to sidestep that Rule here.

* * *

The judgment of the Nevada Supreme Court is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

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see *supra*, at 8; only the latter is exercising personal First Amendment rights.

SUPREME COURT OF THE UNITED STATES

No. 10–568

NEVADA COMMISSION ON ETHICS, PETITIONER *v.* MICHAEL A. CARRIGAN

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF NEVADA

[June 13, 2011]

JUSTICE KENNEDY, concurring.

For the reasons the Court explains, the act of casting an official vote is not itself protected by the Speech Clause of the First Amendment; and I join the Court's opinion.

It does seem appropriate to note that the opinion does not, and on this record should not, consider a free speech contention that would have presented issues of considerable import, were it to have been a proper part of the case. Neither in the submissions of the parties to this Court defining the issues presented, nor in the opinion of the Nevada Supreme Court, were the Nevada statutory provisions here at issue challenged or considered from the standpoint of burdens they impose on the First Amendment speech rights of legislators and constituents apart from an asserted right to engage in the act of casting a vote.

The statute may well impose substantial burdens on what undoubtedly is speech. The democratic process presumes a constant interchange of voices. Quite apart from the act of voting, speech takes place both in the election process and during the routine course of communications between and among legislators, candidates, citizens, groups active in the political process, the press, and the public at large. This speech and expression often finds powerful form in groups and associations with whom

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a legislator or candidate has long and close ties, ties made all the stronger by shared outlook and civic purpose. The process is so intricate a part of communication in a democracy that it is difficult to describe in summary form, lest its fundamental character be understated. It may suffice, however, to note just a few examples.

Assume a citizen has strong and carefully considered positions on family life; the environment; economic principles; criminal justice; religious values; or the rights of persons. Assume, too, that based on those beliefs, he or she has personal ties with others who share those views. The occasion may arise when, to promote and protect these beliefs, close friends and associates, perhaps in concert with organized groups with whom the citizen also has close ties, urge the citizen to run for office. These persons and entities may offer strong support in an election campaign, support which itself can be expression in its classic form. The question then arises what application the Nevada statute has if a legislator who was elected with that support were to vote upon legislation central to the shared cause, or, for that matter, any other cause supported by those friends and affiliates.

As the Court notes, Nev. Rev. Stat. §281A.420(2) (2007) provides:

> "[A] public officer shall not vote upon or advocate the passage or failure of, but may otherwise participate in the consideration of, a matter with respect to which the independence of judgment of a reasonable person in his situation would be materially affected by . . . [h]is commitment in a private capacity to the interests of others."

There is, in my view, a serious concern that the statute imposes burdens on the communications and expressions just discussed. The immediate response might be that the statute does not apply because its application is confined

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to the legislator's "commitment in a private capacity to the interests of others." That proposition may be a debatable one. At least without the benefit of further submissions or argument or explanation, it seems that one fair interpretation, if not the necessary one, is that the statute could apply to a legislator whose personal life is tied to the longstanding, close friendships he or she has forged in the common cause now at stake.

The application of the statute's language to the case just supposed, and to any number of variations on the supposition, is not apparent. And if the statute imposes unjustified burdens on speech or association protected by the First Amendment, or if it operates to chill or suppress the exercise of those freedoms by reason of vague terms or overbroad coverage, it is invalid. See *United States* v. *Williams*, 553 U. S. 285, 292–293, 304 (2008). A statute of this sort is an invitation to selective enforcement; and even if enforcement is undertaken in good faith, the dangers of suppression of particular speech or associational ties may well be too significant to be accepted. See *Gentile* v. *State Bar of Nev.*, 501 U. S. 1030, 1051 (1991).

The interests here at issue are at the heart of the First Amendment. "[T]he First Amendment has its fullest and most urgent application to speech uttered during a campaign for political office." *Eu* v. *San Francisco County Democratic Central Comm.*, 489 U. S. 214, 223 (1989) (internal quotation marks omitted). And the Court has made it clear that "the right of citizens to band together in promoting among the electorate candidates who espouse their political views" is among the First Amendment's most pressing concerns. *Clingman* v. *Beaver*, 544 U. S. 581, 586 (2005) (internal quotation marks omitted).

