

BEFORE THE NEVADA COMMISSION ON ETHICS

IN THE MATTER OF THE REQUEST FOR OPINION CONCERNING ALLEGATIONS THAT
CONCERNED CITIZENS OF MESQUITE IMPEDED THE SUCCESS OF THE CAMPAIGNS OF
RHONDA BALES, GRANT LINDSAY, and RICHARD STROHL,
Candidates for seats on the City Council of Mesquite, Nevada

This matter came before the Nevada Commission on Ethics (hereinafter the "Commission") for hearing by on May 29, 2001, pursuant to NRS 281.477, upon a Request for Opinion submitted by Rhonda Bales, Grant Lindsay, and Richard Strohl, candidates for seats on the City Council of Mesquite, Nevada, on May 18, 2001. Ms. Bales, Mr. Lindsay, and Mr. Strohl allege that Concerned Citizens of Mesquite impeded the success of their campaigns in violation of NRS 294A.345 by making false statements of fact in certain paid political advertisements which appeared in *The Valley Journal*^[1] on May 3 & 10, 2001 and in the *Concerned Citizens of Mesquite Newsletter* on May 4 & 5, 2001.

Notice of the hearing was properly posted and served. Ms. Bales, Mr. Lindsay, and Mr. Strohl appeared in person, and the Commission heard sworn testimony from each. Gary Wilson, Melanie Walker, and John McClintock appeared in person on behalf of Concerned Citizens of Mesquite, and the Commission heard sworn testimony from each.

The Commission, after full consideration of the record in this matter, makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. At the time of the events alleged in the complaint filed herein, Rhonda Bales, Grant Lindsay, and Richard Strohl (hereinafter the "candidates") were all candidates for seats on the City Council of Mesquite, Nevada.
2. Concerned Citizens of Mesquite, Nevada, is a politically active citizens group which organized following the 2001 primary election to provide to voters information on local candidates and issues.
3. *The Valley Journal* is a locally owned and operated weekly newspaper published in Mesquite, Nevada. It is mailed free to persons living in Mesquite, Littlefield and Bunkerville. Michele McClintock, wife of John McClintock, owns a 50% interest in *The Valley Journal* and is the newspaper's Editor.
4. On May 3, 2001, an "Español" political advertisement was published in *The Valley Journal*. The ad was written and paid for by Concerned Citizens of Mesquite. Concerned Citizens of Mesquite wrote the ad in English and translated it into Spanish by using an Internet English-to-Spanish translation software program. Concerned Citizens of Nevada submitted both the English version and Spanish translation by e-mail to *The Valley Journal*. The approximate English translation of the published Spanish translation reads:

Mayor Chuck Horne, April 22, 2001 Salt Lake Tribune

The Casinos employ 52% of the working age people in Mesquite. The construction business and the developers employ another 15%.

Horne, Lindsay, Bales and Strohl would like to run these businesses out of the city.

What do you think is wrong with this picture?

Help preserve the economic future of Mesquite.

Vote Hardy, Hackelman, and Fisher for the city council.

Lindsay, Bales, and Strohl recommend closing the International borders and they want limited immigration.

According to the Constitutional Party of Mayor Horne and his candidates, it would help if:

Regulate the number and the qualifications of the immigrants who can enter this county.

It is unconstitutional that the immigrants, including those persons without documents are or could be eligible for any of the diverse public assistance programs, including help for living, education, social security, and legal services.

They are in favor of a moratorium on immigration into the United States.

They oppose the provisions of any subsidy that helps non documented persons and all other programs that are paid with taxes which might benefit illegals.

They want to rescind the practice of granting citizenship to children born in the United States but whose parents are without citizenship.

The political party of Mayor Horne believes that the immigrants have:

A seriously negative and adverse affect on our economy.

That they increase the cost of government.

That they have a lifestyle that is the lowest of any other.

That they adversely affect the American workers salaries and the balance of the labor force in our county.

Vote No! Lindsay, Bales and Strohl

<http://www.constitutionalparty.com/ustp-99pl.html#Immigration>

Paid for by Concerned Citizens of Mesquite, Nevada.

