

1 seen it, it is kind of a barn-like looking thing now.
2 It's very much a very rural barn-like looking thing.
3 Originally we were more of a concrete neon kind of
4 situation, and that was dead on arrival.

5 We had a lot of conversations about that.
6 The 200 rooms was a big deal. There was a lot of
7 conversation back and forth about the 200 rooms.

8 Councilman Carrigan and the rest of the City
9 Council was meeting with the Nugget at the time on that
10 issue. They were told that building those 200 rooms in
11 the Nugget's mind would make an equal and fair playing
12 field, and that communication was communicated back to us
13 both through Councilman Carrigan and other members on the
14 redevelopment staff including City staff and the Mayor.

15 After a lot of conversations the partners in
16 this project, the Seenos and Paganettis and
17 Mr. Whittemore decided to go ahead and not use the
18 nonrestricted license that they had grandfathered that
19 they had purchased and build the rooms primarily on that
20 issue, that it would calm those waters and make for a
21 more equal and fair playing field as the Nugget's
22 perception of such.

23 So we had a lot of conversation about that.
24 That was a big, big financial hit to this project. It
25 was a \$46- to \$50 million jump in the construction cost.

1 And also operational and everything else.

2 So that was a dicey moment whether this moved
3 forward or not on those rooms, and the decision was made
4 by that partnership to do so. So those conversations
5 were taking place. Primarily those were our
6 conversations about this project.

7 This was a very contentious issue,
8 Commissioner, and I met with the City staff, I would say
9 a couple times a week. It was constant meeting
10 constantly. That handbook was the hardest handbook I
11 have ever been involved with, and it was by far the most
12 scrutinized. So we had a lot of conversations about -- I
13 mean, every single piece was a level of scrutiny that I
14 have never been through. So there was an enormous amount
15 of that kind of conversation.

16 Politically there were always conversations
17 going on about where the opposition was coming from, what
18 could we do, are we meeting with them. There was a lot
19 of pressure to meet with the neighborhood and the people,
20 which we did as much as we could. The problem was a lot
21 of them wouldn't meet with us. But Councilman Carrigan
22 and the County Commissioners and other Council people
23 were encouraging us to meet with them as much as we could
24 get the opposition to meet with us, which we did.

25 So it was a lot of conversation like that. I

1 don't know how to answer that other than that there was a
2 lot of conversation.

3 COMMISSIONER CASHMAN: I appreciate that.

4 COMMISSIONER HSU: I'm sorry. Can you
5 clarify when you say "a lot of conversation," are you
6 talking with the Councilman himself? It seems like you
7 went beyond that.

8 THE WITNESS: The conversations with the
9 Councilmen are -- I know that this is -- Mr. Cashman
10 probably understands this -- that's very small compared
11 to what you end up doing with the staff, and the staff is
12 who really choose to do this stuff. You spend an
13 enormous amount of time with staff.

14 Particularly as the temperature rises,
15 Commissioner Hsu, it gets much more intense, everything
16 gets scrutinized. Lighting, plans, planter boxes,
17 striping. It is just un-godly, every little piece.

18 The Council people speak in much broader
19 terms. You need to build rooms so you have an even
20 playing field with the other properties. We want a
21 community center built out there. We want \$300,000 for
22 low income housing. Those are the demands that come from
23 the electeds.

24 The staff is the one who really grinds out.
25 When a Council person says it needs to match up with all

1 the surrounding neighborhoods, well, that sends everybody
2 down a path. And then you spend months working to
3 accomplish that and try and make the project something
4 that everybody can accept.

5 This project, it bears no resemblance. If I
6 showed you the two pieces from when we started to where
7 we ended up at, you would not recognize them as the same
8 project.

9 BY COMMISSIONER CASHMAN:

10 Q Thank you, Mr. Vasquez.

11 We have had some conversation, you were first
12 hired by or volunteered for -- I'm not sure; I guess it
13 is hired -- Councilman Carrigan in 1999 and subsequent to
14 that ran two other campaigns for him. He has
15 characterized your relationship as being a friend but
16 also being a political adviser throughout that time
17 period.

18 A Uh-huh.

19 Q What kind of political issues would you guys
20 have discussed over the time period from '99 to 2006?

21 A Everything. When you are running a campaign
22 you have to take a look at all the factors that could
23 affect that candidate and that community. In '99, the
24 resident issues in our campaign at that time was traffic
25 and it was the impact of growth, unplanned for growth,

1 taxation. Sparks was in a real jam at the time
2 financially with the diversification of the economy. So
3 economics were a big thing in that campaign.

4 And we used other issues at that time. There
5 was a candidate who was running against Mr. Carrigan who
6 was kind of anointed by the existing Council and the
7 Mayor. So that was a big issue that we used to our
8 advantage in that campaign. That's what you do. I mean,
9 campaigns are just warfare by another mechanism.

10 And so when you are running a campaign, every
11 issue that affects the populous or the political
12 environment of that particular Councilman that you deal
13 with at that time, and those issues change. They evolve
14 based on the indication of the City.

15 So that was a very -- Mr. Carrigan, one of
16 the reasons why I have enjoyed being involved with
17 Mr. Carrigan's political campaigns is they are always
18 highly contested. They are very challenging to someone
19 like myself.

20 So the first one there were seven people
21 running, there was an anointed candidate, a monied
22 candidate and a retired police chief. So he wasn't even
23 on the radar, and it was basically Mike and me and the
24 wives in his kitchen planning out this campaign. It
25 wasn't as glamorous as being hired or fired or anything

1 else. We had no money. We had no resources. We had no
2 donors. We had nowhere to go to get any money or donors,
3 and we ran it on a shoestring and did it all through
4 grass roots.

5 I donated my time to that. I was proud to do
6 so. I'd do so again for the right candidate. Somebody
7 comes along that I believe in them and I think they can
8 do the right things, it's not necessarily that they are
9 going to be on the right place with all my stuff. I just
10 have done that my whole life.

11 Second campaign was a little different. He
12 was an incumbent. So we did have some donors. We had
13 some money. We didn't have anywhere near what we wanted
14 to have. You never do in these kind of campaigns.

15 Campaigns in the city of Sparks are not like
16 campaigns that you read about in the paper. We are
17 talking \$20-, \$30,000 affairs.

18 This last campaign was a different story.
19 Sparks kind of grew up. And there was a lot more money
20 involved. I mean, our opponent raised an enormous amount
21 of money, as did Mr. Carrigan.

22 So throughout all of these we dealt with the
23 issues at the time. The second campaign was very
24 centered around redevelopment, the issues of why
25 redevelopment wasn't happening fast enough. There were

1 some issues related to public safety and a tax bond that
2 had failed. There were a lot of issues about Sparks's
3 budget and consolidation. So the issues had kind of
4 changed and evolved.

5 The third campaign was brutal, just brutal.
6 We had a very well-funded opponent, there were the
7 powerful special interests directly behind it right out
8 in front and were not hiding behind anybody. They raised
9 more money than us. And it was just a tactical exercise
10 the whole time.

11 We had the Lazy 8 issue was this looming
12 cloud over it, and that was the thing that I think most
13 people thought was the actual issue. I don't think from
14 our standpoint in the campaign, I don't think we thought
15 it was the big issue because we were walking the
16 neighborhoods and we were realizing we were going to be
17 okay, that people weren't as concerned about it as it
18 would appear in the media.

19 And we shifted our tactics at the end
20 immensely and went after other issues, spent some time on
21 water. Mr. Carrigan is the chairman of our water
22 company, and we did some stuff on that. Kind of tried to
23 get away from more of the public stuff. All that is
24 public information and stuff which you can look up.

25 So we spent a lot of time on the third

1 campaign trying to shift gears on that once we got a feel
2 for where the neighborhoods were at. The nice thing
3 about a small city like Sparks, it is absolutely
4 conceivable that in a couple of month period of time the
5 candidate himself can walk 60, 70 percent of the houses
6 in his district. You couldn't do that in a bigger city.
7 You can't do it in Reno. But you can in a city the size
8 of Sparks.

9 So you get a very good feel for what, not
10 what you are reading in the paper, but what the folks who
11 don't talk to the paper, who don't show up for Council
12 meetings, who only show up when they vote. We only walk
13 the doors that are registered voters. You get a good
14 feel for what's actually happening and occurring, and
15 that shifted our tactics. And all that time we were
16 communicating on those tactics and how to do that.

17 At the same time, of course, when I was
18 involved with Mr. Carrigan's campaign, the third time, up
19 until that time Sparks had been on a different electoral
20 curve than the rest of the community. They were on an
21 odd year. So they had their own elections. It was very
22 unique his first two campaigns because there was no other
23 elections other than Sparks. The third one was
24 different. It was in the pool with everybody else.

25 So at that time I had responsibilities not

1 only to Mr. Carrigan but to a variety of other candidates
2 at the same time all through the state. So it was a
3 different feel being in the fish pool, the deep end of
4 the pool per se. So the tactics had to change, and it
5 was much more extensive because you are fighting with
6 everybody else for media time and air time, and you are
7 dealing with political rates.

8 When Sparks had its own elections there were
9 no political rates because it was so small. But when
10 they voted as a Council to move their elections into the
11 mainstream, that took the costs from here to here. And
12 his third re-elect, we could feel that, it was an
13 immensely different game. It felt to me more like a Reno
14 race than a Sparks race. But the whole time it's a
15 constant strategic and tactical exercise.

16 VICE CHAIRMAN HUTCHISON: Thank you,
17 Commissioner Cashman. Other Commissioners, Commissioner
18 Jenkins.

19 **EXAMINATION**

20 BY COMMISSIONER JENKINS:

21 Q Good morning, Mr. Vasquez. I have just a
22 quick question. In the 2006 race was there a committee
23 formed by someone to discredit Mr. Carrigan's main
24 opponent?

25 A To discredit Mr. Carrigan's main opponent?

1 No, we didn't have any committees whatsoever in the
2 campaign.

3 Q To your knowledge, in the community, were any
4 individuals or organizations involved raising money,
5 spending money, placing ads, to discredit Mr. Carrigan's
6 opponents?

7 A I'm not trying to evade the question,
8 Commissioner. I honestly can't remember.

9 There's always different groups, builders,
10 the AGC, the Realtors, the unions, there is always
11 different groups who kind of pick and choose their
12 candidates. Particularly labor, and our Carpenters Union
13 is very active.

14 I can't remember who -- I remember we got a
15 lot of endorsements from a lot of those groups, and I
16 think some of those groups might have done some things.
17 I can't remember exactly who or what.

18 Q Here is a better question. Were you involved
19 with any --

20 A No.

21 Q Entities --

22 A No.

23 Q Let me finish my question. We have a court
24 reporter who is going to have a fit.

25 Were you involved with any entities outside

1 of Mr. Carrigan's re-election campaign to raise money or
2 spend money or influence voters to vote for Mr. Carrigan,
3 outside of the campaign itself?

4 A I was -- I met, I meet, as the campaign
5 manager, with all of the various groups at one time or
6 another, and they all do different things. We don't have
7 any impact on this.

8 No, I have no control or input into anything
9 that may have come out to discredit our opponent during
10 that time. That's each of the groups individual stuff.
11 It would be nice if more of these entities, like AGC and
12 all these different groups, would run closer to the
13 managers, but they don't. We don't have any direct
14 control or access to that.

15 It's very seldom that we even get the
16 courtesy of knowing what they are doing before it comes
17 out, and half the time, to be perfectly honest with you,
18 Commissioner, more times than not in my experience
19 running campaigns, those things tend to backfire on you.
20 You get these kind of free radicals out there and they
21 are not following along the path that you have laid out
22 and now you got to deal with that. You don't have the
23 resources for it. You haven't planned for it. And now
24 you got to deal with this guy over here who thinks he's
25 helping but he is really not.

1 Q Does your advertising agency, if that is what
2 it is, handle the placement of advertising during
3 campaign season for any of these special interest groups?

4 A No.

5 Q If AGC wanted to place an ad that said Mike
6 Carrigan is great and they wanted to do it through your
7 agency, would your agency provide those services?

8 A No. We don't work with any of those groups
9 directly like ad placement.

10 Q I'm trying to determine if you directly or
11 indirectly derived a benefit --

12 A No, I don't get to place any of that. I
13 don't have those opportunities. They have their own
14 relationships and their own agencies.

15 To be honest with you, they would never do
16 that through someone like myself. It would not be an
17 opportunity open to me.

18 COMMISSIONER JENKINS: Thank you.

19 VICE CHAIRMAN HUTCHISON: Any other
20 Commissioners? All right.

21 COMMISSIONER HSU: I had a question.

22 VICE CHAIRMAN HUTCHISON: I'm sorry?

23 COMMISSIONER HSU: I have a question.

24 VICE CHAIRMAN HUTCHISON: Commissioner Hsu,
25 please.

1 COMMISSIONER HSU: Sorry. Thank you,
2 Mr. Chairman.

3 EXAMINATION

4 BY COMMISSIONER HSU:

5 Q Mr. Vasquez, I just want to clarify. You
6 testified earlier that you get no win bonus, you are a
7 paid consultant, you get the same amount win, lose or
8 draw on the result of the vote on the Lazy 8 matter.

9 A Uh-huh. Yes, sir.

10 Q So paid consultant, what does that mean? Is
11 that hourly?

12 A No, no.

13 Q Retainer?

14 A It is a retainer.

15 Q And so whatever time, extra time you have to
16 put on, you get paid that same amount?

17 A I do. I get paid that same amount each
18 month. I keep track of my time, I bill back to the
19 retainer and kind of show them where and what I'm doing
20 on a variety of other projects.

21 My relationship with Wingfield Nevada and
22 Harvey Whittemore and the Peppermill is not just about
23 Lazy 8. I have other things that I work on, other
24 responsibilities. There are other projects. There is a
25 little, bitty one going down by Mr. Cashman I think in

1 Las Vegas, Coyote Springs. So I have involvement in a
2 lot of these other projects.

3 So I'm paid a retainer to consult on all of
4 those.

5 Q A global retainer relationship?

6 A It is. I don't get any bonus, any advantage
7 on Lazy 8. And win, lose or draw with Lazy 8, my
8 situation with my client would not have changed and did
9 not change.

10 Q And when you say "retainer," is it a retainer
11 to you or to Art Associates to Electrographics? Who is
12 the retainer to?

13 A The retainer is to my entity Cat Strategies,
14 which is my lobbying and public relations arm.

15 Q And do you mind if I ask how much that
16 retainer is?

17 A No, not at all. Not at all. Wingfield
18 Nevada pays me \$10,000 a month.

19 Q Now so if you start getting, compiling a
20 track record where you are losing, wouldn't it be --
21 would it be fair to say that you could lose your
22 relationship with Mr. Whittemore?

23 A Can I elaborate on that?

24 Q Sure.

25 A The Lazy 8 is one development project. Let

1 me talk to you about some other things that I do.

2 I work on King Triple 8, which is
3 Mr. Whittemore's energy soft drink. I'm doing the brand
4 consulting on that.

5 Long before I was into politics, I was a
6 marketing person. I was an advertising person. I have
7 an enormous background in brand management, brand
8 development. I'm working with his entity helping to
9 develop the King Triple 8 brand.

10 I'm working with bioceuticals, which is
11 another Wingfield Nevada Company, on a product called
12 Alcodol, which I'm working on the brand development and
13 market penetration on and rollout. I'm working on a
14 piece at the Red Hawk Resort that we're hoping to convert
15 into, which is not an entitlement issue, but build a day
16 care and a gym similar to my Caughlin Club.

17 I have got a relationship with Annette
18 Whittemore where I do stuff for the WPI, which is the
19 Whittemore Patterson Institute for immunization disease
20 research. I also do some projects from time to time for
21 Red Hawk as it relates to advertising for ads and
22 television and other marketing products for David's
23 Restaurant and the golf course.

24 Q So let me just -- I appreciate that,
25 actually.

1 A My point is, though, I do all these things.
2 Lazy 8 was one piece of this. It wasn't the only piece.
3 It wasn't the central piece. It was one piece of many.

4 My job with Lazy 8 will be concluding soon.
5 I will still be doing all the other things and moving
6 forward with all those other responsibilities.

7 Q So I guess, then, the point I was trying to
8 see if -- to explore is whether or not even if you don't
9 get paid more or less on a particular City Council vote,
10 you could potentially lose your long-term financial
11 relationship with the Whittemore family if you start
12 losing with the City Council, if you start having a bad
13 track record, but what you are telling me is that there
14 is a lot of other things going on and you are on retainer
15 for all that stuff.

16 A Oh, yes, Mr. Hsu. The Lazy 8 is the thing
17 that gets all the attention and it's the thing -- it is
18 the reason why I'm sitting here. But it isn't what I
19 spend most of my time on for that client. There are a
20 variety of other things.

21 Currently the King Triple 8 is now taking up
22 most of my time. So it's one of many things.

23 And the interesting thing about the Wingfield
24 Nevada group is the diversity of business interests they
25 have, from energy drinks to bioceticals. This casino

1 project is part of that.

2 Q Let me switch directions real quick. You
3 made reference about meeting with individual Council
4 people and the Mayor for this Lazy 8 project, and I think
5 you said you took them out to the site? Did you say
6 that? You actually --

7 A No, the site is a big flat piece of dirt.

8 Q So in terms of individual meetings with all
9 of them.

10 A We met individually with all of them. We
11 meet -- let me take one step back. I meet with the
12 individual Council members and the Mayor on things
13 outside of Lazy 8 for Red Hawk. I met with everybody
14 last week on a stop sign we wanted to make into a stop
15 light at the entrance to the golf course. There is all
16 these different things on the project.