The constitutionality of a law prohibiting a legislative or executive official from voting on matters advanced by or associated with a political supporter is therefore a most serious matter from the standpoint of the logical and

EXHIBIT E16

inevitable burden on speech and association that preceded the vote. The restriction may impose a significant burden on activities protected by the First Amendment. As a general matter, citizens voice their support and lend their aid because they wish to confer the powers of public office on those whose positions correspond with their own. That dynamic, moreover, links the principles of participation and representation at the heart of our democratic government. Just as candidates announce positions in exchange for citizens' votes, *Brown* v. *Hartlage*, 456 U. S. 45, 55–56 (1982), so too citizens offer endorsements, advertise their views, and assist political campaigns based upon bonds of common purpose. These are the mechanisms that sustain representative democracy. See *ibid.*

The Court has held that due process may require recusal in the context of certain judicial determinations, see *Caperton* v. *A. T. Massey Coal Co.*, 556 U. S. ___ (2009); but as the foregoing indicates, it is not at all clear that a statute of this breadth can be enacted to extend principles of judicial impartiality to a quite different context. The differences between the role of political bodies in formulating and enforcing public policy, on the one hand, and the role of courts in adjudicating individual disputes according to law, on the other, see *ante*, at 6, may call for a different understanding of the responsibilities attendant upon holders of those respective offices and of the legitimate restrictions that may be imposed upon them.

For these reasons, the possibility that Carrigan was censured because he was thought to be beholden to a person who helped him win an election raises constitutional concerns of the first magnitude.

As the Court observes, however, the question whether Nevada's recusal statute was applied in a manner that burdens the First Amendment freedoms discussed above is not presented in this case. *Ante*, at 10.

exhibit e-17

SUPREME COURT OF THE UNITED STATES

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ON WRIT OF CERTIORARI TO THE SUPREME COURT OF NEVADA

[June 13, 2011]

JUSTICE ALITO, concurring in part and concurring in the judgment.

I concur in the judgment, but I do not agree with the opinion of the Court insofar as it suggests that restrictions upon legislators' voting are not restrictions upon legislators' speech. *Ante*, at 8. As respondent notes, "[o]ur history is rich with tales of legislators using their votes to express deeply held and highly unpopular views, often at great personal or political peril." Brief for Respondent 23. To illustrate this point, respondent notes, among other famous incidents, John Quincy Adams' vote in favor of the Embargo Act of 1807, a vote that is said to have cost him his Senate seat, and Sam Houston's vote against the Kansas-Nebraska Act, a vote that was deeply unpopular in the South. *Id.*, at 23–24 (citing J. Kennedy, Profiles in Courage 48, 109 (commemorative ed. 1991)).

In response to respondent's argument, the Court suggests that the "expressive value" of such votes is "'not created by the conduct itself but by the speech that accompanies it.'" *Ante*, at 9. This suggestion, however, is surely wrong. If John Quincy Adams and Sam Houston had done no more than cast the votes in question, their votes would still have spoken loudly and clearly to everyone who was interested in the bills in question. Voting has an expressive component in and of itself. The Court's

EXHIBIT E-18

strange understanding of the concept of speech is shown by its suggestion that the symbolic act of burning the American flag is speech but John Quincy Adams calling out "yea" on the Embargo Act was not. *Ibid.**

A legislative vote is not speech, the Court tells us, because the vote may express, not the legislator's sincere personal view, but simply the view that is favored by the legislator's constituents. See *ibid.* But the same is sometimes true of legislators' speeches.

Not only is the Court incorrect in its analysis of the expressive character of voting, but the Court's position is inconsistent with our reasoning just last Term in *Doe* v. *Reed*, 561 U. S. ___ (2010). There, respondents argued that "signing a petition is a legally operative legislative act and therefore 'does not involve any significant expressive element.'" *Id.*, at ___ (slip op., at 6) (quoting Brief for Respondent Reed 31). But the Court rejected this argument, stating:

> "It is true that signing a referendum petition may ultimately have the legal consequence of requiring the secretary of state to place the referendum on the ballot. But we do not see how adding such legal effect to an expressive activity somehow deprives that activity of its expressive component, taking it outside the scope of the First Amendment." 561 U. S., at ___ (slip op., at 6).

But cf. *id.*, at ___ (SCALIA, J., concurring in judgment) (slip op., at 1) ("I doubt whether signing a petition that has the effect of suspending a law fits within 'the freedom of speech' at all").

Our reasoning in *Reed* is applicable here. Just as the act of signing a petition is not deprived of its expressive character when the signature is given legal consequences,

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* See 17 Annals of Congress 50 (1807); see also 15 *id.*, at 201 (1806).

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the act of voting is not drained of its expressive content when the vote has a legal effect. If an ordinary citizen casts a vote in a straw poll on an important proposal pending before a legislative body, that act indisputably constitutes a form of speech. If a member of the legislative body chooses to vote in the same straw poll, the legislator's act is no less expressive than that of an ordinary citizen. And if the legislator then votes on the measure in the legislative chamber, the expressive character of that vote is not eliminated simply because it may affect the outcome of the legislative process.

In Part III of its opinion, the Court demonstrates that legislative recusal rules were not regarded during the founding era as *impermissible* restrictions on freedom of speech. On that basis, I agree that the judgment below must be reversed.

EXHIBIT E-20