The English version submitted with the computerized Spanish translation to *The Valley Journal* by Concerned Citizens of Mesquite reads:

Horne, Lindsay, Bales, and Strohl Encourage Closed Borders and Limited Immigration

According to the platform of the Constitutional Party which Mayor Horne and his candidates endorse and support:

* Regulation of the numbers and of the qualifications of immigrants into the country.

* Immigrants – including illegal aliens – have been made eligible for various kinds of public assistance, including housing, education, Social Security, and legal services. This is unconstitutional.

* Favor a moratorium on immigration to the United States.

* Oppose the provision of welfare subsidies and other taxpayer-supported benefits to illegal aliens.

* Reject the practice of granting U.S. citizenship to children born to illegal aliens while in the U.S.

Mayor Horne's political party claims that immigrants have:

* a severe and adverse impact on our economy.

* increase the cost of government.

* low standards of living.

* threatens the wage structure of the American worker and the labor balance in our country.

Vote NO! Lindsay, Bales, and Strohl.

5. Concerned Citizens of Mesquite attributed the statement "Horne, Lindsay, Bales, and Strohl Encourage Closed Borders and Limited Immigration" to the candidates based solely on Mayor Horne's affiliation with a political party which allegedly favors closing international borders and Mayor Horne's endorsement of the candidates. Prior to publishing the statement, Concerned Citizens of Mesquite made no effort to ascertain whether the statement was truthful as to the candidates' position on the issue.

6. On May 3, 2001, a full-page political advertisement paid for by Concerned Citizens of Mesquite appeared in *The Valley Journal*. The statements in the ad challenged by the candidates read:

What do we, then, as voters really KNOW about "**those people**", the **other** three candidates, **Winkin', Blinkin' and Nod**? In recent weeks, there have been statements from those other three candidates resembling prejudice and bias, rather radical opinions, and are they who we want to represent the citizens of Mesquite?

I would think that the citizens of Mesquite would want to preserve and protect one of the most sought-after places to live in the US. We have much to be grateful for fabulous weather, friendly people, low crime, low utility rates, proximity to marvelous recreation areas, and spectacular golf courses. We have what most people only dream about! If Winkin' Blinkin' and Nod are elected as the mayor's stool pigeons, there will be NO opportunities for employment, NO Community College, the HOSPITAL will NOT survive, the new AIRPORT will NOT be completed, so NO new jobs there or tourists, golfers and gamblers (who help pay our taxes). There will be NO new neighborhoods, and property values will plummet, because NO ONE will want to come here. THINK OUTSIDE THE BOX.

JUST READ IT YOURSELF! Remember how Jim Jones had a cult following and his followers ended up dead in Guyana after drinking Kool Aide laced with cyanide?

7. The candidates support the Mesquite community college and hospital.

8. On May 5, 2001, Concerned Citizens of Mesquite published and distributed a multi-page *Concerned Citizens of Mesquite Newsletter*. Printed on the front page of the newsletter are photographs of Mesquite Mayor Chuck Horne and candidates Bales, Lindsay and Strohl with the caption:

“Who is This Man? Why Are These People Following Him?”

Printed below the photographs of candidates Bales, Lindsay and Strohl are the words:

The Independent American Party Newsletter dated 14, November 2000, The headline states; “Charles Horne, Mayor of Mesquite **Leading the Revolution**”.

In a box at the bottom left of page 2 of the newsletter appears the words:

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In a box at the top right of page 4 of the newsletter, the final paragraph following several paragraphs discussing issues concerning Mayor Horne reads:

Falling property values, lost jobs, failed businesses? Maybe the “Mayor from Hell” is more effective than we could have ever imagined. Are Lindsay, Bales, and Strohl destined to become the deputies of discord?

Page 6 of the newsletter contains “25 Rules of Disinformation.” In a box in the middle of the page is the note:

“This entry was found on the FreeRepublic forum, oddly enough, it was submitted by a subscriber who signs himself as ‘MetalBird1.’ What a coincidence. Sounds a lot like an airline pilot, doesn’t it? like the type of moniker a retired pilot would use, doesn’t it?”