17 Q Let's focus on the Lazy 8.

18 A I'll take them one at a time.

19 Q Did you meet with the Mayor and --

20 A No, I --

21 Q Let me ask the question, and I mean, I know
22 you want to answer.

23 A I do.

24 Q I just want to see if I can break this down,
25 then. Did you meet with all the Councilmen and the Mayor

1 individually regarding Lazy 8?

2 A I met with all the Council people and the
3 Mayor individually on Lazy 8. One Council person I
4 talked to on the phone, and he was very up front to me,
5 up front that he was not going to be involved with this
6 project, was not going to support it, and frankly, didn't
7 want to put any time into learning about it at all.

8 Q And so that --

9 A And I respected that.

10 Q With respect to those series of meetings,
11 that included the Councilman, Mr. Carrigan?

12 A Yes.

13 Q Right?

14 A Yeah.

15 Q His meeting was in person?

16 A All of them were.

17 Q And I mean, for lack of a better term, these
18 are lobbying meetings?

19 A Oh, yeah. We're going through the scope of
20 the project. When you do a handbook it's not like
21 lobbying a bill at the legislative session where you are
22 bringing forward your bill through the LCB and you are
23 trying to move it through committee and everything else.
24 These things evolve. You are looking for what are the
25 things about this that you don't like, what about this

1 won't work, what about this do you not think is in the
2 City's best interests, what doesn't fit with your plan.
3 And you massage the project. It's completely different
4 than working a bill through the Legislature or something
5 through a regulatory body like the PUC.

6 Q I understand that, and you have actually
7 painted a really good picture as to how your role is a
8 little different than what people get these impressions
9 about.

10 A Sure.

11 Q Arm twisting senators and things like that.

12 A No, I'm usually arm twisting the client.

13 Q So I mean, earlier today Mr. Carrigan said
14 you never lobbied him, he actually called you about
15 questions.

16 A Uh-huh.

17 Q I'm seeing a little bit of a disconnect
18 there.

19 A No, let me connect those dots for you.

20 Q Okay.

21 A Mr. Carrigan was already involved with
22 Mr. Whittemore before I was on board with this particular
23 project. When I got involved, they had already been
24 discussing the 200 rooms, they had already been
25 discussing a lot of these pieces.

1 So when I got involved, I wasn't actually
2 meeting or lobbying with Mike Carrigan about, hey,
3 support this project. I was more going back to my client
4 saying, look, this is what they got to have, this is what
5 they want.

6 Q But still in your mind it would still fall
7 under your general role of lobbying?

8 A No.

9 Q You are the liaison communicating back and
10 forth.

11 A Well, lobbying to me would mean that I'm
12 trying to get Councilman Carrigan to concur with our
13 position and support our project. When I got involved
14 with this, it was in completely defensive position at
15 that point. I didn't get involved at the beginning. I
16 got in late on this project.

17 And my role at that point was more, okay,
18 here is the things that I need to have, you need to go to
19 your client and tell your client I got to have this, this
20 and this for the City. These are the things that I have
21 to have. It wasn't a traditional lobbying role, and I
22 can put my hand on the Bible and swear to that.

23 If my role was to lobby Mr. Carrigan, I was a
24 complete and total failure because it cost my client a
25 ton of money. I got in late. That's how it was.

1 Q The overall -- I guess, I mean, it all
2 depends on what your view of lobbying. You have actually
3 given me two different views based on your testimony. I
4 mean, there is the general meeting and educational
5 component of it, which I thought you said was lobbying.
6 And then you actually carved that out and said, well,
7 actually, if you really want to talk about true lobbying,
8 it's asking for the vote. Is that fair to say?

9 A To me it is more asking for the vote and
10 asking for the support on the project. I never had that
11 conversation with Mr. Carrigan. I was too busy trying to
12 figure out how to get my client to change his plans and
13 make this thing work.

14 The communication between Mr. Carrigan and
15 Mr. Whittemore was well in line before I got on board.
16 So I had other focuses, and then basically trying to get
17 some reality to what we needed to do to make this project
18 actually happen.

19 Q I just have one quick question. We have an
20 exhibit book, there is a green book, and if you could go
21 to Tab 5 on that. It's not something you are going to
22 have -- you would have been familiar with, but I'm going
23 to use that as a basis to ask you a question.

24 A Sure.

25 Q Really it is the last sentence there, there

1 is a reference to a \$46,000 in campaign expenses
2 regarding your activities on Mr. Carrigan's campaign.

3 A Uh-huh.

4 Q It says that this is a total, the 46,562
5 campaign expense total is a pass through, meaning Carlos
6 Vasquez used this money to pay others for advertising
7 services. Do you see that?

8 A Yeah.

9 Q Is that something -- do you agree with that
10 statement?

11 A Oh, yeah.

12 Q So just to break that down, pass through to
13 pay who? Advertising? Media?

14 A Well, we buy media. A lot of that money goes
15 right back to the government in terms of postage to pay
16 the mail houses, to pay the people who make the signs, to
17 pay the guys who sell us the paper. It's all video
18 placement.

19 In Sparks Council races, Commissioner, I know
20 you are thinking media like in television, Mr. Carrigan
21 only had one campaign that ever had television. Previous
22 to that it was all mail. So the bulk of our expenses
23 were postage and mail house related. And some printing.
24 But the government makes the most money out of all this.

25 Q Did your companies retain some of that money?

1 You have two companies; right? Or you have more but you
2 have --

3 A Yes, sir.

4 Q -- Electrographics?

5 A Electrographics.

6 Q That's the printing component?

7 A Printing company, and Art Associates is our
8 ad agency.

9 Q Did any of those companies actually take a
10 cut of this \$46,000?

11 A The printing we priced out at a below market
12 rate, we took our profit off of it.

13 Q Essentially cost?

14 A Yeah. It was all cost. I never retained any
15 money on any of this. Everything we did for Mr. Carrigan
16 has always been for cost, always. Pass through money.
17 If the postage is \$4,500, he gave me a check for \$4,500,
18 I wrote a check for \$4,500 to the mail house, to the U.S.
19 Post Office and then paid the mail house.

20 Q Was there an overhead component that you paid
21 your company?

22 A No.

23 Q Just costs, pure costs?

24 A We had some stuff where we had some internal
25 costs that we were trying to cover some of our salaries.

1 But it was pure internal costs, and I could easily
2 display that to you.

3 Q What does that mean? Explain that a little
4 bit more. Internal costs to cover salaries of who?

5 A The people working on this stuff. The
6 designers and that kind of stuff. A lot of this stuff is
7 stuff that we don't do in-house, we farm out to somebody,
8 and we pass those costs on to the campaign. We don't do
9 signs, we don't do mailings, and that kind of stuff we
10 had to use vendors for. And we passed those costs
11 directly on to the campaign.

12 COMMISSIONER HSU: No further questions,
13 Mr. Chairman. Thank you.

14 VICE CHAIRMAN HUTCHISON: Thank you,
15 Commissioner Hsu.

16 We're at 12:30 now. Mr. Thornley, are you
17 going to have any questions for Mr. Vasquez?

18 MR. THORNLEY: Yes, Mr. Vice chairman.

19 VICE CHAIRMAN HUTCHISON: How long is it
20 going to take you? With this caveat, we really aren't
21 interested in repeated testimony. So if you have already
22 heard it once, we don't have to hear it twice.

23 MR. THORNLEY: I believe pretty quickly,
24 then.

25 VICE CHAIRMAN HUTCHISON: Does that mean less

1 than five minutes?

2 MR. THORNLEY: I would think so.

3 VICE CHAIRMAN HUTCHISON: Because I always
4 say to the judge, only a few questions, Your Honor. Then
5 a half hour later I finish up.

6 So I'll hold you to that under five minutes.
7 Please go ahead and examine. And I don't believe there
8 is any other Commissioners who wish to examine, so please
9 go ahead.

10 **EXAMINATION**

11 BY MR. THORNLEY:

12 Q Carlos, you told the Commissioner that you
13 and Mr. Carrigan discussed political issues.

14 COMMISSIONER FLANGAS: Do you want to take
15 the mic?

16 BY MR. THORNLEY:

17 Q Your answer reflected political issues to
18 Sparks as they related to campaigns. Are your
19 discussions of political issues with Councilman Carrigan
20 limited to Sparks?

21 A Oh, no, no. I see what you are saying. No.
22 When you do this for a living, and you are involved with
23 people who are in politics, you talk about everything.
24 We spend -- not just with Mike Carrigan but with
25 everybody I know in this kind of little fish bowl, we

1 talk about every political issue on the planet.

2 Anything that's going on anywhere is gossip,
3 and that's how it works. I would say the bulk of our
4 conversations, more than the bulk, probably about 99
5 percent are stuff that doesn't even pertain to Nevada.
6 It's more national politics and the gossip of what's
7 happening in this profession.

8 Q Thank you, Carlos. Earlier Commissioner
9 Jenkins asked you a question about whether or not you
10 were involved with special interest groups that were
11 attempting to discredit Council Carrigan's opponent in
12 the election. And you said no. What about the opposite?
13 Are you aware of any interest groups that were out to
14 discredit Councilman Carrigan?

15 A Absolutely. I mean, there were a lot of
16 different groups that were formed to discredit Councilman
17 Carrigan all through his third reelect. So yeah, I'm
18 well aware of those groups.

19 Q Could you give us an example of those groups,
20 please?

21 VICE CHAIRMAN HUTCHISON: Counsel, let me ask
22 you, what point are you trying to make with this
23 examination? What is the relevance to the issues before
24 the Commission?

25 MR. THORNLEY: The relevance of the issues

1 before the Commission, Vice Chairman, are that the
2 complaints that were filed with this Commission are not
3 necessarily rooted in an ethical violation. In fact,
4 they are more of a political ploy to discredit Councilman
5 Carrigan as they arose in the midst of this election, of
6 this 2006 election.

7 VICE CHAIRMAN HUTCHISON: I can tell you
8 motive for filing a complaint really is irrelevant. If
9 somebody has violated a statute and I love the politician
10 or I hate the politician, just not going to come into our
11 deliberations. We're going to look at the statutes,
12 apply them to the facts that we elicit during the course
13 of the testimony, and then render our decision.

14 MR. THORNLEY: Thank you, Vice Chairman.
15 I'll move on.

16 BY MR. THORNLEY:

17 Q Carlos, have you ever made a campaign
18 contribution to Councilman Carrigan with expectation of
19 some type of return?

20 A No. Never.

21 Q Has Councilman Carrigan ever prompted you or
22 indicated to you that he would vote for a particular
23 project in return for your donated time?

24 A Never.

25 Q Carlos, would it be fair to describe your

1 political relationship with Councilman Carrigan as three
2 separate undertakings rather than a single continuous
3 occurrence?

4 A Yeah.

5 Q You have described the Lazy 8 project as it
6 more from how you initially presented it to what it has
7 become.

8 A Uh-huh.

9 Q What were your options before you decided to
10 build the hotel?

11 A Well, my client had a nonrestricted,
12 grandfathered, gaming license that they acquired from the
13 Old Reno Casino in downtown Reno when the train trench
14 was built. That enables them to build a gaming property
15 with nonrestricted gaming anywhere they want within the
16 region, not entitlement -- I'm just talking move the
17 license -- without building the 200 rooms that the gaming
18 statute requires. That lets them build a property that
19 is basically just gaming without the overhead of the
20 resort component.

21 They bought that with the idea of moving that
22 to Spanish Springs and using the existing entitlement
23 that was there to build that type of product. That's
24 about a \$35- to \$50 million project. That was what was
25 presented at the CAB before I was brought on board, the

1 County Advisory Board, and that was what Mr. Whittemore,
2 Mr. Carrigan, the rest of the Council were dealing with
3 previous to my involvement in this project.

4 Q Thank you. So would it be fair to summarize
5 that before Councilman Carrigan and the rest of the
6 Sparks Council became involved in this project, the Red
7 Hawk Land Company, Harvey Whittemore, the Peppermill
8 intended to build a casino without the hotel?

9 A Yes. Yes, that was the plan. The reason
10 they bought that license, that was a two and-a-half
11 million dollar purchase, was to build a property that
12 didn't have the associated overhead with the resort
13 component.

14 Q And to this day they maintain that license?

15 A Yes. The Peppermill currently holds that
16 license.

17 Q And so they still hold the license and they
18 are building the hotel out at the Lazy 8 project even
19 though they are not legally obligated to do that?

20 A Yes. Yes.

21 MR. THORNLEY: Just one final question,
22 Mr. Vice Chairman.

23 VICE CHAIRMAN HUTCHISON: Sure.

24 BY MR. THORNLEY:

25 Q You described a great deal of experience you

1 have in politics here in Nevada. From your experience
2 could you describe Councilman Carrigan as compared to
3 other politicians you have worked for?

4 A That is a big question.

5 Q I can narrow it down.

6 A No, I want to answer that. Actually that's
7 the only question I want to answer.

8 VICE CHAIRMAN HUTCHISON: That gives you a
9 chance to talk a lot.

10 THE WITNESS: Yeah. And I'm sorry. That is
11 what I do, I'm a public relations person.

12 VICE CHAIRMAN HUTCHISON: And I'm a lawyer,
13 and we're trying to get out for lunch.

14 THE WITNESS: I'll make it quick, and I know
15 you are hungry. I have had the opportunity to work with
16 elected officials all over the country. I have spent a
17 lot of time in D.C., I spent a lot of time in D.C.
18 lobbying.

19 But we don't have many of these guys that you
20 can actually believe in. And you won't hear that a lot
21 from people like me, but that's the truth. You get to
22 see what this is really like.

23 And I spent a lot of time in Las Vegas with
24 some folks that this didn't end up real well with, and I
25 saw that side of this business also. And it's kind of

1 gratifying to me from time to time, and this is a
2 business that doesn't give you a lot of gratification,
3 when you get to work for the good guys. We don't get to
4 do that much. We're always kind of compromising,
5 ameliorating, putting things together.

6 But I have got five political candidates and
7 they are the only five that I work for anymore, I'm not
8 running campaigns anymore, but I run these five guys and
9 I never charge them anything, and my reason for doing
10 that is because they are the five good men that I get to
11 work for. And I know they do the right thing. I have
12 seen them do the right thing, no matter what it costs
13 them. As corny as that sounds, of the 92 that I have
14 run, there are five.

15 And Mike Carrigan is the top of that five.
16 And that's why I do it. And that's why I would do it
17 again, even if I had to come back here every year, I'd do
18 it again.

19 MR. THORNLEY: Thank you, Mr. Vice Chair.
20 That is all we have.

21 VICE CHAIRMAN HUTCHISON: Thank you,
22 Mr. Thornley; thank you, Mr. Vasquez. I appreciate you
23 being here, and we do appreciate your testimony. I was
24 just kidding with you there, and we're all longwinded
25 whether lawyers or lobbyists or political types. Thank

1 you for being here this afternoon. We're going to go
2 ahead and take a lunch break. Mr. Thornley.

3 MR. THORNLEY: Mr. Vice Chair, since you
4 clarified that the motive is irrelevant, we'd like to
5 release the other three witnesses or four witnesses.

6 VICE CHAIRMAN HUTCHISON: That would be
7 great. So you will not be presenting witnesses after the
8 lunch, then?

9 MR. THORNLEY: No, sir, that is correct.

10 VICE CHAIRMAN HUTCHISON: And so in essence
11 you are resting?

12 MR. THORNLEY: Yes, sir.

13 VICE CHAIRMAN HUTCHISON: We will reconvene
14 at -- do you want to be back here at 1:30? Is that all
15 right with everybody? Let's go ahead and recess until
16 1:30. We're in recess until then.

17 (Brief recess taken.)

18 VICE CHAIRMAN HUTCHISON: Just we're back on
19 the record now, and we have before the Commission
20 Ms. Cooney, Ms. Adams, Mr. Valline and Mr. deProsse; is
21 that correct?

22 MS. COONEY: Close enough.

23 VICE CHAIRMAN HUTCHISON: It will be spelled
24 right in the record. And you all have been called on
25 behalf of Mr. Carrigan to testify for him. He has

1 indicated that he does not need to have your testimony in
2 this hearing, and therefore, you are released and you can
3 stick around and listen to the hearing, you can go on to
4 more productive endeavors, but we appreciate you coming
5 down and being available. Mr. Carrigan's counsel said
6 that your testimony won't be necessary. Thank you so
7 much.

8 (The witnesses were excused.)

9 (Lunch recess taken at 12:46 p.m.)

1 CARSON CITY, NEVADA, WEDNESDAY, AUGUST 29, 2007

2 1:33 P.M.

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4
5 VICE CHAIRMAN HUTCHISON: We're back on the
6 record in the Nevada Commission on Ethics hearing for
7 August 29th, 2007.

8 We have I believe finished all of the
9 witnesses, Mr. Thornley; is that correct, as far as you
10 are concerned?

11 MR. THORNLEY: Yes, Mr. Vice Chairman.

12 VICE CHAIRMAN HUTCHISON: Thank you. And the
13 Commission as well has completed its examination of
14 witnesses. So at this point I will actually close the
15 testimony portion of this hearing, and I know, counsel,
16 that you have two things that you want to present to the
17 Commission. One is a closing argument. I believe the
18 other is a motion.

19 MR. THORNLEY: Yes.

20 VICE CHAIRMAN HUTCHISON: Would you like to
21 present your motion before or after your closing?

22 MR. THORNLEY: We'd like to present it
23 before, please, Vice Chairman.

24 VICE CHAIRMAN HUTCHISON: Go right ahead,
25 please.

1 MR. THORNLEY: Our motion is essentially
2 this, that Commissioner Flangas disclose his relationship
3 with Alex Flangas for the record.

