

No. 10-568

**In the
Supreme Court of the United States**

NEVADA COMMISSION ON ETHICS,
Petitioner,

v.

MICHAEL A. CARRIGAN,
Respondent.

*On Petition for Writ of Certiorari
to the Supreme Court of Nevada*

SUPPLEMENTAL BRIEF IN OPPOSITION

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December 10, 2010

Sparks City Councilmember

QUESTION PRESENTED

Whether state-imposed restrictions on the ability of local elected officials to vote on legislative matters are subject to strict scrutiny review under the First Amendment.

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**SUPPLEMENTAL BRIEF IN OPPOSITION
TO PETITION FOR WRIT OF CERTIORARI**

Pursuant to Supreme Court Rule 15.8, Sparks City Councilman Michael A. Carrigan respectfully submits this Supplemental Brief in Opposition to the Petition for Writ of Certiorari to bring the Court's attention to intervening circumstances that had not occurred at the time of Carrigan's last filing. The Brief in Opposition filed by Carrigan on November 29, 2010 argues that the matter now before the Court does not present an "ideal vehicle" to resolve the issue presented for review based on the pendency of a second, similar appeal before the Nevada Supreme Court (Docket No. 56462). *See* Opp. 24-25. On December 9, 2010, the Nevada Supreme Court dismissed that appeal as moot. *See* App. 1a-3a.

Nevertheless, the dismissal of the second appeal does not cure the constitutional infirmities of the Nevada Ethics in Government Law that remain unreached by the Nevada Supreme Court.¹ Therefore, a determination by the Court that a standard of review other than strict scrutiny applies to state-imposed restrictions on the political speech of elected officials does not guarantee a different result in the instant case and may not prevent the ultimate demise of Nev.Rev.Stat. § 281A.420(8) (2007) on other constitutional grounds.

¹ Namely that Nev.Rev.Stat. § 281A.420(8) (2007) is unconstitutionally vague, and that the binding advisory opinion process established in Nev.Rev.Stat. § 281A.440 (2007) is an unconstitutional prior restraint on protected speech.

CONCLUSION

The petition for certiorari should be denied.

Respectfully submitted,

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APPENDIX

**IN THE SUPREME COURT
OF THE STATE OF NEVADA**

No. 56462

[Filed December 9, 2010]

THE COMMISSION ON ETHICS OF)
THE STATE OF NEVADA,)
Appellant/Cross-Respondent,)
vs.)
MICHAEL A. CARRIGAN, FOURTH)
WARD CITY COUNCIL MEMBER,)
OF THE CITY OF SPARKS,)
Respondent/Cross-Appellant.)

**ORDER DISMISSING APPEAL
AND CROSS-APPEAL**

This is an appeal and cross-appeal from a district court order granting a petition for judicial review of an Ethics Commission decision. Second Judicial District Court, Washoe County; Patrick Flanagan, Judge

When our preliminary review of the docketing statement and the NRAP 3(g) documents revealed potential justiciability and jurisdictional defects, we ordered appellant and cross-appellant to show cause why this appeal and cross-appeal should not be dismissed. First, according to the documents before us,

it appeared that the City Council voting to which the Ethics Commission decision pertained has concluded, with cross-appellant having abstained and, thus, that this appeal was moot. See NCAA v. University of Nevada, 97 Nev. 56, 624 P.2d 10 (1981) (pointing out that this court's duty is to decide actual controversies, not to give opinions on moot questions). Second, cross-appellant prevailed below, and as a result, it appeared that cross-appellant was not an aggrieved party with standing to appeal. See NRAP 3A(a); Ford v. Showboat Operating Co., 110 Nev. 752, 877 P.2d 546 (1994); Valley Bank of Nevada v. Ginsburg, 110 Nev. 440, 874 P.2d 729 (1994).

In response, cross-appellant moved to voluntarily dismiss his cross-appeal, and he also filed a document signed by appellant agreeing to the dismissal. Accordingly, we grant the unopposed motion to voluntarily dismiss the cross-appeal. NRAP 42(b).

Appellant, in its timely response, argues that the appeal is not moot because a legal question involving the constitutionality of its application of the ethics laws remains pending. Appellant also argues that even if the appeal is moot, the issues it raises are capable of repetition, yet evading review, and thus fall within an exception to the mootness doctrine. Having considered appellant's response, we conclude that this appeal is moot. Further, the capable of repetition yet evading review exception is not applicable here. Traffic Control Servs. v. United Rentals, 120 Nev. 168, 171-72, 87 P.3d 1054, 1057 (2004) (recognizing that the capable of repetition yet evading review exception to the mootness doctrine applies when the duration of the challenged action is "relatively short," and there is a "likelihood that a similar issue will arise in the future"

(citing, among other opinions, Langston v. State, Dep't of Mtr. Vehicles, 110 Nev. 342, 344, 871 P.2d 362, 363 (1994) (pointing out that facts unique to a particular party will not give rise to the mootness exception)). Accordingly, we

ORDER this appeal and cross-appeal DISMISSED.

/s/Cherry, J.
Cherry

/s/Saitta, J.
Saitta

/s/Gibbons, J.
Gibbons

cc: Hon. Patrick Flanagan, District Judge
Yvonne M. Nevarez-Goodson
Sparks City Attorney
Washoe District Court Clerk
Stephanie Koetting, Court Reporter