Paragraph 24 on page 6 reads:

Silence critics. If the above methods do not prevail, consider removing opponents from circulation by some definitive solution so that the need to address issues is removed entirely This can be by their death, arrest and detention, blackmail or

destruction of their character by release of blackmail information, or merely by proper intimidation with blackmail or other threats.

At the bottom of page 12 of the newsletter appears six caricatures: a king sitting on a throne with a staff in his hand and three court jesters (one female and two male) to his right and two soldiers to his left. Above the caricature of the king appears the words "MAYOR HORNE" with the word "MAYOR" crossed out and above it the word "KING." Above the caricature of the female court jester appears the word "BALES," above the caricature of one of the male court jesters appears the word "STROHL," and above the caricature of the other male court jester appears the word "LINDSAY." Beside the caricatures of the two soldiers appear the words "MESQUITE MILITIA."

9. On May 10, 2001, a political advertisement paid for by Concerned Citizens of Mesquite appeared in *The Valley Journal*. The ad pictured tanker trucks and a vehicle. Above the picture appear the words:

Those People's Choice
Horne's Clones,
Are Planning a Fuel Dump and Truck Stop
In Your Front Yard!

Among the comments printed below the picture are the words:

According to Grant Lindsay, the land and fuel dump owner's are ready whenever you are!

Lion's Candidate Forum 4/19/01

The land owner stated your new fuel dump will be located on Leavitt Lane!

Stated at the Lion's Candidate Forum 4/19/01

At the bottom of the ad appear the words:

**VOTE NO
AGAINST LINDSAY, BALES AND STROHL
VOTE NO
ON HORNE'S CHECKS & BALANCES CHARTER**

10. The candidates support efforts to bring a service station rest stop business to Mesquite.

11. On May 10, 2001, a full-page political advertisement paid for by Concerned Citizens of Mesquite appeared in *The Valley Journal*. The statements in the ad challenged by the candidates read:

4. Horne and his followers are only about dividing and conquering. Recent fact is that in a March 15 forum held by the Mayor, they said several of our department heads would be terminated. This statement was made by Grant Lindsay, Richard Strohl, Rhonda Bales and Chuck Horne. Don't believe their new spin. They are now saying we never said that we were going to fire the employees. They may be right that they are not going to fire the lower ranking employees, but they intend to get rid of the city attorney, the city manager, the police chief, the director of personnel and any other department head that they don't desire.

Mayor Horne also stated in the article in the Salt Lake Tribune that he was the "Mayor from Hell." Who are the disciples? Al Campbell, Mr. & Mrs. Hunt, Mr. and Mrs. Muse, Mr. & Mrs. Ziake, Guy Gaught, Ann Marie Isenburg, Mr. & Mrs. Christine Strohl, Mr. & Mrs. Bales, Mr. & Mrs. Lindsay. All of these disguise themselves under Checks and Balances, Senior Citizens For Change and now the Friends of the Constitution.

Further, [the Mayor] and his three clones (not representatives of the city) are engaged in a backroom deal for site selection of a fuel dump.

VOTE NO

Lindsay, Bales and Strohl and on the Mayor/Council Charter with Checks and Balances.
It is just wrong for Mesquite

12. On May 17, 2001, a full-page political advertisement paid for by Concerned Citizens of Mesquite appeared in *The Valley Journal*. The statements in the ad challenged by the candidates read:

Candidate Richard Strohl took part in telephone conferences with Mayor Charles Horne and Bernie Giordana of Loan Source to finance the BLM land take-down in exchange for a hospital..

“Re-enshrine the palladium of individual liberty” is a call to arms. The Checks and Balances Charter calls for arming the citizenry when it utilizes the polito-babble of the ultra right-wing and its connotations to the second amendment of the U.S. Constitution. Are you ready for the “Mayor from Hell’s” deputies of disaster to turn Mesquite into a modern day version of Dodge City?

Vote NO for clines: Lindsay, Bales, and Strohl.

13. Ms. Bales is presently politically affiliated with the Republican Party. Prior to registering as a Republican in April 2001, Ms. Bales had, since July 1996, been politically affiliated with the Independent American Party. Mr. Lindsay is a registered Republican. Mr. Strohl is nonpartisan.