4 VICE CHAIRMAN HUTCHISON: Okay. What is the
5 reason for that, counsel?

6 MR. THORNLEY: Well, we're here today because
7 of disclosure and abstention statutes, and a familial
8 relationship clearly falls within those, and we believe
9 Commissioner Flangas has a familial relationship with
10 Alex Flangas.

11 VICE CHAIRMAN HUTCHISON: Is there a
12 relevance to Alex Flangas and this proceeding?

13 MR. THORNLEY: Yes, Mr. Vice Chairman. Alex
14 Flangas is a partner --

15 MR. CREEKMAN: I believe a partner.

16 MR. THORNLEY: -- at Hale Lane. Hale Lane is
17 representing the Nugget and the concerned citizens here
18 today suing the City of Sparks.

19 MR. CREEKMAN: And Your Honor, had we gotten
20 to motive, we would have, we believe we would have
21 successfully established that Hale Lane was instrumental
22 in mounting this, in stirring up citizen interest in
23 mounting this challenge to Commissioner Carrigan.

24 VICE CHAIRMAN HUTCHISON: Okay. So you are
25 talking to somebody who doesn't know anything about this

1 lawsuit and doesn't really know the background here. You
2 guys are really into this a lot more than I am or any
3 other member of this Commission. So you are going to
4 have to give us a little more background.

5 I understand what the motion is, you want to
6 have Commissioner Flangas disclose his familial
7 relationship, if any, to Alex Flangas, and I'm just
8 trying to understand the relevance of that, and what I
9 understand is there is some sort of a lawsuit that I
10 believe Mr. Flangas has brought on behalf of the Nugget
11 as well as other citizens or what?

12 MR. CREEKMAN: Mr. Flangas's law firm, the
13 Hale Lane law firm, sued the City of Sparks and Red Hawk
14 Land Development Company with respect to their belief of
15 the illegitimacy of the underlying settlement agreement
16 which settled -- which had the effect, Your Honor, of
17 reversing the City Council action.

18 VICE CHAIRMAN HUTCHISON: And then allowing
19 the project to go forward?

20 MR. CREEKMAN: Permitting the project to go
21 forward.

22 VICE CHAIRMAN HUTCHISON: Okay.

23 MR. CREEKMAN: On all points raised in
24 opposition to that lawsuit by the City, Judge Polaha of
25 the Second Judicial District Court ruled in the City's

1 favor that he was completely and absolutely without
2 jurisdiction to hear the case, to touch the case. He
3 went further than that and advised the parties, the
4 Nugget, comprised of the Nugget and of a number of
5 assembled and interested citizens who align themselves
6 with the Nugget of what they should have done had they
7 been inclined to bring a lawsuit. They should have
8 intervened in the underlying action, they should have set
9 aside, attempted to set aside the underlying judgment
10 order and stipulation which settled the dispute between
11 Red Hawk and the City.

12 That decision has subsequently been appealed
13 to the Nevada Supreme Court which is where it rests
14 today.

15 Adding further complication to this matter is
16 the fact that, to the extent there is a familial tie
17 between Commission Member Flangas and Alex Flangas as a
18 partner at the Hale Lane firm, Mr. Flangas is married to
19 Amanda Flangas, who is the sales manager for the Sparks
20 Nugget.

21 VICE CHAIRMAN HUTCHISON: Okay. All right.
22 Well, I will go ahead and grant your motion to ask
23 Commissioner Flangas if he would disclose what
24 relationship, if any, he has with Alex Flangas.

25 Commissioner Flangas, please.

1 COMMISSIONER FLANGAS: I believe that -- see,
2 I have a step-brother, John Flangas, who is the father of
3 Alex Flangas. My father and John Flangas's father were
4 first cousins. Now my mother died when I was six months
5 old, and my father got killed a year later, and I was
6 adopted by my father's first cousin.

7 So I'm going to ask Adriana, in that table
8 there, that would probably make Alex Flangas probably a
9 third cousin.

10 VICE CHAIRMAN HUTCHISON: I am so lost with
11 that stuff. Yes, I'm going to allow our Commission
12 Counsel to comment.

13 COMMISSIONER FLANGAS: But further let me go
14 one step further. I have no idea where Alex Flangas's
15 law activities are, who he works for and who he is
16 connected with and whatever connection he might have with
17 this case.

18 MR. THORNLEY: Mr. Vice chairman, I believe
19 that is good enough for us.

20 VICE CHAIRMAN HUTCHISON: So do you have any
21 motion beyond just the disclosure?

22 MR. THORNLEY: No, sir.

23 VICE CHAIRMAN HUTCHISON: Thank you very
24 much.

25 All right. With that motion then we will go

1 ahead and proceed to closing statements. Counsel, you
2 were requesting a closing statement, and we don't always
3 do that, but we will afford you that courtesy and look
4 forward to hearing your closing statement.

5 MR. THORNLEY: Thank you very much. Do you
6 mind if I stand?

7 VICE CHAIRMAN HUTCHISON: Please do.

8 MR. THORNLEY: Today you have heard the same
9 testimony from Mike Carrigan that you heard from Carlos
10 Vasquez that you read in your own Executive Director's
11 report. I told you at the beginning of this that we'd
12 come back to you and we'd apply the facts of the case as
13 you heard them today to the laws in question.

14 Now the first one I'd like to address is your
15 disclosure statute. We talked at the beginning how we
16 said at the beginning for disclosure we needed to see if
17 the relationship between Mike Carrigan and Mr. Vasquez
18 fell within the definition of .501 sub (8). But before
19 we get there, let's look at this for a minute.

20 We're not talking about just the
21 relationship. We're talking about whether or not he
22 disclosed sufficient information in cases where he's
23 accepted a gift or loan.

24 You heard from both men that there's been no
25 gift or loan. Which would reasonably be affected by his

1 commitment in a private capacity to the interests of
2 others. Which is exactly the .501 sub (8) you are
3 talking about that we discussed this morning.

4 There is five categories that fall within NRS
5 281.501 sub (8). The first is a member of a household.
6 Mr. Vasquez is not a member of Councilman Carrigan's
7 household.

8 The second, is he related by blood, adoption
9 or marriage by the third degree of consanguinity. Not
10 there either.

11 Who employs him or a member of his household.
12 Mike Carrigan is not employed by Mr. Vasquez. So we
13 don't have subsection (c) either.

14 With whom he has a substantial and continuing
15 business relationship. You heard from both men that they
16 wouldn't classify their relationship as a business
17 relationship, they'd classify it as a political
18 undertaking. You heard from both men that the
19 relationship stops between the three elections and
20 Carrigan has to ask for it to begin again at the onset of
21 each subsequent election. So it's not continuing.

22 Because it is not continuing it doesn't
23 matter if it is substantial or not. But to the extent
24 you are inclined to consider that, you heard from both
25 men that money doesn't change hands except to pay the

1 costs of the election. This isn't a substantial
2 relationship. It's not a substantial business anything.

3 The final one is a relationship that is
4 substantially similar to any of the four previous. The
5 only part of this relationship that is left is a
6 friendship.

7 Being friends does not make you a member of a
8 household. Being friends does not make you related
9 within the third degree of consanguinity. Being friends
10 does not make you an employee or employer, and being
11 friends does not create a substantial and continuing
12 business relationship.

13 So you don't have the fifth subsection
14 either.

15 Ultimately because none of those are
16 satisfied, this can also not be satisfied. And the only
17 other condition in which he needs to disclose anything is
18 one in which he has a pecuniary interest, and you heard
19 both men say that Councilman Carrigan and Carlos Vasquez
20 don't have financial ties to the Lazy 8 project, or its
21 success or failure.

22 Finally, with this statute, the only portion
23 of the relationship between these two men that was not
24 disclosed at the August 23rd meeting was the campaign
25 contributions that were properly reported to the

1 Secretary of State. This subsection does not require a
2 public officer to disclose any campaign contributions
3 that the public officer reported pursuant to NRS 294A.120
4 or 294A.125 in a timely manner. Both of those statutes
5 require that reporting of a campaign contribution by
6 January 15th of the year immediately following the year
7 in which the campaign contribution was given.

8 So we can turn to the abstention statute.
9 Again, Councilman Carrigan would be required to abstain
10 in cases where he's accepted a gift or loan, but as we
11 saw here, he's not.

12 Where he has a pecuniary interest. Again, he
13 has no financial ties to the Lazy 8 project or its
14 success or failure.

15 And his commitment in a private capacity to
16 the interests of others, which we have shown does not
17 exist.

18 Finally, NRS 281.481 sub (2), whether or not
19 Councilman Carrigan has secured an unwarranted benefit
20 for Mr. Vasquez. First, he would need to have secured an
21 unwarranted benefit for someone that he has an entity
22 with a significant pecuniary interest in. He didn't.

23 Or to any person whom he has a commitment in
24 a private capacity to. He didn't.

25 As you can plainly see in the statute,

1 unwarranted means without justification or adequate
2 reason. You heard from Councilman Carrigan and you heard
3 from Mr. Vasquez and you have seen in your own exhibits
4 and ours, Councilman Carrigan was resoundly re-elected by
5 the people of Sparks. He ran an election that was or a
6 campaign that was based almost entirely on this Lazy 8
7 matter. He received legal advice on the matter, he
8 considered the merits of it, he cost the builder almost
9 \$50 million. He has plenty of justification and adequate
10 reason to vote the way he did on the Lazy 8 project.

11 Finally, one last thing. He would have
12 needed to actually secure a grant to violate this statute
13 and he failed. His vote alone is insufficient to grant
14 anything. His vote alone is insufficient to secure
15 anything.

16 From this Commission's own opinions, when a
17 public officer or a public employee lacks the capacity to
18 grant or secure the privilege even if they say they will
19 do it, they cannot be found in violation of this statute.

20 MR. CREEKMAN: Mr. Chair, I have one final
21 consideration to add to Mr. Thornley's closing.

22 VICE CHAIRMAN HUTCHISON: Go ahead,
23 Mr. Creekman.

24 MR. CREEKMAN: This case is all about the
25 application of the facts to the law, but it's about much,

1 much more than that. The case goes to foundational
2 bedrock principles of our freedom, our society and our
3 system of self-governance.

4 Implicated in today's hearing is not just the
5 application of facts to a number of statutes, but
6 implicated today are associational freedoms, privacy
7 rights, First Amendment speech rights, and rights enjoyed
8 by all of our citizens to a representative democracy. It
9 would be really nice if we could turn back the clock and
10 turn this into ancient Washington, D.C., Carson City,
11 Sparks, into ancient Rome. We could all put on our togas
12 and go down to the forum to work out our problems with
13 one another or to deal with the day-to-day issues, but
14 that's not the case.

15 The ancient Roman forum has been replaced by
16 the ballot box and by representative democracy, and what
17 we do in America now is we elect representatives to
18 consider, to debate and to speak on our behalves with
19 respect to all the issues of public and social
20 significance.

21 A decision of this Commission that Councilman
22 Carrigan committed an ethical violation in his August
23 23rd disclosure runs afoul of his associational rights
24 and his privacy rights. It does the same with Mr.
25 Vasquez's associational rights, Mr. Vasquez's privacy

1 rights, and I would contend Mr. Vasquez's First Amendment
2 rights to contribute to and support the candidates of his
3 choice in the manner of his choosing so long as he does
4 so in compliance with applicable law.

5 But most significantly, a determination that
6 Councilman Carrigan's disclosure was inadequate on the
7 23rd of August violates or at least seriously impairs the
8 rights of nearly 90,000 Sparks citizens to have their
9 elected representative speak on their behalf on issues of
10 public concern and importance to the City of Sparks.

11 On the other hand, I would point this
12 tribunal's attention to the fact that a decision running
13 in favor of Councilman Carrigan is not only supported by
14 the law and the facts, but it furthers our democratic
15 institutions and principles by recognizing the right of
16 the public to petition their government for redress of
17 their grievances by protecting everyone's associational,
18 privacy and First Amendment rights, and including not
19 only those enjoyed by Mr. Carrigan, Mr. Vasquez, but as
20 disclosed earlier today, by Commission Member Hsu and by
21 Commission Member Cashman.

22 A decision contrary to the position being
23 espoused by Councilman Carrigan and the City of Sparks
24 runs directly afoul from our position or from our
25 perspective to the Nevada Constitution and the United

1 States Constitution. And I would caution the Commission
2 from treading on that territory.

3 VICE CHAIRMAN HUTCHISON: Thank you,
4 Mr. Creekman; thank you, Mr. Thornley.

5 All right, we will go ahead and close then
6 the receiving of evidence, testimony, comments by
7 counsel, arguments by counsel, closing arguments, and we
8 will now open the Commission for deliberations. This is
9 a process that can sometimes be lengthy and can sometimes
10 be expeditious depending on kind of what the issues are
11 in the case. It's a public body's way of deliberating
12 openly so you can hear what our thinking is.

13 It may seem like we are ignoring all the rest
14 of you, but we're just talking among ourselves. That is
15 the way the rules are established, and we have to talk
16 and think and reason out loud and then ultimately come to
17 a decision.

18 So I'd like to open up this meeting now for
19 deliberations by the Commissioners and would like to
20 start with Commissioner Jenkins, please. I'm sorry,
21 Commissioner Flangas had his finger on the button first.
22 Commissioner Flangas.

23 COMMISSIONER FLANGAS: I would like to start
24 and get this thing in perspective.

25 Now a request for an RFO, request for

1 opinion, was made, there are four of them, 06-62, 66, 68,
2 and 61, regarding Sparks Councilman Mike Carrigan and
3 filed by Jeannie Adams, Janae Maher, Mary Odom, and I
4 think it is Shirley Bertschinger, best I can pronounce
5 that. The accusations were that Carlos Vasquez had undue
6 influence over Carrigan's vote for the Lazy 8 and
7 underreporting of campaign contributions and maybe
8 economic gains.

9 A panel was put together and they found just
10 and sufficient cause exists for the Commission having NRS
11 281.481 (2), 281.501 subsection (2), and 281.501
12 subsection (4), cited those three violations or potential
13 violations.

14 Now on August 23rd of '06, Sparks City
15 Council had a contentious meeting, and at the conclusion
16 of that meeting John Mayer, Phil Salerno and Judy Moss
17 voted against the Lazy 8. Mike Carrigan and Ron Schmitt
18 voted in favor.

19 On August 24th or 25th, in that time range,
20 the developer, Harvey Whittemore, stated that he was
21 going to sue Sparks for damages in the amount of a
22 hundred million dollars.

23 The developer argued that he had the right to
24 move a '94 casino development approval from Whittemore's
25 Wingfield Springs in Sparks to Pyramid Highway in spite

1 of the Sparks Planning Commission having voted four to
2 three against the Lazy 8 a month before that.

3 On September 1st of '06, a private vote to
4 settle the lawsuit took place, and there was a vote of
5 three to two which overturned the August 24th result.

6 On or about September 20th of '06, a
7 settlement was reached in which Mayer and Salerno voted
8 no, and then Moss, Carrigan and Schmitt voted yes, which
9 overturned the previous result.

10 Now Carlos Vasquez is Harvey Whittemore's
11 public relations representative and lobbyist.
12 Mr. Vasquez is a personal friend and campaign manager for
13 both Mayor Geno Martini and Mike Carrigan. Carlos and
14 Laurie Vasquez donated some \$5,000 each to the '99
15 campaign in kind and continued donations thereafter.

16 Now some of the facts that bubble out in this
17 case was that the minutes of that meeting that took place
18 on August I believe 23rd, some 258 citizens signed in in
19 opposition to the proposal, of which 39 spoke, some 91
20 Sparks citizens signed in in support, of which 19 spoke.

21 Now I agree with Chairman Kosinski's
22 observations in the panel hearing regarding
23 Mr. Carrigan's disclosure. He did not disclose enough to
24 show the potential effect of the action on his vote or
25 relating to his commitment in a private capacity to

1 another. He should have disclosed that the relationship
2 was substantial and continuing. He should have included
3 a description of the business relationship between
4 himself and Vasquez other than saying he's my campaign
5 manager, and further, indicated how many years he had
6 been working with him.

7 Was his judgment materially swayed as a
8 result of that substantial ongoing friendship? I think
9 so.

10 Did his commitment in a private capacity to
11 the interests of others take place? I think so.

12 I believe the public trust was ill served in
13 this situation. Mr. Carrigan was elected to serve the
14 citizens of Sparks. He aided and abetted what a
15 substantial citizen opposition did not want. The Sparks
16 Planning Commission voted four to three opposing the Lazy
17 8 a month before the August 23rd meeting. It would have
18 been most appropriate and indeed proper for Mr. Carrigan
19 to abstain from this vote.

20 Once more the fact bubbles out that you can
21 be marginally legal and overwhelmingly unethical, and
22 this bubbles out to the detriment of the public trust.

23 In summation, in spite of a four to three
24 vote by the Sparks Planning Commission opposing the Lazy
25 8 a month before the August 23rd Council meeting and in

1 spite of a squishy and inadequate disclosure on August
2 23rd, and in spite of a three to two City Council vote on
3 August 23rd opposing the Lazy 8, and in spite of a
4 shameful and in my opinion ill-advised illegal, grossly
5 unethical and secret meeting on September 1st to settle a
6 bullying and tyrannical mega lawsuit threat, Mike
7 Carrigan abandoned his sworn duty to his City and caved
8 into the lawsuit threat on September 19. And in my
9 opinion, I find him in violation of NRS 281.481(2),
10 281.501(2) and 281.501(4).

11 VICE CHAIRMAN HUTCHISON: Thank you,
12 Commissioner Flangas.

13 I think what we should do, and I know that
14 you included in your analysis all three statutes, what I
15 would like to do is try to take them one at a time, and I
16 know that you have included your analysis certainly on
17 the first one that we're going to take up, Commissioner
18 Flangas. I would like to have comments by other members
19 of the Commission as well.

20 Let's start with NRS 281.481(2). The issue
21 there is did Councilman Carrigan use his official
22 position to secure or grant unwarranted privileges,
23 preferences or advantages for himself or a person to whom
24 he has a commitment in a private capacity to the
25 interests of that person when he voted on the Lazy 8

1 matter.

2 Commissioners, we all have our statutes in
3 front of us. On the Executive Director's report it
4 begins on page 4 of 11, and what I would like to do is
5 kind of work through that statute. And Commissioner
6 Jenkins, I see that your light is on. Go ahead, please.

7 COMMISSIONER JENKINS: Mr. Chairman, did you
8 want to work through the statute or did you want me to
9 discuss my feelings about 281.481(2).

10 VICE CHAIRMAN HUTCHISON: I want to discuss
11 your feelings about the statute.

12 COMMISSIONER JENKINS: Good, thank you.
13 Well, first I'd like to talk about a commitment in a
14 private capacity to the interest of others. And so
15 again, looking at the statute, it means a commitment to a
16 person who is a member of his household or who is related
17 to him within the third degree of consanguinity, but the
18 Legislature also added any other commitment or
19 relationship that is substantially similar to a
20 commitment or relationship described in (a) through (d).
21 And that means a person who is as close as a member of
22 your household or a person who is just as close as a
23 person related by blood or by marriage, a person just as
24 close as one with whom one has a substantial and
25 continuing business relationship.

1 In that capacity, with regard to commitment
2 in the private capacity to the interests of another, I
3 have some issues with both (d), the substantial and
4 continuing business relationship, and (e), that just as
5 close as, my words, provision of that definition.

6 With regard to the substantial and continuing
7 business relationship, I disagree with the testimony of
8 the interpretation by the public officer and the other
9 witnesses in that one needs to be in the business of
10 making money for it to be a business relationship. I
11 think that perhaps when Councilman Carrigan testified
12 that they wanted to make sure everybody knew that
13 Mr. Vasquez wasn't being paid, that may have been an
14 intention to avoid the definition of a business
15 relationship, maybe directly, maybe indirectly, but we
16 didn't get to that.

17 And I think that business is business.
18 Business that Mr. Vasquez is in is to provide public
19 relations and advertising services, whether he's paid or
20 not, and but for his in-kind contribution, if you will,
21 those services would have been a business relationship.

22 So that gives me pause, and I'm not certain
23 where I land with regard to that subsection (d). But we
24 did hear that Mr. Vasquez and Mr. Carrigan are friends
25 and have been friends for years and years, and that

1 may -- that relationship may rise to a definition of just
2 as close as a member of your household, a member of your
3 family.

4 I found it interesting when Council Member
5 Carrigan referred to his father or someone who lives in
6 his household, he would definitely have abstained, but
7 not his sister. He has two sisters. But when
8 Commissioner Hsu was questioning him about, well, is Mr.
9 Vasquez as close as a brother, his answer was no.

10 So I'm not certain where I am as far as the
11 affinity or consanguinity, but any other commitment or
12 relationship substantially similar to a substantial and
13 continuing business relationship gives me pause. I hope
14 that I made that clear. Because it is a little twisted.

15 And in that we might derive that Mr. Carrigan
16 had a commitment in a private capacity to the interests
17 of Mr. Vasquez resulting from their not for compensation
18 but otherwise business relationship.

19 And I also disagree that starting and
20 stopping every three years doesn't eviscerate the
21 continuing nature of their relationship. Every time
22 Mr. Carrigan ran for office he used the services of Mr.
23 Vasquez. I consider that continuing.

24 And I also consider it substantial in that
25 Mr. Carrigan's role as a Council member is reliant upon,

1 and he said he's a damn good campaign manager, reliant
2 upon the services provided by Mr. Vasquez.

3 So the person to whom he has a commitment in
4 a private capacity to the interests of might be
5 Mr. Vasquez with regard to NRS 281.481 subsection (2).

6 However, there are two pieces of that statute
7 that I find fail miserably, and that is not only was
8 Mr. Carrigan unable to secure or grant those privileges,
9 and I was among the camp that said you just have to
10 attempt to, but I don't believe that those privileges, if
11 you will, were unwarranted due to the resounding support
12 in the ward for the project that Councilman Carrigan
13 concluded from his personal interaction with his
14 constituents. I find that on balance his responsibility
15 to act as a representative in our representative form of
16 government outweighs greatly any privilege, preference or
17 exemption or advantage that might flow to Mr. Vasquez as
18 a result.

19 So participating in the vote and representing
20 his constituency says to me that any privilege that might
21 have flowed would not be unwarranted. And with that, I
22 would find that there was not a violation of 281.481(2).

23 VICE CHAIRMAN HUTCHISON: Thank you,
24 Commissioner Jenkins.

25 Other Commissioners want to weigh in here on

1 NRS 281.481 subsection (2)? Any other Commissioners?

2 Commissioner Hsu, please.

3 COMMISSIONER HSU: Thank you, Mr. Chairman.

4 I think that there is -- without going into the
5 commitment in a private capacity issue, which I'm
6 prepared to discuss a little bit more in detail when we
7 get to the other statutes, but for purposes of 281.481
8 subsection (2), I don't see any evidence that Mr.
9 Carrigan would have -- that he used his position to
10 secure or grant some kind of privilege for Mr. Vasquez.
11 Those facts just really never came into play.

12 So I think that, in my mind, we can easily
13 dispose of that allegation and move to the next ones.

14 VICE CHAIRMAN HUTCHISON: Do any other
15 Commissioners wish to be heard on NRS 281.481(2)? Any
16 other Commissioners?

17 I have a similar mind as Commissioners
18 Jenkins and Hsu as well. I just don't think that the
19 evidence has demonstrated and shown that there was an
20 effort by Commissioner Carrigan -- I'm sorry --
21 Councilman Carrigan to secure unwarranted privileges. I
22 don't know that we have to necessarily reach the idea of
23 do you have to be successful in that attempt in order to
24 secure or grant. I believe as Commissioner Jenkins does,
25 that it would not have been unwarranted in any event

1 given his constituent's desires.

2 So if there is no further comment on this
3 particular section, is somebody prepared to make a
4 motion? Yes, Commissioner Jenkins, please.

5 COMMISSIONER JENKINS: Mr. Chairman, I move
6 that the Commission on Ethics find no violation of NRS
7 281.481 subsection (2) based on the information and
8 evidence presented.

9 COMMISSIONER CAPURRO: Second.

10 VICE CHAIRMAN HUTCHISON: Motion on the
11 floor. Is there a second? Commissioner Hsu has seconded
12 the motion. I'm sorry, Commissioner Capurro, Randy.

13 Are there any other Commissioners who wish to
14 be heard on the motion? If not we will call for the
15 question. All those in favor say aye. Those who are
16 opposed say nay.

17 COMMISSIONER FLANGAS: Nay.

18 VICE CHAIRMAN HUTCHISON: Commissioner
19 Flangas voted in the negative. The rest of the
20 Commissioners voted in the affirmative.

21 (Whereupon, the motion was put to a vote
22 and carried five to one.)

23	MR. CASHMAN:	Aye.
24	MR. FLANGAS:	Nay.
25	MR. CAPURRO:	Aye.
	MR. HSU:	Aye.
	MS. JENKINS:	Aye.
	MR. HUTCHISON:	Aye.

1 VICE CHAIRMAN HUTCHISON: All right. Next
2 statute that we need to discuss then is NRS 281.501(4).
3 This issue surfaces from this statute with the question
4 of whether Councilman Carrigan's relationship with
5 Mr. Vasquez was a relationship enumerated by NRS
6 281.501(8), and if so, did Councilman Carrigan fail to
7 sufficiently -- we all know that he disclosed -- but did
8 he sufficiently disclose that relationship.

9 So let's go ahead and turn our attention to
10 NRS 281.501(4) and that issue before the Commission. Is
11 there a Commissioner who would like to be heard on this
12 point? Commissioner Hsu.

13 COMMISSIONER HSU: Thank you, Mr. Chairman.
14 In discussing the disclosure statute, I want to refer to
15 the actual transcript, which was Exhibit K, Bates stamp
16 62 of the yellow book in which Mr. Carrigan indicated, it
17 is pretty much an accurate reflection of what he said.
18 Again, without going into the issue of commitment in a
19 private capacity, I think we can talk about disclosure.

20 VICE CHAIRMAN HUTCHISON: Can you give us
21 that reference again, Commissioner?

22 COMMISSIONER HSU: I'm sorry. It is Tab K of
23 the yellow binder, and then it is Bates stamp number 62.
24 He says, Mr. Carrigan says that he is a person --
25 Mr. Vasquez is a personal friend, he's my campaign

1 manager and he stands not to -- he does not stand to reap
2 any financial personal gain or loss on that.

3 It is pretty much what we heard today. He is
4 a personal friend and he's a campaign manager. I mean,
5 there is this personal side of it and then there is a
6 business side of it.

7 And in the ideal world, you might expect,
8 well, he's been a personal friend since 1991 and he was
9 my campaign manager for 1996 and 1999, or 2006, 1999, and
10 2003 elections or whatever.

11 But the reality is that we have citizen
12 legislators or citizen form of government where you do
13 your best. And I think the elements here are similar to
14 the case that we had with the Nye County Commissioner.

15 I think this is in my mind satisfactory as a
16 disclosure because -- I mean, he lays it out. He's my
17 friend and he's my campaign manager. I don't think we
18 should find -- we should punish people for making the
19 disclosure but not going into every single little detail
20 that somebody might require. I think this is a pretty
21 good disclosure, in my mind.

22 So I don't believe there is a violation of
23 281.501 subsection (4).

24 VICE CHAIRMAN HUTCHISON: Thank you,
25 Commissioner Hsu.

1 Other Commissioners? Commissioner Jenkins.

2 COMMISSIONER JENKINS: I agree with
3 Commissioner Hsu's comments for the most part. I would
4 have liked to have seen a much more detailed disclosure
5 in that the disclosure that Mr. Vasquez is a consultant
6 for Red Hawk Land Company doesn't really tie him in the
7 record to the Lazy 8 project. So I would have liked to
8 have seen much more disclosure saying that Mr. Vasquez is
9 working for the Wingfield companies who are the movers
10 and shakers behind the Lazy 8 project, which is coming up
11 for a vote before us, and he's a friend, and he's been my
12 campaign manager, but the rest of the disclosure.

13 So while I don't find it to be inadequate
14 based on the evaluations of other disclosures that have
15 come before the Commission that we have deemed
16 sufficient, generally, I'd like to see this Commission
17 place a higher standard on the disclosures that are made.
18 However, I can't argue that it's inadequate. It's just
19 not as adequate as I'd like to see it.

20 VICE CHAIRMAN HUTCHISON: Other
21 Commissioners's thoughts on this? Commissioner Cashman,
22 please.

23 COMMISSIONER CASHMAN: Thank you,
24 Mr. Chairman, Vice Chairman. I have similar concerns as
25 Commissioner Jenkins, and I guess I'm at a loss. If we

1 would like to see greater detail in disclosures, yet we
2 do not mandate them, how can we ever get what we want?

3 There clearly was a very close relationship
4 here. The disclosure in my mind again is okay, I guess.
5 I don't even know that I want to call it sufficient.

6 But my concern is maybe a broader one and
7 that is if we have the desire, and I certainly have the
8 desire to see a fuller disclosure than the one we have
9 here be our standard, yet we say, well, by what we have
10 done in the past I guess we can't do anything else, how
11 do we ever achieve our objective, how do we achieve our
12 goal.

13 VICE CHAIRMAN HUTCHISON: Thank you,
14 Commissioner Cashman. Commissioner Jenkins.

15 COMMISSIONER JENKINS: I'll hop in one more
16 time. Thank you, Commissioner Cashman, for that support.

17 The Woodbury opinion lays out in great
18 clarity and detail the disclosure that would be
19 sufficient, and that is sufficient to inform the public
20 of the nature of the relationship, the reason that it's
21 being disclosed and so forth, and it goes through it
22 beautifully. I couldn't even paraphrase it to do it
23 justice. And we consistently refer people before the
24 Commission to that opinion, and counsel to Mr. Carrigan
25 didn't bring that to his attention.

1 It's not Mr. Carrigan's fault that he relied
2 on his counsel, I think, and that his counsel failed to
3 bring that to his attention. Counsel is not before us
4 today; Mr. Carrigan is.

5 VICE CHAIRMAN HUTCHISON: Thank you,
6 Commissioner Jenkins. I'll just chime in here as well.

7 I think the answer is -- and in my view, I'm
8 not nearly as convinced that saying that Mr. Vasquez is
9 my campaign manager and my friend is enough. Because
10 what Woodbury says is the burden therefore is
11 appropriately on the public officer or employee to
12 disclose private commitments, which happened here, he
13 disclosed his private commitments, I'm a friend, he's my
14 campaign manager, and the effect those private
15 commitments can have on the decision-making process. And
16 I agree he disclosed his private commitments, but under
17 Woodbury and under the amendments that the Legislature
18 made which Woodbury addresses, I think that you have to
19 go on.

20 I agree with Commissioner Jenkins that I
21 don't think that Councilman Carrigan got good advice on
22 this. I don't think it is enough to just say, hey, tell
23 the public if you have some sort of an interest, because
24 Woodbury has been an opinion of ours for a long time. We
25 constantly refer people to it. It's been an opinion

1 since 1999. And Woodbury requires the disclosure of
2 private commitments, and then you have to say what effect
3 those private commitments may have on the decision-making
4 process of this body.

5 So what kind of disclosure does that require
6 in my mind? Look, Mr. Vasquez is my campaign manager. I
7 have relied upon him for many years for political advice.
8 I continue to rely upon him for political advice. His
9 thinking and his way of thinking, somebody could say, may
10 have an effect on the way I think about political issues,
11 like the one that is currently before us.

12 I am a good friend of his. And let me tell
13 you how that may have an effect on my thinking and my
14 processing. I like to be comfortable around my friends.
15 I know that my friend wants this Lazy 8 matter to pass, I
16 would like to be comfortable when I'm around my friends
17 and do what my friends like me to do, and they want me to
18 do what I like them to do. So that may have an effect on
19 my decision-making process.

20 But then I think you can go even further and
21 say, now I have disclosed that. You understand what my
22 relationships are, you understand how that could have an
23 effect on my decision-making process. But, and then you
24 make your decision in terms of whether you are going to
25 abstain or not.

1 But then, and then you make your decision. I
2 can put that aside. I can decide that notwithstanding
3 the way this could affect my decision-making process, I
4 can still be fair, I can still be impartial, and here is
5 why. Because if you don't believe that I can, you can
6 boot me out of office. Because if I'm not, I'm not going
7 to be tied to the honor code that I established when I
8 was a young man in the Navy. You can disclose that.

9 I think that really serves the public well.
10 And I think that is what Woodbury requires. I think that
11 Woodbury requires that kind of a disclosure, and if we,
12 Commissioner Cashman, want public officials in the state
13 to do that, then we should follow Woodbury and we should
14 find that this is not an adequate disclosure.

15 Now I will say again, do I think -- and I
16 don't want people running off saying, well, Mr. Carrigan
17 I think is a bad guy. I think he got, I'll put it this
18 way, incomplete advice. I think he relied upon his
19 counsel. And I don't think counsel really consulted, or
20 if they did consult, they didn't really explore fully
21 Woodbury. And that is how we get there, Commissioner
22 Cashman, in my view.

23 COMMISSIONER JENKINS: I talk too much, I'm
24 sorry, and I wasn't recognized.

25 VICE CHAIRMAN HUTCHISON: Yes, Commissioner

1 Jenkins, please.

2 COMMISSIONER JENKINS: I think that our
3 leader today is a very eloquent person, but I have to
4 disagree with his analysis about abstention, and we're
5 not there yet.

6 VICE CHAIRMAN HUTCHISON: Right.

7 COMMISSIONER JENKINS: And we will talk about
8 that then. But I just wanted to get that on the record.

9 VICE CHAIRMAN HUTCHISON: Okay. Good.

10 COMMISSIONER JENKINS: And this is the peril
11 of relying on your lawyer.

12 VICE CHAIRMAN HUTCHISON: Any other thoughts?
13 Commissioner Hsu, please.

14 COMMISSIONER HSU: Thank you, Mr. Chairman.
15 I'd just like to make a quick point in what I'm hearing
16 from some of my fellow Commissioners here. I don't know
17 if it is an extra insight or if it is a disadvantage, but
18 I do represent public entities, local governments, in
19 particular, school districts, and from time to time
20 attend their school board meetings, and if this body is
21 to require a disclosure just like the Chairman said, I
22 mean, that took three, four, five minutes, you are going
23 to have these meetings go on -- and I have sat through
24 meetings that go on till, school board meetings that go
25 on till 10:00 o'clock, 11:00 o'clock -- you are going to

1 go to 1:00 o'clock because you are going to have everyone
2 doing a five-minute disclosure.

3 The reality is that people serve, they run,
4 they are general everyday citizens who run for office,
5 and I think it would be a tremendous chilling effect on
6 the process. This is a democracy, as our City Attorney
7 has indicated, and it is a great process that we have, a
8 great form of government. And I think when you start
9 going down the path of you are going to have to do a
10 three-minute disclosure, and everyone else is going to do
11 a disclosure, you are going to have five people on the
12 school board disclosing, and 15 minutes of disclosure
13 before you get to an item. And then you go to the
14 regular business of it.