14. Mayor Horne is chairman of the Independent American Party and founder of the Friends of the Constitution and the Tenth Amendment Committee Party.

15. Mayor Horne has publicly endorsed the candidates.

CONCLUSIONS OF LAW

1. Rhonda Bales, Grant Lindsay, and Richard Strohl are candidates for public office as defined by NRS 294A.005.

2. The Commission has jurisdiction to render an opinion in this matter pursuant to NRS 281.477 and NRS 294A.345.

WHEREFORE, on motion duly made, seconded, and approved by majority vote, the Commission renders the following Opinion:

OPINION

NRS 294A.345 provides:

1. A person shall not, with actual malice and the intent to impede the success of the campaign of a candidate, impede the success of the candidate by causing to be published a false statement of fact concerning the candidate, including, without limitation, statements concerning:
 - (a) The education or training of the candidate.
 - (b) The profession or occupation of the candidate.
 - (c) Whether the candidate committed, was indicted for committing or was convicted of committing a felony or other crime involving moral turpitude, dishonesty or corruption.
 - (d) Whether the candidate has received treatment for a mental illness.
 - (e) Whether the candidate was disciplined while serving in the military or was dishonorably discharged from service in the military.
 - (f) Whether another person endorses or opposes the candidate.
 - (g) The record of voting of a candidate if he formerly served or currently

serves as a public officer.

2. Any candidate who alleges that a false statement of fact concerning the candidate has been published in violation of subsection 1 may file a request for an opinion with the commission on ethics pursuant to NRS 281.411 to 281.581, inclusive. Such a request must be filed with the commission not later than 10 days after the date on which the false statement of fact is alleged to have been made. The commission shall give priority to such a request over all other matters pending with the commission

3. A person who violates the provisions of this section is subject to a civil penalty that may be imposed by the commission on ethics pursuant to NRS 281.551.

4. As used in this section:

(a) "Actual malice" means knowledge of the falsity of a statement or reckless disregard for whether a statement is true or false.

(b) "Publish" means the act of printing, posting, broadcasting, mailing, speaking or otherwise disseminating.

In pertinent part, NRS 281.477 provides:

2. [A request for opinion filed with the Commission pursuant to NRS 294A.345] must be accompanied by all evidence and arguments to be offered by the requester concerning the issues related to the request. Except as otherwise provided in this subsection, if such evidence and arguments are not submitted with the request the commission may:

(a) Draw any conclusions it deems appropriate from the failure of the person or group of persons requesting the opinion to submit the evidence and arguments, other than a conclusion that a person alleged to have violated NRS 294A.345 acted with actual malice; and

(b) Decline to render an opinion.

The provisions of this subsection do not prohibit the commission from considering evidence or arguments presented by the requester after submission of the request for an opinion if the commission determines that consideration of such evidence or arguments is in the interest of justice.

7. The person or group of persons that filed the request for the opinion pursuant to NRS 294A.345...has the burden of proving the elements of the offense, including that a person alleged to have violated NRS 294A.345 acted with actual malice. The existence of actual malice may not be presumed. A final opinion of the commission rendered pursuant to this section must be supported by clear and convincing evidence. In addition to the other requirements for issuing an opinion pursuant to this subsection, the commission shall not render a final opinion determining that a person has violated NRS 294A.345 unless the commission makes specific findings that:

(a) The person caused to be published a false statement of fact concerning a candidate;

(b) The person acted with actual malice in causing the false statement to be published.

(c) The person acted with the intent to impede the success of the campaign of the candidate in causing the false statement to be published; and

(d) The publication of the false statement did in fact impede the success of the campaign of the candidate.

13. As used in this section:

(a) "Actual malice" has the meaning ascribed to it in NRS 294A.345.

(b) "Publish" has the meaning ascribed to it in NRS 294A.345.