15 People are going to be at these meetings,
16 these board meetings till one, two o'clock in the
17 morning, and believe me, I have been through late
18 meetings, and I just don't think that this Commission --
19 or I believe that insight is something that you guys
20 ought to consider.

21 I think this disclosure meets the bare
22 minimum standards. It's not the greatest disclosure, but
23 it meets the standard that I think we can expect out of
24 common, ordinary citizens who run for office.

25 Do we want more? Do we want better

1 disclosure? Absolutely. That is why we have the
2 education process. That is why we refer people to
3 Woodbury when they come before us, and advisory opinions,
4 but I think it would be a very bad, chilling effect on
5 public participation in government. I mean, it is
6 already hard enough as it is to get very good, qualified
7 people to run for office.

8 Again, I mean, I don't think that this is the
9 case to -- I mean, this is not the test case on
10 inadequate disclosure. I think this was fine, in my
11 view. And I would strongly encourage that we not punish
12 Mr. Carrigan for an inadequate disclosure, especially
13 since he relied on his counsel. Thanks.

14 VICE CHAIRMAN HUTCHISON: Commissioner Hsu,
15 would you mind if I just followed up on something?
16 Because I value your analysis. And think you have
17 definitely a good practical point.

18 How do we satisfy the statute with this kind
19 of bare minimum disclosure in terms of -- do you think
20 just disclosing that you are a friend or the campaign
21 manager does in itself, just disclosing that, that then
22 informs the public of the potential effect of the action?
23 That just the disclosure of the relationship does that?
24 So you really don't see a need to go further?

25 COMMISSIONER HSU: I think there is a

1 disclosure of the relationship and the personal and on a
2 business side of it, and I think that the effect on the
3 Councilman is I don't stand to reap any benefit. Yeah,
4 he probably might have said, well, you know, I mean,
5 Carlos Vasquez's client. I think it is pretty much
6 implied that he is representing the Lazy 8 on this. So
7 it is his client stands to benefit from whatever happens
8 that night.

9 But certainly the effect of the vote on him
10 personally is in this disclosure. I think this meets
11 what -- well, let me put it this way. I think that there
12 is some other very more important and serious provisions
13 in the Ethics in Government Law, and obviously, we need
14 to take disclosure and abstention very seriously, which
15 we do, but I don't think that this rises to the level of
16 an ethics violation. And from a public policy
17 standpoint, I have already stated that.

18 In sitting in on public meetings either as a
19 lawyer or as a participant, I think that if we are to
20 have the gold standard that you just did for disclosures,
21 probably 99 percent of the people who made a disclosure
22 would be inadequate.

23 VICE CHAIRMAN HUTCHISON: Thank you,
24 Commissioner Hsu.

25 Other Commissioners who wish to comment,

1 discussion on NRS 281.501 subsection (4), what we're
2 talking about now? Any other thoughts or considerations?
3 All right. Is anybody prepared to make a motion?

4 Do we need to get to and do we need to talk
5 about the public commitment with this statute?
6 Commissioner Hsu, what do you think? Do we need to go
7 through that analysis here? Because that is another
8 prong of the statute.

9 COMMISSIONER HSU: I'd rather wait until the
10 next one.

11 VICE CHAIRMAN HUTCHISON: All right. Is
12 there a motion that any of the Commissioners would like
13 to make?

14 COMMISSIONER CAPURRO: I'll make a motion.

15 VICE CHAIRMAN HUTCHISON: Commissioner
16 Capurro, please.

17 COMMISSIONER CAPURRO: In agreement with
18 Mr. Hsu and his motion, I will make that motion.

19 VICE CHAIRMAN HUTCHISON: Commissioner Hsu,
20 would you mind formulating a motion for us?

21 COMMISSIONER HSU: Well, the motion I guess
22 would be that the Commission find that Councilman
23 Carrigan did not violate NRS 281.501 subsection (4).

24 VICE CHAIRMAN HUTCHISON: All right, is there
25 a second to that motion?

1 COMMISSIONER JENKINS: Commissioner Hsu.

2 COMMISSIONER HSU: I guess I'll second
3 Commissioner Capurro's motion.

4 VICE CHAIRMAN HUTCHISON: All right. So we
5 will, for the record, we will make that Commissioner
6 Capurro's motion, seconded by Commissioner Hsu. Is there
7 any discussion on the motion that anybody would like to
8 have? Commissioner Cashman, are you leaning towards your
9 microphone for discussion?

10 COMMISSIONER CASHMAN: No.

11 VICE CHAIRMAN HUTCHISON: All right. Then
12 let's go ahead and call for the question. Let's go ahead
13 and do a roll call on this one. Commissioner Capurro.

14 COMMISSIONER CAPURRO: Aye.

15 VICE CHAIRMAN HUTCHISON: Commissioner
16 Cashman.

17 COMMISSIONER CASHMAN: Aye.

18 VICE CHAIRMAN HUTCHISON: Commissioner Hsu.

19 COMMISSIONER HSU: Aye.

20 VICE CHAIRMAN HUTCHISON: Commissioner
21 Hutchison, nay. Commissioner Jenkins.

22 COMMISSIONER JENKINS: Aye.

23 VICE CHAIRMAN HUTCHISON: Commissioner
24 Flangas.

25 COMMISSIONER FLANGAS: No.

1 VICE CHAIRMAN HUTCHISON: The motion passes
2 four to two.

3 (Whereupon, the motion was put to a vote
4 and carried four to two.)

5 MR. CASHMAN:	Aye.
6 MR. FLANGAS:	Nay.
7 MR. CAPURRO:	Aye.
8 MR. HSU:	Aye.
9 MS. JENKINS:	Aye.
10 MR. HUTCHISON:	Nay.

11 (Commissioner Cashman exited room.)

12 VICE CHAIRMAN HUTCHISON: Now we will move on
13 to -- and that motion passes concerning Councilman
14 Carrigan's disclosure and the Commission by a vote of
15 four to two was found to be sufficient.

16 The next statute that we will consider will
17 be the final one, and that is NRS 281.501 subsection (2),
18 should Councilman Carrigan have abstained from acting on
19 the Lazy 8 matter. The Commission has now found that he
20 sufficiently disclosed, and now the next question is
21 should he in fact have acted on that matter or voted on
22 that matter.

23 I'd like to begin the discussion on that
24 particular statute. Any Commissioner wish to be heard on
25 this statute? Commissioner Hsu or Commissioner Jenkins,
you are first to reach. Go ahead.

COMMISSIONER JENKINS: I just want to go back
to our Chair's examples about, well, I would be able to

1 be impartial and I would be able to put aside my
2 relationships.

3 VICE CHAIRMAN HUTCHISON: I'm going to just
4 interrupt you for a minute. I think counsel is advising
5 us we should wait for Commissioner Cashman. So hold that
6 thought, and we will hold on for just a minute here to
7 make sure we have got our Commission.

8 Let's take a five-minute break. Be back here
9 at 2:35. None of the Commissioners talk to anybody.

10 (Recess taken at 2:28 p.m.)
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1 CARSON CITY, NEVADA, WEDNESDAY, AUGUST 29, 2007

2 2:33 P.M.

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5 VICE CHAIRMAN HUTCHISON: Let's call to order
6 the meeting and continue our deliberations. I'm going to
7 start the deliberations again concerning NRS 281.501
8 subsection (2). This statute requires us to consider the
9 issue of whether Councilman Carrigan should have
10 abstained from acting on the Lazy 8 matter. And
11 Commissioner Jenkins was the first to weigh in on this,
12 and I'd like to turn the time over now to Commissioner
13 Jenkins.

14 COMMISSIONER JENKINS: Thank you,
15 Mr. Chairman, Vice Chairman. Our abstention statute NRS
16 281.501 subsection (2) requires that the Councilman would
17 have voted on a measure with respect to which the
18 independence of judgment of a reasonable person in his
19 situation, not necessarily him, but a reasonable person
20 in his situation, which I would characterize as an
21 elected official, not just a person in the community,
22 would be materially affected by, and I'll skip to his
23 commitment in a private capacity to the interests of
24 others. And it's there that I should have been telling
25 all of us the story of the relationship similar to a

1 substantial and continuing business relationship.

2 So I won't go through that again, but my take
3 on the facts that were presented in the materials and
4 today is that Councilman Carrigan and Mr. Vasquez had a
5 commitment in a private capacity to the interests -- or
6 Councilman Carrigan had a commitment in a private
7 capacity to the interests of Mr. Vasquez by nature of his
8 relationship similar enough to a substantial and
9 continuing business relationship that the independence of
10 judgment of a reasonable person, in this case an elected
11 official, in his situation would be materially affected,
12 and as a result, I would think that he would have been
13 required to abstain.

14 VICE CHAIRMAN HUTCHISON: Commissioner Hsu.

15 COMMISSIONER HSU: Thank you, Mr. Vice Chair.
16 I guess I have been calling you Mr. Chair this whole
17 hearing. You are the Chair of the meeting.

18 VICE CHAIRMAN HUTCHISON: Call me Your
19 Majesty if you like.

20 COMMISSIONER HSU: Your Highness.

21 I have a different take on the issue of
22 commitment in a private capacity to the interests of
23 others, that language. I don't necessarily believe that
24 there was a substantial and continuing business
25 relationship, but I do believe that it was similar to

1 that of a person -- similar to a household or family
2 member. I'm trying to find my statutes real quick.

3 What we heard today is you heard Carlos
4 Vasquez and you heard Mr. Carrigan say that Carlos
5 Vasquez only charged his costs, he didn't make any money
6 in serving on three campaigns as the campaign manager for
7 Mr. Carrigan, and Carlos Vasquez actually said it right
8 out. He said in addition to him thinking he has one of
9 the highest standards of just being a good person, he
10 said he is a friend of mine. And the relationship really
11 is one of a close friendship.

12 And Mr. Carrigan joked that -- well,
13 Mr. Carrigan talked about having to abstain if it was his
14 father but not necessarily his sister. But when pushed
15 on it, I mean, he wouldn't consider Carlos like a
16 brother, but in terms of what they do and the amount of
17 interaction, they go to dinner, he confides in Carlos
18 Vasquez, he is a confidante, that relationship between
19 Mr. Carrigan and Carlos Vasquez appears to be a lot
20 closer than that of between Mr. Carrigan and his sister.

21 And so I think that the commitment in a -- I
22 got to look at my statutes again -- I think that where
23 the commitment in a private capacity exists is that it is
24 substantially similar to a person who is related to
25 Mr. Carrigan, not the continuing and business

1 relationship.

2 But that all being said, I think of my own
3 experiences where I don't go to dinner with a lot of
4 friends. I mean, there are different levels of friends.
5 There are people you are acquaintance with, hence you
6 call them your friends, and for politicians probably
7 everybody is your friend to some degree who you have some
8 kind of relationship with.

9 But I mean, this is a close relationship. It
10 is substantial and continuing by Mr. Carrigan's own
11 admission and Mr. Vasquez's own admission. Because of
12 that close relationship, I think that's what would
13 require an abstention.

14 What I'm struggling with is I think that he
15 should have abstained on this, but what I'm struggling
16 with is that he was reliant on counsel on this, and
17 unfortunately, he got advice that was based on things
18 that -- I mean, it didn't even mention the commitment in
19 a private capacity, that statutory language, the
20 subsection -- I keep missing it -- subsection (8)(e).
21 And there is some history behind why subsection (e) came
22 into play.

23 When I first started, there was a case that
24 was going on, and I don't know the facts of it per se, I
25 just heard of it, but in Las Vegas there was an Ethics

1 Commission hearing against Yvonne Atkinson-Gates, I
2 believe is her name, and she was apparently doing --
3 awarding favors or something. There was contracts being
4 awarded to her friends and maybe campaign people,
5 cronies, whatever you want to call it, and that case,
6 there was a finding of a violation against Miss Gates,
7 but it was appealed, and on the judicial review the court
8 said that the language was too vague because those people
9 were not members of a household, they were friends, and
10 there was some language in there that was vague. It just
11 referred to any other person.

12 So this subsection (e) was specifically added
13 in order to get rid of the unconstitutionality of the
14 statutory language previously, and it was specifically
15 added to include the kinds of close friendships that
16 would have applied in the Atkinson-Gates case.

17 So I think this is the first one in my seven
18 and-a-half years doing this where we actually apply this
19 language in subsection (e) of NRS 281.501 subsection (8),
20 sub part (e). So I think it is the friendship that
21 creates the commitment -- the very close friendship.
22 Because not all friendships are going to do that, but it
23 is the very close friendship that creates the commitment
24 in a private capacity to someone else.

25 But again, I'm struggling with the fact that

1 he relied on his legal counsel and followed -- I mean, he
2 basically said, Mr. Carrigan basically said that if he
3 was told to abstain he would have.

4 VICE CHAIRMAN HUTCHISON: Thank you,
5 Commissioner Hsu.

6 Other Commissioners? Commissioner Cashman.

7 COMMISSIONER CASHMAN: I guess I'm going to
8 take a little bit different slant at it, but I think the
9 result is similar.

10 I personally believe that seven years of
11 political advice and counsel and running campaigns makes
12 it a continuing business relationship, whether there's
13 money exchanged or not. Mr. Carrigan in his own words
14 indicated that Mr. Vasquez was instrumental in getting
15 him elected. That creates a significant bond. That
16 creates in my mind a relationship that's greater than
17 just a friend or is even greater than a business
18 associate. It's a dependent relationship. It could
19 potentially be a relationship that has a feeling of debt
20 or I'm here because this person got me elected and has
21 kept me elected.

22 I think personally that it has done
23 Commissioner -- Council Carrigan, he has been done a
24 great disservice by even having to be here because I
25 think having one's campaign manager and long-term

1 confidante on the other side of an issue puts him in a
2 terrible position, one I think he should have abstained
3 from, and for that reason I believe that a commitment in
4 a private capacity in the interests of Mr. Vasquez does
5 exist and would vote in the affirmative on a motion.

6 VICE CHAIRMAN HUTCHISON: Thank you,
7 Commissioner Cashman. Other Commissioners?

8 Let me tell you how I feel about this. I
9 think that there is a commitment in a private capacity as
10 well, and I'll tell you why. I reach it on a couple
11 different levels.

12 One is that I think after my questioning it
13 was clear to me that there was a substantial and
14 continuing business relationship, as Commissioner Cashman
15 has already disclosed, there was in fact the exchanging
16 of business-type activities. There were even checks
17 going back and forth. Whether or not somebody made a
18 profit of it I don't think is the definition of business.
19 I think there was even some testimony that to my mind
20 business is when money exchanges hands. And in fact,
21 money exchanged hands in this relationship.

22 Now, do I think it was a prime -- I mean, it
23 was solely a business relationship? No. It was a very
24 close friendship. It was also a very close relationship
25 with a campaign manager, the very person who got the

1 Councilman elected and helped him, was very instrumental
2 in getting him elected. Mr. Vasquez was highly
3 instrumental in that endeavor according to the testimony
4 here.

5 Furthermore, Mr. Vasquez was also a political
6 confidante and adviser, someone who you may think, hey,
7 he helped get me into office, he can help keep me here if
8 he keeps me on the straight and narrow and gives me
9 continuing political advice.

10 I can't imagine a situation -- and I agree
11 with Commissioner Cashman, that Councilman Carrigan was
12 in a very tough position when Mr. Vasquez decided to get
13 involved in the Lazy 8. Very, very difficult.

14 You got now appearing in front of you as a
15 decisionmaker your very, very close friend, with whom you
16 have had a close relationship for a very long time. You
17 have got your campaign manager who got you into office to
18 begin with. You got your political consultant and
19 adviser and confidante with whom you on a regular basis
20 consult in ongoing political matters.

21 Very, very difficult for me to then say, now,
22 would a -- now when I say this, I want to say it with all
23 due respect to the Councilman, because I believe he is
24 not anything but an upright and honorable man.

25 But the test is -- and what he said here

1 today is absolutely true in terms of the effect that this
2 situation had on him and his decision-making process and
3 taking into account all of his political constituents's
4 desires. But the test isn't whether or not Mr. Carrigan
5 was in fact influenced. The test is whether or not a
6 reasonable person in his position would have been
7 materially influenced. I'm paraphrasing the statute.

8 And I think that a reasonable person in that
9 position would be materially influenced by his very close
10 friend being in front of him, his campaign manager and
11 his political confidante all wrapped into one person
12 standing in front of me presenting something and
13 presenting a position. I just think that's just for a
14 reasonable person, very, very difficult to overcome and
15 they would be materially affected.

16 So I think there is a commitment in a private
17 capacity. I do think that it would have had a material
18 effect on a reasonable person in Mr. Carrigan's
19 situation.

20 I also think that it is instructive to look
21 at what the Legislature intended when it included this
22 statute in our reg -- in our laws here. Under Senate
23 Bill 478 in 1999, which ultimately became NRS 281.501
24 subsection (8), or at least that bill included that,
25 Mr. Scherer testified before the Government Affairs

1 Committee, and he said a couple things that I think are
2 instructive in this matter. And in talking about the
3 substantial and continuing relationship he says, quote:

4 "So the relationship would have to be
5 substantial and continuing. Now if this
6 was one where the same person ran your
7 campaign, time after time after time, and
8 you had a substantial and continuing
9 relationship, yes, you probably ought
10 to disclose and abstain in cases involving
11 that particular person." Close quote.

12 He also went on to clarify that this section
13 just doesn't talk about mere friendship. That is why I
14 don't think mere friendship requires disclosure. It
15 requires more than that, and we have that here. We have
16 the close friendship and relationship of a campaign
17 manager, of a political confidante and adviser as well.

18 The Government Affairs Committee legislative
19 history also provides that Mr. Scherer stressed, quote:

20 "We are trying to leave the Commission,
21 this Commission, some discretion in the
22 extreme cases when he did not fall into one
23 of these special specific pigeon holes, but
24 they could nevertheless find that there was
25 a relationship that was just as close or

1 "closer. We don't want to get two friends per se.

2 "And I think the Commission, you know,
3 there's been a lot of talk in the press about
4 friendships, but I think if you read the
5 Commission's decisions carefully, you will see
6 they don't talk about just friendships. They
7 talk about relationships that go beyond
8 friendship."

9 So I think the legislative intent is clear in
10 terms of relationships that move beyond friendship,
11 relationships that include more than just friendship and
12 those friendships, and to me, that's present here. It
13 falls then within NRS 281.501(8) subsection (e), any
14 other commitment or relationship that is substantially
15 similar to a commitment or a relationship described in
16 this section. And my analogy is I believe that there is
17 a substantial and continuing business relationship, but
18 even if there wasn't, there certainly is a substantial
19 and continuing political relationship and/or professional
20 relationship that has continued to exist between the
21 Councilman and Mr. Vasquez.

22 So I believe then that under NRS 281.501(2),
23 that there was a commitment in a private capacity and
24 that a reasonable person would materially have been
25 affected by that private interest.

1 I want to stress again to the Councilman and
2 on the record that I don't for a minute think that he is
3 not being accurate in his assessment and his testimony
4 today in terms of the effect it had on him personally
5 directly. But again, as I said, that is not the test
6 under the statute. And so that is the reason that I get
7 there, but I want to make my reasoning clear in terms of
8 how I feel about the Councilman's testimony here today.
9 Thank you.

10 Are there other comments? Yes, Commissioner
11 Jenkins, please.

12 COMMISSIONER JENKINS: Now that we have
13 thoroughly vetted the issue of a commitment in a private
14 capacity to the interests of others, I feel that we need
15 to use Mr. Thornley's demonstrative, the one on the left
16 and read the material in the final paragraph on the top
17 left. It must be presumed that the independence of
18 judgment of a reasonable person would not be materially
19 affected by his pecuniary interest or his commitment in a
20 private capacity to the interests of others where the
21 resulting benefit or detriment accruing to him or to the
22 other persons is not greater than that accruing to any
23 other member of the general business, profession,
24 occupation or group.

25 And this is where we have got a Hobson's

1 choice or Councilman Carrigan had a Hobson's choice, and
2 that is do I go ahead and vote because I am committed to
3 my constituents, despite the fact that I have a
4 commitment in a private capacity to the interests of
5 others. And would Mr. Vasquez's affect, if you will, on
6 my judgment, if I were to vote in favor of something that
7 might benefit him, benefit him more than the benefit
8 accruing to any other public relations guy.

9 I don't know how to really deal with this.
10 But the fact is, there is an out to the abstention
11 requirement, and I don't think that I have ever done the
12 analysis of that paragraph in a Commission on Ethics
13 hearing.

14 VICE CHAIRMAN HUTCHISON: Well, let's do it.

15 COMMISSIONER JENKINS: Go ahead.

16 VICE CHAIRMAN HUTCHISON: Commissioner Hsu,
17 why don't you take us through the statute and give us
18 your thoughts.

19 COMMISSIONER HSU: Thank you, Mr. Chairman,
20 Your Highness. I think people put too much emphasis on
21 this language when I see people argue it when the
22 resulting benefit or detriment accruing to him would not
23 be greater than any accruing to any other member in a
24 general business. There is only one lobbyist hired by
25 Harvey Whittemore's group to do this, at least in terms

1 of what I heard. It's not like the entire business
2 profession of lobbyists are being affected uniformly.
3 That's kind of what that language is there for.

4 So I just don't see how that applies. I
5 mean, we have one person, Carlos Vasquez is who is the
6 spokesman or paid consultant for the Lazy 8 people, and
7 he certainly gets the professional benefit by having this
8 approved, and of course, the vote was that it got denied,
9 the vote, but I just don't see how that language applies
10 because it is not a broad application.

11 Again, not every lobbyist -- well, maybe
12 there is testimony that could be had about Harvey
13 Whittemore hiring every lobbyist, but I just don't see
14 how every -- how the entire group of lobbyists is being
15 affected by the passage or failure of this vote. Thanks.

16 VICE CHAIRMAN HUTCHISON: I'm going to just
17 turn some time over to Counsel Fralick to comment on this
18 paragraph that we're considering.

19 MS. FRALICK: Thank you, Mr. Vice Chair.
20 Since we are considering that part of subsection (2) of
21 NRS 281.501, I just want to mention that it is related to
22 sub (1) of NRS 281.501, and this goes to the comments
23 made by Commissioner Hsu in that Commissioner Hsu was
24 talking about how he does not believe -- if I'm
25 incorrect, Commissioner Hsu, you can just correct me --

1 that he doesn't believe this applies because sub (2) is
2 talking about a group of people that where it doesn't fit
3 the circumstance that we're talking about.

4 However, it does go hand in hand with sub
5 (1), and sub (1), if I can just read it into the record,
6 and have it on the record in case you want to discuss it,
7 but NRS 281.501, or .501 subsection (1) states:

8 "Except as otherwise provided in
9 subsections (2), (3) and (4), a public
10 officer may vote upon a matter if the
11 benefit or detriment accruing to him as
12 a result of the decision either individually
13 or in a representative capacity as a member
14 of a general business, profession, occupation
15 or group, is not greater than that accruing
16 to any other member of the general business,
17 profession, occupation or group."

18 VICE CHAIRMAN HUTCHISON: Thank you, counsel.

19 All right. Other discussions about this?
20 Commissioner Jenkins, any other thoughts about this
21 particular section? Did Commissioner Hsu address your
22 point?

23 COMMISSIONER JENKINS: No. We might consider
24 that Councilman Carrigan is a resident of his ward and
25 the decision to participate in the vote and his bringing

1 the motion and voting for it would not bring him or the
2 project -- well, him any greater benefit than any other
3 resident of his ward. But you know, Vasquez just really
4 throws a wrench in the whole thing, doesn't he?

5 VICE CHAIRMAN HUTCHISON: If I can comment,
6 Commissioner Jenkins. We're really talking about it must
7 be -- we're really talking about the independence of
8 judgment of a reasonable person would be materially
9 affected by -- would not be materially affected by his,
10 we're not talking about pecuniary interest, we're talking
11 about his commitment in a private capacity to the
12 interests of others. So we're not talking about his
13 interest as a citizen, we're talking about the private
14 capacity interest to Mr. Vasquez.

15 So I think that Commissioner Hsu's reasoning
16 does, I think, apply, and that is if you could say, look,
17 the benefit that accrued to Mr. Vasquez was not any
18 different than what accrued to everybody else. Then I
19 think that you are fine. But Mr. Vasquez was in a
20 different position than the general business, profession,
21 occupation or group in terms of the Lazy 8 and the
22 passage of the matter that was before the Council on
23 August 23rd.

24 So I do think that Commissioner Hsu's
25 reasoning makes sense to me and that paragraph does not

1 necessarily save the day.

2 COMMISSIONER JENKINS: If I could just throw
3 one more thing on the record, and that is my analysis --
4 thank you, Commissioner Hutchison -- this is off the
5 subject, but his acceptance of a gift or loan I
6 eliminated because Vasquez's gift of free services was
7 disclosed on his disclosure form and therefore it wasn't
8 a gift. Pecuniary interest wasn't -- didn't apply here.
9 So the commitment in a private capacity is the only one
10 that did for me.

11 And I can't find any support for -- though I
12 would like to think about it just one more minute -- but
13 I can't find any support for that paragraph, you're
14 right, about the benefit being more or less than anyone
15 else in a group. Thank you for the time to think about
16 it, though.

17 VICE CHAIRMAN HUTCHISON: Are you finished
18 thinking?

19 COMMISSIONER JENKINS: Yes, thank you.

20 VICE CHAIRMAN HUTCHISON: Other Commissioners
21 who would like to weigh in here?

22 Is there a motion that any Commissioner would
23 like to make at this point? Commissioner Hsu,
24 Commissioner Jenkins, go ahead.

25 COMMISSIONER JENKINS: With regard to the

1 allegations that Councilman Carrigan violated NRS 281.501
2 subsection (2) with regard to abstention, I move that a
3 preponderance of the evidence shows that Councilman
4 Carrigan should have abstained from the vote on the Lazy
5 8 matter on August 23rd, 2006.

6 VICE CHAIRMAN HUTCHISON: Is there a second
7 to that motion?

8 COMMISSIONER CAPURRO: I'll second the
9 motion.

10 VICE CHAIRMAN HUTCHISON: Commissioner
11 Capurro seconded the motion. Is there discussion on the
12 motion? Any discussion on the motion? We will go ahead
13 and call for the vote then, and we will do it by roll
14 call. Commissioner Capurro.

15 COMMISSIONER CAPURRO: Aye.

16 VICE CHAIRMAN HUTCHISON: Commissioner
17 Cashman.

18 COMMISSIONER CASHMAN: Aye.

19 VICE CHAIRMAN HUTCHISON: Commissioner Hsu.

20 COMMISSIONER HSU: Aye.

21 VICE CHAIRMAN HUTCHISON: Commissioner
22 Hutchison, aye. Commissioner Jenkins.

23 COMMISSIONER JENKINS: Aye.

24 VICE CHAIRMAN HUTCHISON: Commissioner
25 Flangas.

1 COMMISSIONER FLANGAS: Aye.

2 (Whereupon, the motion was put to a vote
3 and carried unanimously.)

4 MR. CASHMAN: Aye.

5 MR. FLANGAS: Aye.

6 MR. CAPURRO: Aye.

7 MR. HSU: Aye.

8 MS. JENKINS: Aye.

9 MR. HUTCHISON: Aye.

10 VICE CHAIRMAN HUTCHISON: The matter passes
11 six to zero concerning violation of NRS 281.501
12 subsection (2). Having found a violation we now must
13 move on to the question and consideration of whether or
14 not it was a willful violation. And in order to do that
15 we need to have discussion on that point, and I see that
16 Commissioner Jenkins would like to begin the discussion.
17 Please.

18 COMMISSIONER JENKINS: While it pains me
19 greatly that we have made a finding of a violation, I
20 sincerely believe that Councilman Carrigan had no intent
21 or purpose to benefit anybody other than his
22 constituents, that he did not attempt in any way to
23 disobey or disregard Chapter 281 of NRS. He relied on
24 the advice of counsel. He sought counsel's advice when
25 he had a question, and he followed counsel's advice,
regardless of other opportunities he may have had to seek
an advisory opinion or ask for a second opinion or say,
are you sure. He did what he thought, and what I

1 thought, think, shows a clear intent to do what he
2 believed was within the statute, and as a result, I don't
3 think he willfully violated it in any way.

4 I also don't believe that he fits the safe
5 harbor provisions that are in the statute that was
6 adopted, the three things that all have to be present in
7 order to be, per se, not a willful violation. Because he
8 didn't seek an advisory opinion from the Commission, and
9 the action that he took probably was contrary to a prior
10 published opinion of this Commission. However, we have
11 received evidence that his counsel didn't even consider
12 those.

13 But regardless, so I don't think that it is
14 an automatic not willful, but I don't see any evidence
15 that he knew or should have known that his conduct was
16 going to violate the statute. Of course, we all should
17 have known because we can read the statutes and apply
18 them to ourselves. But I think this is a particularly
19 difficult one, and I don't think the man acted with any
20 intent or purpose to disregard the Ethics in Government
21 Law.

22 VICE CHAIRMAN HUTCHISON: Thank you,
23 Commissioner Jenkins. Other comments or discussion about
24 the willful violation aspect of NRS 281.501(2)?
25 Commissioner Hsu.

1 COMMISSIONER HSU: Thank you, Mr. Vice Chair.
2 Really what happened as I see it is that, unfortunately,
3 Councilman Carrigan got incomplete advice. I don't want
4 to say bad advice but incomplete advice.

5 When I look at the opinion letter from the
6 City Attorney's office and the conclusion, it states,
7 "The only type of bias which may lead to disqualification
8 of a public official must be grounded in fact
9 demonstrating that the public stands to reap either
10 financial or personal gain or loss as a result of the
11 official action." And Councilman Carrigan is pretty
12 clear he didn't stand to reap any financial or personal
13 gain on that.

14 But that is not necessarily what the
15 statute -- that is not the only situation which requires
16 an abstention, unfortunately. And Councilman Carrigan
17 said if he would have been told to abstain he would have.
18 And we have gone through the statutes, and there are
19 other types of situations in which you should abstain.
20 And actually Councilman Carrigan pointed it out, if it
21 was his father he had said he would have abstained. If
22 his father was there, that doesn't mean there is any
23 financial or personal gain or loss to him.

24 So it's unfortunate that there is this
25 opinion that he sought and it just didn't quite go far

1 enough, because I think that the facts have really been
2 fleshed out that this is a pretty close relationship that
3 would require an abstention, but would have followed what
4 his lawyer would have told him. So I just can't find him
5 being willful under the circumstances.

6 VICE CHAIRMAN HUTCHISON: Thank you,
7 Commissioner Hsu.

8 Other comments by Commissioners?
9 Commissioner Cashman.

10 COMMISSIONER CASHMAN: I, too, don't believe
11 that Councilman Carrigan did anything willful in this
12 case. Although I am bothered by -- the reason I say that
13 is because he did follow the advice of counsel, albeit
14 incomplete.

15 I am concerned, though, that sort of the
16 smell test, the reasonable person statute where somebody
17 looks at it from an arm's length, and it is very
18 difficult to do when you are dealing with personal
19 relationships, and I think that is where the rub comes
20 in. The smell test just should have said, you know, I
21 don't know that I can vote on this if my good friend is
22 representing the other person on the other side. I think
23 I got to abstain.

24 I mean, as difficult as it is and as much as
25 you want to do what you think is right for your

1 community, I think that -- in my mind it is not willful
2 but there is a smell test issue here that Mr. Carrigan
3 certainly should have picked up on or should have known,
4 and I just think that the analysis of these personal
5 relationships like this are very difficult for
6 individuals and create difficult situations and difficult
7 choices.

8 VICE CHAIRMAN HUTCHISON: Thank you,
9 Commissioner Cashman. Commissioner Cashman, just for
10 clarification, in addition to the good friend, of course,
11 he was the campaign manager and the political confidante
12 and all the comments you made previously as well. Is
13 that also part of the concern expressed as well?

14 COMMISSIONER CASHMAN: It is the sum total of
15 the relationship.

16 VICE CHAIRMAN HUTCHISON: Right, right.

17 COMMISSIONER CASHMAN: To me, it transcends
18 just a business relationship and becomes more. But it is
19 the sum total of the relationship as the consultant, as a
20 friend, as a political confidante, and as somebody that
21 he's relied on to put him in the position that he's in.

22 VICE CHAIRMAN HUTCHISON: Thank you,
23 Commissioner Cashman.

24 Commissioner Jenkins, please.

25 COMMISSIONER JENKINS: Here I go again. I

1 fear that if relying on so-called incomplete legal advice
2 is the reasoning for the finding of no willfulness, that
3 every elected official is going to go out and get a first
4 year lawyer and get advice, and that lawyer will
5 intentionally fail to review the Ethics Commission's
6 written opinions and tell their clients go for it or
7 don't, whatever you want to do, you can rely on my
8 opinion. And I certainly, certainly don't want that to
9 happen.

10 So when this opinion is drafted, I think it's
11 going to be important that we say something about the
12 Sparks City Attorney's office being on notice of the
13 evaluation of the statutes with regard to abstention and
14 disclosure, and place that squarely in the opinion if we
15 find that there is no willfulness, that relying on
16 counsel's recommendations in and of itself is not
17 adequate for a finding of not willfulness.

18 I think that Councilman Carrigan's intentions
19 were made clear through a myriad of evidence presented
20 and not just his reliance on the advice of counsel, on
21 his record, on his presentation, the presentation by the
22 other witness, Mr. Vasquez, and the materials in our
23 evidence books. So please, let's put the slippery slope
24 argument out there because that certainly isn't going to
25 fly more than once or so.

1 VICE CHAIRMAN HUTCHISON: Thank you,
2 Commissioner Jenkins.

3 For me, let me just begin where Commissioner
4 Jenkins left off, and that is, to me, the reliance on
5 counsel is just one of the facts that we look at. If you
6 really want to evaluate willfulness, there are opinions
7 on this, the McDonald opinion is a good one, and others,
8 and I believe Commissioner Jenkins has already gone
9 through the analysis.

10 Our opinion in McDonald says specifically it
11 is on a case-by-case basis and that you want to take a
12 look at the public official's activities and determine
13 whether they acted voluntarily and with a specific intent
14 and purpose either to disobey or disregard the NRS
15 Chapter 281, what that requires, or do something which
16 NRS 281 forbids.

17 I didn't find any evidence of that in this
18 hearing. And I do think it is unfortunate, I think we're
19 all saying it is unfortunate that you are here because
20 you did go out and seek the advice of counsel. I think
21 at least I found your testimony, Councilman, to be
22 credible, that you relied upon that opinion, that you
23 would have followed whatever your counsel told you to do.

24 COMMISSIONER JENKINS: We're not talking to
25 him, we're deliberating.

1 VICE CHAIRMAN HUTCHISON: But I'm just
2 looking at him. I just found that that testimony was
3 credible. I found that he would have followed the advice
4 of his lawyer. Had he done so, and had been more
5 completely informed, I'm confident that he would have
6 done what they told him to do.

7 So I echo the sentiments of Commissioner
8 Jenkins as well that we're not simply saying go out and
9 get a lawyer who may or may not do a good job. We're
10 saying follow the opinions and the statutes that are
11 already published and provided.