It is clear from the evidence and the testimony that the candidates adamantly disagree with the political opinion of

Concerned Citizens of Mesquite concerning the candidates' position on various issues. However, political disagreement does not amount to a campaign practices violation under NRS 294A.345. Rather, to sustain allegations on which the Commission may find a violation of NRS 294A.345, the candidates must (a) file a request for opinion with the Commission within ten days after the alleged false statement is published, and (b) prove, by clear and convincing evidence, that Concerned Citizens of Mesquite violated each element of NRS 294A.345 and, in doing so, acted with "actual malice." See, NRS 294A.345(2) and NRS 281.477(7). The candidates have failed to meet that burden.

With the exception of a statement of fact published in the "Español" political advertisement that appeared in *The Valley Journal* on May 3, 2001, which inaccurately attributes to the candidates a certain political position,^[2] the evidence presented by the candidates (although politically hard-hitting) amounts to nothing more than statements of political opinion by Concerned Citizens of Mesquite, some of which does not even relate to the candidates. Further, the candidates neither alleged nor presented evidence of any false statement of fact consistent with the types prohibited by NRS 294A.345(1)(a)-(g). Mere political opinion is protected speech under the First Amendment to the U.S. Constitution and does not violate the provisions of NRS 294A.345.

The decision by Concerned Citizens of Mesquite to publish as a statement of fact an inaccurate statement regarding a candidate's position on a particular political issue without investigating the accuracy of the statement (as Concerned Citizens of Mesquite did in the "Español" political advertisement that appeared in *The Valley Journal* on May 3, 2001), is, on the other hand, of concern to the Commission. However, the Commission is precluded from rendering an opinion on that issue because the candidates failed to timely file with the Commission a request for opinion regarding that alleged false statement of fact. NRS 294A.345(2) requires that a "candidate who alleges that a false statement of fact concerning the candidate has been published in violation of [NRS 294A.345(1)]... [must file a request for opinion] with the commission not later than 10 days after the date on which the false statement of fact is alleged to have been made." The statute provides no exception to the 10-day requirement. The alleged false statement was published on May 3, 2001. The candidates filed their request for opinion with the Commission on May 18, 2001, more than ten days after the date on which the false statement of fact is alleged to have been made. The Commission, therefore, lacks jurisdiction to render an opinion concerning the alleged false statement of fact published by Concerned Citizens of Mesquite on May 3, 2001.

With regard to the alleged false statement of fact published in the "Español" political advertisement on May 3, 2001, the candidates failed to meet the timely filing requirements of NRS 294A.345(2). With regard to the remaining alleged false statements of fact, which were timely filed with the Commission, the candidates failed to meet their burden of proof required by NRS 281.477, Subsection 7, to find a violation of NRS 294A.345 because no clear and convincing evidence was presented on which the Commission could make specific findings that Concerned Citizens of Mesquite (a) caused to be published a false statement of fact concerning the candidates prohibited by NRS 294A.345, and (b) acted with actual malice in causing such a false statement to be published, and (c) acted with the intent to impede the success of the candidates' campaigns in causing such a false statement to be published, and (d) actually impeded the success of the candidates' campaigns in causing such a false statement to be published.

The Commission, therefore, finds no violation of NRS 294A.345 by Concerned Citizens of Mesquite with regard to the candidates' allegations herein.

NOTE: THE FOREGOING OPINION APPLIES ONLY TO THE SPECIFIC FACTS AND CIRCUMSTANCES DEFINED HEREIN. FACTS AND CIRCUMSTANCES THAT DIFFER FROM THOSE IN THIS OPINION MAY RESULT IN AN OPINION CONTRARY TO THIS OPINION. NO INFERENCES REGARDING THE PROVISIONS OF NEVADA REVISED STATUTES QUOTED AND DISCUSSED IN THIS OPINION MAY BE DRAWN TO APPLY GENERALLY TO ANY OTHER FACTS AND CIRCUMSTANCES.

DATED: September 12, 2001.

NEVADA COMMISSION ON ETHICS

By: TODD RUSSELL, Chairman

^[1] *The Valley Journal* is a locally owned and operated weekly newspaper published in Mesquite, Nevada. It is mailed free to persons living in Mesquite, Littlefield and Bunkerville.

[\[2\]](#) The statement reads: "Lindsay, Bales, and Strohl recommend closing the International borders and they want limited immigration."