12 So I likewise do not find in the testimony a
13 basis for willfulness or for intentional conduct, and
14 therefore, I would not be able to support such a finding.

15 Are there other comments by any other
16 Commissioners concerning willfulness?

17 All right. Is there a motion? Commissioner
18 Jenkins.

19 COMMISSIONER JENKINS: Based on the
20 deliberations I would move that the Commission find that
21 Councilman Carrigan's violation of NRS 281.501 subsection
22 (2) was not willful.

23 VICE CHAIRMAN HUTCHISON: Is there a second
24 to the motion?

25 COMMISSIONER HSU: I'll second it.

1 VICE CHAIRMAN HUTCHISON: Commissioner Hsu
2 has seconded the motion. Is there any discussion on the
3 motion by the Commissioners? Hearing none we will call
4 for the question. All in favor say aye. Those opposed
5 say nay.

6 COMMISSIONER FLANGAS: Nay.

7 VICE CHAIRMAN HUTCHISON: The motion carries
8 five to one with Commissioner Flangas voting against.

9 (Whereupon, the motion was put to a vote
10 and carried five to one.)

11	MR. CASHMAN:	Aye.
12	MR. FLANGAS:	Nay.
13	MR. CAPURRO:	Aye.
14	MR. HSU:	Aye.
15	MS. JENKINS:	Aye.
16	MR. HUTCHISON:	Aye.

17 VICE CHAIRMAN HUTCHISON: So with those
18 deliberations, Councilman, I can now turn my attention to
19 you. Unless there is any other comments before we do so
20 or other matters that need to be discussed, I believe we
21 can close our deliberations and we will do so.

22 Councilman Carrigan, I'll just repeat what
23 the Commission has decided. On the charge concerning
24 your violation of NRS 281.481 subsection (2), regarding
25 your use of an official position to secure or grant
unwarranted privileges, preferences or advantage for
yourself or person to whom you have a commitment in a
private capacity, when you voted on Lazy 8 matter, the

1 Commission found that you did not violate that statute on
2 a five-to-one basis.

3 Under the charge that you had violated NRS
4 281.501 subsection (4), regarding whether your
5 relationship with Mr. Vasquez was a relationship under
6 NRS 281.501 subsection (8) that needed to be disclosed
7 and whether you sufficiently disclosed that relationship,
8 the Commission found that you did not violate NRS 281.501
9 subsection (4) by a vote of four to two.

10 And finally with regards to NRS 281.501
11 subsection (2), the Commission found that you should have
12 abstained from acting on the Lazy 8 matter and therefore
13 violated NRS 281.501 subsection (2). However, on a vote
14 of five to one, the Commission has found that you did not
15 do so willfully.

16 That concludes our decisions and our
17 deliberations. My question for you, Councilman, is do
18 you have any questions or would you like to make any
19 final comments.

20 MR. CARRIGAN: No, sir. I just thank you for
21 your time.

22 VICE CHAIRMAN HUTCHISON: Thank you so much.

23 MR. CARRIGAN: I just want to say this was a
24 great education here, and I just hope that other elected
25 officials will take a look at this, because I'm not an

1 attorney, I relied on an attorney's opinion, and it bit
2 me in the butt. And I just hope, you are talking about
3 the slippery slope, I hope that even if you go out and
4 find an attorney that's been around for 20 years, that if
5 you are going to rely on their opinion, you have to take
6 a look at the elected official.

7 You can read NRS all you want, but there is a
8 lot of convoluted statements in there. So I would
9 request that if you expect me as an elected official to
10 take look at that, let's make it pretty easy for me to
11 read.

12 Because you asked me, hey, I relied on my
13 attorney. That is what the City of Sparks pays him for.
14 And like I said, if he would have said, you know, you
15 should abstain from this, I probably -- well, I already
16 said I would have abstained.

17 But anyway, I thank you, Your Honor, for your
18 time.

19 VICE CHAIRMAN HUTCHISON: Thank you,
20 Councilman. Just final comment. You may want to take a
21 look at NRS 281.551 subsection (5), and that does provide
22 the safe harbor provisions where for sure if there is any
23 questions in the future, you have a way of and a process
24 to address that, and I do just want to reiterate, though,
25 I think you heard the comments of the Commission in terms

1 of how we viewed you and your veracity and your
2 honorableness, and your honor, and that was I don't think
3 in any way degraded here or questioned here. So we thank
4 you for your time and appreciate you going through a
5 difficult process. Thank you.

6 MR. CARRIGAN: Thank you.

7 VICE CHAIRMAN HUTCHISON: You bet. And with
8 that we will close Agenda Item No. 2. And we will give
9 everyone a chance to get out of the room, and then we
10 will take up Agenda Item No. 3.

11 (Matter concluded at 3:15 p.m.)
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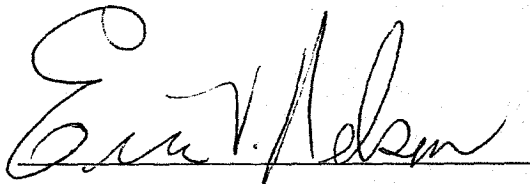
1 STATE OF NEVADA,)
2) ss.
3 COUNTY OF WASHOE.)
4

5 I, ERIC V. NELSON, Certified Court Reporter
6 and a notary public in and for the County of Washoe,
7 State of Nevada, do hereby certify:

8 That I was present at the meeting of the
9 NEVADA COMMISSION ON ETHICS on WEDNESDAY, AUGUST 29,
10 2007, and thereafter took stenotype notes of the
11 proceedings, and thereafter transcribed the same into
12 typewriting as herein appears;

13 That the foregoing transcript is a full,
14 true and correct transcription of my stenotype notes of
15 said proceedings.

16 Dated at Reno, Nevada, this 8th day of
17 September 2007.

18
19
20
21 

22 ERIC V. NELSON, CCR 57
23
24
25

1 think well, I know I don't have a conflict. And I
2 strongly suspect that's what Mr. Carrigan was thinking
3 in this situation, is that in his mind, he knew he
4 didn't have a conflict.

5 The problem is, is that the Ethics
6 Commission, and I think based on substantial evidence
7 and properly interpreting the law, found that he had
8 an appearance of conflict. And I uphold their
9 decision.

10 Miss Fralick or Mr. Powers, do you want to
11 write a decision, submit it to me, address each of
12 those issues that were raised in the brief, and then
13 submit it to me. I'll give you -- how long -- who's
14 going to do it?

15 MR. POWERS: We'll work on it together, but
16 I'll do a preliminary draft.

17 THE COURT: How long will it take to get that
18 in?

19 MR. POWERS: Next Monday, Your Honor?

20 THE COURT: That's fine. I won't be here all
21 of this week, we have a judge's conference this week,
22 so Monday's fine. And then I'll give you until the
23 following Monday, Mr. Thornley, to object to anything
24 you see in the decision.

25 MR. THORNLEY: Thank you, Your Honor.

1 THE COURT: And if there are no objections,
2 I'll sign it. So basically, this matter will be --
3 the order will be back before me by -- this is May
4 twelfth.

5 You'll have until the nineteenth. And then
6 the following Monday, if I haven't gotten any
7 objections, the twenty-sixth, I'll sign the order
8 that's submitted to me. Anything more on this matter
9 then?

10 MR. THORNLEY: No, Your Honor.

11 THE COURT: That will be the order of the
12 Court then. You can all be at ease, court's in
13 recess.

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16 (Proceedings adjourned at 9:50 a.m.)
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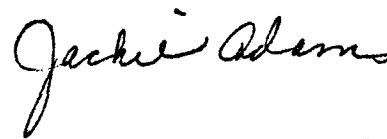
1 STATE OF NEVADA.)
) ss.
2 CARSON CITY)
3

4 I, JACKIE ADAMS, an official Reporter of the
5 First Judicial District Court of the State of Nevada,
6 in and for Carson City, DO HEREBY CERTIFY:

7 That I was present in Department II of the
8 above-entitled Court on May 12th, 2008, and took
9 verbatim stenotype notes of the proceedings had in the
10 matter captioned within, and thereafter transcribed
11 them into typewriting as herein appears;

12 That the foregoing transcript, consisting of
13 pages 1 through 42, is a full, true, and correct
14 transcription of my stenotype notes of said
15 proceedings.

16 DATED: At Lake Tahoe, Nevada, this _____ day
17 of _____, 2008.
18

19
20 
21 _____

JACKIE ADAMS CSR #278

1
2 **IN THE SUPREME COURT OF THE STATE OF NEVADA**
3

4 **MICHAEL A. CARRIGAN**, Fourth Ward
5 City Council Member, of the City of Sparks,

6 Appellant,

Docket No. 51920

District Court No. 07-OC-012451B

7 vs.

8 **THE COMMISSION ON ETHICS OF THE**
9 **STATE OF NEVADA,**

10 _____ Respondent. /
11
12

13 * * * * *

14 **APPELLANT CITY OF SPARKS'**

15 **APPENDIX TO**

16 **MOTION FOR EXPEDITED APPEAL**

17 **VOLUME II**

18 * * * * *

19
20
21 **CHESTER H. ADAMS**, #3009
22 Sparks City Attorney
23 **DOUGLAS R. THORNLEY**, #10455
24 Assistant City Attorney
431 Prater Way
Sparks, NV 89431
(775) 353-2324

25 **Attorneys for Appellant**
26 **MICHAEL CARRIGAN**

27 **RECEIVED**

28 L:\LITIGATION\Carrigan - Ethics-DT\Pleadings\Supreme Court Appeal\Cover Sheet for Motion for Expedited Appeal Appendix Volume I.wpd

TRAVIS D. LINDEMAN
CLERK OF SUPREME COURT
DEPUTY CLERK

1 **INDEX OF EXHIBITS**

2 **Volume I**

- 3 Exhibit A NRS 241.020; NRS 281.501 (presently codified at NRS 281A.420); NRS 281.551
4 (presently codified at NRS 281A.440); NRS 294A.100; Sparks City Charter, Article
5 2, Sec. 2.030; Sparks Municipal Code 1.10.020.
- 6 Exhibit B Nevada Commission on Ethics Opinion *In re: Carrigan*, 06-61; 06-62; 06-66; 06-68,
7 dated October 8, 2007.
- 8 Exhibit C First Judicial District Court's Order and Judgment Denying the Petitioner's Petition
9 for Judicial Review and Affirming the Final Decision of the Nevada Commission on
10 Ethics, dated May 28, 2008
- 11 Exhibit D Supreme Court of the State of Nevada's Order Denying Petition for Writ of
12 Mandamus or Prohibition, dated June 19, 2008.
- 13 Exhibit E Transcript of Proceedings Petition for Judicial Review, dated May 12, 2008

14 **Volume II**

- 15 Exhibit F Transcript of NCOE Hearing regarding Opinion Requests 06-61, 06-62, 06-66, 06-68,
16 dated August 29, 2007
- 17
- 18
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EXHIBIT “F”

BEFORE THE NEVADA COMMISSION ON ETHICS

-o0o-

OPEN SESSION

Opinion Requests: 06-61, 06-62, 06-66, 06-68

WEDNESDAY, AUGUST 29, 2007

Legislative Building
401 S. Carson Street, Room 3138
Carson City, Nevada

COPY

Reported by:

ERIC V. NELSON, CCR 57, RPR, CM

A P P E A R A N C E SCOMMISSION MEMBERS PRESENT

MARK HUTCHISON, Vice Chairman
TIMOTHY CASHMAN
WILLIAM FLANGAS
RANDALL CAPURRO
CAREN JENKINS
RICK HSU

COMMISSION COUNSEL

ADRIANA FRALICK

STAFF

TAMI DeVRIES, Research Analyst
MATT DiORIO, Senior Investigator

I N D E X

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CARLOS VASQUEZ

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CARSON CITY, NEVADA, WEDNESDAY, AUGUST 29, 2007

9:32 A.M.

-oOo-

2. Open session to hear testimony, receive evidence, deliberate and render an opinion relating to Requests for Opinion submitted pursuant to NRS 281.511(2)(b), alleging that certain conduct of Michael Carrigan, Councilman, City of Sparks, violated the provisions of NRS 281.501(2), NRS 281.501(4), and NRS 281.481(2).

VICE CHAIRMAN HUTCHISON: The next agenda item will be Agenda Item No. 2. This is an open session to hear testimony, receive evidence, deliberate and render an opinion relating to Requests for Opinions submitted pursuant to NRS 281.511 subsection (2)(b), alleging that certain conduct of Michael Carrigan, Councilman, City of Sparks, violated the provisions of NRS 281.501 subsection (2), NRS 281.501 subsection (4), and NRS 281.481 subsection (2).

Are there any disclosures to be made prior to moving forward with this agenda item? Commissioner Cashman.

COMMISSIONER CASHMAN: Thank you, Mr. Chairman. I do have a disclosure to make.

In reviewing the material for today's hearings, I discovered that Summerset, LLC, made a contribution to Mr. Carrigan in the amount of a thousand

1 dollars in August of 2006. I'm a 12 percent owner in
2 that real estate company and on its board of managers.
3 As such the board of managers provides strategic guidance
4 to the company on a quarterly basis and does not involve
5 ourselves in the company's day-to-day management.

6 Summerset, LLC, is directed on a daily basis
7 by its managing partner who makes all the decisions
8 relating to political contributions of the company. I
9 have never met Mr. Carrigan, and I do not have any
10 relationship with him either personally or
11 professionally.

12 I have carefully reviewed these facts and
13 feel that my consideration of this case will not be
14 materially affected in any way and I can objectively rule
15 on the merits without prejudice.

16 VICE CHAIRMAN HUTCHISON: Thank you,
17 Commissioner Cashman. Further disclosures?

18 COMMISSIONER HSU: Mr. Chair.

19 VICE CHAIRMAN HUTCHISON: Commissioner Hsu.

20 COMMISSIONER HSU: Yes. I have never met
21 Mr. Carrigan, do not know him personally, either, but I
22 do have a disclosure to make.

23 As an attorney, I was involved in litigation
24 involving a witness in this case, Carlos Vasquez, I think
25 it was in 2005. I had brought litigation on behalf of

1 his father, Carlos Vasquez's father, Laurie Vasquez, and
2 the litigation was against Art Associates and
3 Electrographics, which were two businesses that his
4 father used to own. The litigation concerned his
5 father's sale of stock back to those companies, and at
6 the time both companies were controlled by Carlos
7 Vasquez. That litigation was resolved quickly. I no
8 longer represent his father on that.

9 Subsequent to that I found out that after the
10 dispute, that Carlos Vasquez has apparently hired one of
11 my law partners, Kurt Hunsberger, to do legal work for
12 him, estate planning and corporate work. Kurt
13 Hunsberger, I talked to him yesterday, he has not
14 provided any legal advice on matters relating to the Lazy
15 8 project or any campaign work performed by Mr. Vasquez.

16 Under my firm's compensation arrangement, I
17 do not share any fees that Carlos Vasquez would pay to my
18 firm. My salary neither increases nor decreases if
19 Carlos Vasquez pays my firm for any legal work that they
20 provide. And again, I'm not involved in any of that kind
21 of legal work that Kurt Hunsberger is doing.

22 I have looked at this pretty closely. I
23 don't have any pecuniary interest in the outcome of the
24 case. I do not believe the independence of judgment of a
25 reasonable person in my situation would be materially

1 affected by my law firm's commitment to a witness in this
2 case, Carlos Vazquez, regarding his estate planning and
3 corporate matters. I think I can remain impartial.

4 I do think that Mr. Carrigan should have an
5 opportunity if he wants to object to my service on this
6 Commission today, and I will not hold that against him if
7 he does. I will certainly -- if he does want to do a
8 motion to disqualify and this Commission agrees to
9 disqualify me, that's fine, too. I can sit out, and I
10 brought my laptop, I can do some other work.

11 So that being said, this is a fairly
12 long-winded disclosure, but I do believe I could sit in
13 and will respect the Commission if it decides otherwise.
14 Thank you.

15 VICE CHAIRMAN HUTCHISON: Thank you,
16 Commissioner Hsu.

17 Mr. Carrigan and counsel, would you like to
18 come up for just a minute? We can address the
19 disclosures, disclosure matters. Both Commissioner
20 Cashman and Commissioner Hsu have made disclosures, and
21 both I believe intend to proceed with participation on
22 the Commission's decisions today. And the question now
23 before you is, do you have any objection to either
24 Commissioner Cashman or Commissioner Hsu proceeding with
25 their participation here.

1 MR. THORNLEY: No, Mr. Vice chairman, we have
2 no such objections.

3 VICE CHAIRMAN HUTCHISON: Counsel, can you
4 identify yourself for the record, please?

5 MR. THORNLEY: My name is Doug Thornley.

6 VICE CHAIRMAN HUTCHISON: Doug Thornley?

7 MR. THORNLEY: Yes, sir.

8 VICE CHAIRMAN HUTCHISON: Thank you,
9 Mr. Thornley.

10 MR. CREEKMAN: Mr. Vice chair, I'm David
11 Creekman.

12 VICE CHAIRMAN HUTCHISON: Mr. Creekman.

13 MR. CREEKMAN: C-r-e-e-k-m-a-n.

14 VICE CHAIRMAN HUTCHISON: I know who you are.

15 MR. CARRIGAN: And I'm Mike Carrigan.

16 VICE CHAIRMAN HUTCHISON: All right. Thank
17 you, Councilman. And Mr. Thornley, will you be
18 representing Mr. Carrigan today along with Mr. Creekman,
19 or is Mr. Creekman here more in the capacity as a
20 representative and counsel for the City?

21 MR. THORNLEY: Mr. Vice Chair, you are
22 correct with your first statement, we will both be
23 representing Mr. Carrigan today.

24 VICE CHAIRMAN HUTCHISON: Okay. All right.
25 Let me explain to you the process today that the

1 Commission will pursue. This will be an administrative
2 hearing. A lot of us are trial lawyers, and perhaps
3 those of you in the audience have seen courtroom drama
4 play out, and there is all kinds of rules in the
5 courtroom that don't necessarily apply here. The rules
6 of evidence are much more relaxed and it is a more give
7 and take I think relaxed atmosphere.

8 But there are still order that will be
9 followed and protocol that will be followed as well as
10 rules that will be followed. But we're not necessarily
11 following the rules of evidence and civil procedures as
12 we would in a trial.

13 Mr. Thornley, you will have an opportunity to
14 make an opening statement if you'd like, sir. After your
15 opening statement, if you choose to make one, then as the
16 Chair I will call the witnesses, and the members of the
17 Commission will have an opportunity then to question
18 those witnesses. Once we have concluded our questioning,
19 then, Mr. Thornley or Mr. Creekman, you can cross-examine
20 the witnesses if you'd like. You then, after you have
21 had an opportunity to cross-examine and the Commission
22 has had an opportunity to examine witnesses that the
23 Commission will call, then counsel for Mr. Carrigan will
24 have an opportunity to call any witnesses that haven't
25 already testified, if you wish.

1 Following the witnesses's testimony, I will
2 then close the testimonial portion of the hearing, and
3 then I'll call for deliberation of the various Commission
4 members.

5 Following our deliberations we will then call
6 for votes on each of the alleged violations and the
7 Commission will render its opinion on the issue of
8 whether Mr. Carrigan violated any of the statutes
9 involved in this hearing. A written opinion will be
10 published and provided to Mr. Carrigan and his attorneys,
11 and Mr. Carrigan has the right to subsequently request
12 judicial review of the opinions under the provisions of
13 NRS Chapter 233B if he so chooses.

14 Are there any questions, counsel or
15 Mr. Carrigan, about the proceedings today?

16 MR. THORNLEY: Mr. Vice Chair, before we get
17 started, will we have an opportunity to discuss the
18 motion to dismiss that was filed with your Commission?

19 VICE CHAIRMAN HUTCHISON: Yes, you will.
20 Matter of fact, we can take up the motion in just a
21 minute. I wanted to get to a couple of other items
22 including stipulated facts that you had presented as well
23 before we begin opening statements.

24 Why don't we go ahead and swear in the
25 witnesses who will be presented today, and then we can

1 take those witnesses into the room and wait their
2 testimony prior to counsel's opening statement. Is that
3 the way that we should proceed, counsel?

4 MS. FRALICK: Yes, it is.

5 VICE CHAIRMAN HUTCHISON: Okay. I know that
6 there are two witnesses who will be called today,
7 Mr. Carrigan and Mr. Vasquez will be called by the
8 Commission. I know that there will be Ms. Beth Cooney
9 and Jeannie Adams will be called on behalf of
10 Mr. Carrigan. So if those four witnesses could stand and
11 be sworn in.

12 MR. THORNLEY: Mr. Vice Chair.

13 VICE CHAIRMAN HUTCHISON: Yes.

14 MR. THORNLEY: There are two more witnesses
15 to be called by Mr. Carrigan.

16 VICE CHAIRMAN HUTCHISON: Please tell me who
17 they are.

18 MR. THORNLEY: Mr. James Valline.

19 VICE CHAIRMAN HUTCHISON: I have it right
20 here. James Valline and also James deProsse. So we have
21 six witnesses then. And do we usually swear these all in
22 together or individually?

23 Can you all six -- and I just want to make
24 sure all six are in the room. Mr. Carrigan as well.
25 Thank you. So we have all six of our witnesses. Can you

1 all please raise your right hand and be sworn in by the
2 court reporter.

3 (Six witnesses sworn.)

4 VICE CHAIRMAN HUTCHISON: Thank you. Now
5 we'd like to have the witnesses who will testify just
6 wait in the room next door, and we will call you as your
7 testimony is needed. Thank you so much.

8 (Witnesses excluded except for Mr. Carrigan.)

9 VICE CHAIRMAN HUTCHISON: We will take up the
10 motion to dismiss. Mr. Thornley, I have had a chance to
11 review this motion carefully. I think that there are
12 many points that are made that are well taken and they
13 present a lot of issues that the Commission I think needs
14 to address after hearing testimony, and I think that once
15 we conclude our testimony as well as our deliberations,
16 we have dealt with all the issues that you raise in your
17 brief, and I think in the interests of fairness and
18 equity we will proceed with the hearings, we will hear
19 testimony on that, and then we will render our decision.

20 If you still think that there are outstanding
21 issues that we haven't hit, you can certainly bring it to
22 my attention, but I believe we will hit them all,
23 counsel, during the course of our deliberations.
24 Therefore, I'm going to deny the motion at this point and
25 allow the Commission to hear the evidence and then render

1 its decision.

2 MR. THORNLEY: Thank you, Mr. Vice Chair.

3 VICE CHAIRMAN HUTCHISON: You are welcome.

4 Now we have stipulated facts that were
5 presented. Ms. Fralick, I believe that these are
6 stipulated facts that are presented by Mr. Carrigan's
7 counsel; is that correct?

8 MS. FRALICK: That is correct, Mr. Vice
9 Chair.

10 VICE CHAIRMAN HUTCHISON: Has the Commission
11 had a chance to take a look at the stipulated facts?
12 I'll give you my thoughts about them, and I'm certainly
13 happy to entertain any other thoughts that any of the
14 members of the Commission may have.

15 I think that some of these facts are easily
16 established and stipulated to, and we appreciate the
17 expediency with which the hearing will progress if we do
18 stipulate to some of these facts. Facts 10, counsel, 10,
19 11, 12, 13, 14 and 15 seem to be facts that are not
20 really stipulated facts, facts that really require a
21 factual analysis and the application of the relevant
22 statutes and law to those facts. In addition, I don't
23 believe that we have jurisdiction over stipulated fact
24 number 11 concerning reported campaign contributions.

25 So those are my thoughts. I'd certainly like

1 to hear any of the thoughts from the other Commission
2 members concerning the acceptance of these stipulated
3 facts. Any other Commissioners want to chime in? If
4 not, then let me tell you what I suggest.

5 COMMISSIONER JENKINS: Did you include 10?

6 VICE CHAIRMAN HUTCHISON: I included 10 in my
7 list of things that I think are questions of law and fact
8 that we probably can't stipulate to.

9 Let me tell you what I think we can stipulate
10 to, and Commissioners, you can tell me if you disagree.
11 I think we can stipulate to 1 through 9, and we can
12 stipulate to 6.

13 COMMISSIONER JENKINS: 16.

14 VICE CHAIRMAN HUTCHISON: Excuse me. 16 and
15 17.

16 COMMISSIONER JENKINS: So moved.

17 VICE CHAIRMAN HUTCHISON: Anybody second that
18 motion to accept the stipulated facts, stipulated facts 1
19 through 9 and 16 and 17 as presented by counsel for
20 Mr. Carrigan?

21 COMMISSIONER HSU: Second that.

22 VICE CHAIRMAN HUTCHISON: Seconded by
23 Commissioner Hsu. Any discussion on the motion?

24 Let's go ahead and call for a vote. All
25 those in favor say aye. Any opposed?

1 (Whereupon, the motion was put to a vote
2 and carried unanimously.)

3 MR. CASHMAN: Aye.
4 MR. FLANGAS: Aye.
5 MR. CAPURRO: Aye.
6 MR. HSU: Aye.
7 MS. JENKINS: Aye.
8 MR. HUTCHISON: Aye.

9 VICE CHAIRMAN HUTCHISON: All right. So for
10 the record then, the facts as I have outlined them are
11 stipulated. Facts 10, 11, 12, 13, 14 and 15 are not.

12 Let's see if we can get on the same page here
13 and sort of focus our issues and our efforts here today
14 and be as efficient as we can. We want to give everybody
15 a full opportunity to be heard, examine the witnesses,
16 really air these issues, and make sure that everybody
17 feels like the process is fair and we have had a full
18 opportunity to engage in the process and be heard
19 completely.

20 The first issue that is before the Commission
21 deals with NRS 281.481 subsection (2), and really a way
22 to define that issue is did Councilman Carrigan use his
23 official position to secure or grant unwarranted
24 privileges, preferences or advantages for himself or a
25 person to whom he has a commitment in a private capacity
to the interests of that person when he voted on the Lazy
8 matter.

The second major issue before the Commission

1 deals with NRS 281.501 subsection (4), and that issue can
2 be expressed, is Councilman Carrigan's relationship with
3 Mr. Vasquez a relationship enumerated in NRS 281.501(8).
4 If so, did Councilman Carrigan fail to sufficiently
5 disclose his relationship.

6 The third issue before the Commission deals
7 with NRS 281.501 subsection (2), and that is should
8 Councilman Carrigan have abstained from acting on or
9 voting on the Lazy 8 matter.

10 And those are really the three major issues.
11 I know that there will be sub points, sub issues,
12 different permutations raised during the course of this
13 hearing. But, counsel, would you agree that those are
14 the major issues that we're dealing with in this case?

15 MR. THORNLEY: Yes, Mr. Vice chairman, I
16 will.

17 VICE CHAIRMAN HUTCHISON: Thank you, counsel.

18 All right. We're going to go ahead and call
19 our first witness on behalf of the Commission, unless I
20 need to do anything else, counsel.

21 MS. FRALICK: Mr. Vice Chair, if you would
22 like to have Mr. Thornley's opening statement at this
23 point before we call the witnesses.

24 VICE CHAIRMAN HUTCHISON: Thank you. I
25 forgot all about that. Mr. Thornley, will you please

1 provide us with your opening statement if you wish.

2 MR. THORNLEY: Thank you, Mr. Vice Chair.
3 Good morning, Commissioners.

4 VICE CHAIRMAN HUTCHISON: Good morning.

5 MR. THORNLEY: As you know, Councilman
6 Carrigan has been accused of violating three provisions
7 of Nevada Ethics in Government law. But what you may not
8 know is why the ethics complaints were filed in the first
9 place. If you think the politics on a national stage are
10 ugly, then you have never played ball at the local level.

11 Today you will hear testimony that Councilman
12 Carrigan has committed no violation of NRS 281.481 sub
13 (2), 281.501 sub (2), or 281.501 sub (4). You will learn
14 that the complaints filed in this matter were an
15 orchestrated political vendetta mounted by individuals
16 and interests unhappy with Councilman Carrigan's position
17 on the Lazy 8 project and exacerbated by Councilman
18 Carrigan's recent reelection which demonstrates the City
19 of Sparks apparent satisfaction with his representation.

20 At the conclusion of this proceeding I'll
21 come back to you and together we will apply the facts of
22 this case to the law in question. The overwhelming and
23 undisputed evidence will show that absolutely no
24 violation of Nevada's Ethics in Government law occurred
25 in this case. Councilman Carrigan's role in government

1 is to provide a voice to the people he represents.
2 That's what happened here and that's what the citizens of
3 Sparks hope continues to happen. Thank you.

4 VICE CHAIRMAN HUTCHISON: Thank you very
5 much, counsel. We will go ahead and have the Commission
6 call its first witness, which is Michael Carrigan.

7 MICHAEL CARRIGAN

8 called as a witness,
9 was examined and testified as follows:

10 EXAMINATION

11 VICE CHAIRMAN HUTCHISON:

12 Q Mr. Carrigan, you have already been sworn in
13 as a witness in this case. Each of the Commissioners
14 will either ask you questions or not ask you questions
15 sort of depending on what their feel of the facts is like
16 and what issues that they have and what questions they
17 have in mind.

18 I think first just sort of as an overview, I
19 would like to ask you some questions, and I'm sure my
20 fellow Commissioners will get into much more detail. But
21 as you know, the heart of this matter is really going to
22 get to your relationship with Mr. Vasquez.

23 Am I pronouncing that correctly?

24 A Vasquez.

25 Q Vasquez. Mr. Vasquez, and the extent of that

1 relationship, how long lasting its been, the financial
2 aspect of that relationship, the political aspect of that
3 relationship, the business aspect of that relationship.
4 So I'd like to try to just get that out initially --

5 A Okay.

6 Q -- by asking you a series of questions now
7 that you know where I'm going. Let's talk first about
8 the personal relationship or the friendship relationship
9 or the family relationship that you have, that your wife
10 has, that your family has with Mr. Vasquez and his spouse
11 and his family. Just give me an overview there, please.

12 A Sure. 1991 I got stationed in NES Fallon,
13 and my wife is a schoolteacher by trade. She got a job
14 teaching with Carlos's wife. She team taught. That is
15 when they first met. That is when I first met Carlos.
16 That would have been probably October of 1991.

17 Q Okay. Now so the relationship with your
18 families began with your spouses?

19 A Yes.

20 Q They team taught and that relationship
21 started about in October of 1991?

22 A Correct.

23 Q And did that relationship with your spouses,
24 to your knowledge, also involve social aspects or was it
25 at that time, sort of focussing on October 1991, that

1 early time frame, was it pretty much they were team
2 teaching and that was their relationship?

3 A Yes. They have gone of course to some of the
4 school functions together. But that's how it started off
5 is they were teaching together.

6 Q Did it progress then where they began to
7 socialize, become more friends outside of the classroom
8 and professional environment?

9 A I would say yeah, they became pretty good
10 friends. They team taught. You are going to become good
11 friends or you are not going to get along very well when
12 you are teaching.

13 Q When would you say that that friendship began
14 to materialize beyond just simply being acquainted with
15 each other and professionals in the classroom and really
16 moved on and became good friends outside of the
17 classroom? When did that begin?

18 A You know, I couldn't give you a time frame on
19 that. I could just say it evolved into that they were
20 friends.

21 Q Okay. And then did there come a time then
22 when you began to be friends or become acquainted with
23 Mr. Vasquez?

24 A Yeah. Usually what happened is that they had
25 a Christmas party or something. Most of the spouses were

1 in the education field. I was in the military. Carlos
2 was not in the education. So we kind of stayed together
3 because the other people ignored us. If you have anybody
4 that's in teaching, you know what I'm talking about. We
5 kind of started talking.

6 Basically I was still in the military at the
7 time, and he told me that he was in -- he ran campaigns,
8 and offhandedly one time, and this was a long time ago,
9 he said if you ever want to run for public office, give
10 me a call because that is what I do for a living. And
11 I'm sure he's regretting that I called him in 1999.

12 Q Now when do you recall first actually
13 becoming acquainted then with Mr. Vasquez?

14 A I remember exactly, it was at the first
15 Christmas party.

16 Q Would that have been in December of '91?

17 A 1991.

18 Q And then you continued to be acquaintances
19 ever since December of 1991 and then that turned into
20 more of a friendship?

21 A Yeah. It was kind of odd. The only time I
22 ever saw him was at a school function.

23 Q Okay. So if there was a party, a gathering,
24 open houses, whatever it was, you ran into each other?

25 A Generally he and I tried to stay away from

1 those, but every once in a while we got lassoed into
2 going, and we kind of commiserated together in the
3 corner.

4 Q Tell me when that relationship changed in any
5 way from beyond commiserating with each other in the
6 corner at these functions to something more than that?

7 A I think in 1999 when I asked him to run my
8 first campaign, he became my campaign manager.

9 Q And what were you running for in 1991 --
10 1999?

11 A 1999 I ran for Council Ward 4 in Sparks.
12 That was my first election.

13 Q Were you successful?

14 A Yes.

15 Q All right. And can you tell me what type of
16 an involvement you guys had as a campaign manager and as
17 a candidate during the course of that 1999 run?

18 A I was a rookie. I had never run for
19 political office. I retired out of the military in 1992.
20 And so the city councilwoman who had that position
21 decided not to run again, and I was complaining, and my
22 wife said, quit complaining and run if you want to. So I
23 called Carlos up and said, hey, remember in 1991 you said
24 you could run a campaign, would you like to help me.

25 And he said, okay, let's do it. And I was

1 probably -- there were seven people running, and I was
2 the biggest dark horse out of the seven.

3 Q And was Mr. Vasquez instrumental, in your
4 view, in getting you elected?

5 A Yes.

6 Q Why?

7 A Because he is a good campaign manager.

8 Q And being a good campaign manager, what did
9 he do to help get you elected with your experience with
10 him in 1999?

11 A It was strategy, basically. Political
12 strategy on what to do.

13 Q I want to stay with -- I want to take them in
14 segments here. The 1999, he is your campaign manager,
15 you are a dark horse, nobody gives you a shot. He's a
16 very good campaign manager, good strategy, good comments
17 and good thoughts about how to win elections?

18 A Yes.

19 Q And in fact, you go on and win the election?

20 A I do.

21 Q Now how long does that campaign take where
22 you are involved with each other on I'm sure a regular
23 basis during that campaign?

24 A In 1999 Sparks elections were in the summer.
25 We changed that a couple years ago because we want to go

1 in November with everybody else, because number one, it
2 was cheaper for our citizens, and number two, we wanted a
3 better turnout. So our elections were in June. We
4 usually started probably April. So I would say April,
5 May and June. So three months.

6 And at that time in 1999, it was a very small
7 election. I mean, in other words, it was just the City
8 of Sparks, there were no national issues and there were
9 no other elections on the ballot.

10 Q It was a very parochial election?

11 A Exactly.

12 Q I want to stay with the 1999 time frame. Let
13 me shift you now. Did Mr. Vasquez or his spouse or
14 anybody that you know he controlled or directed do any
15 more work for your campaign?

16 A No.

17 Q Did they provide any in-kind contributions in
18 that 1999 time frame?

19 A You mean for the election?

20 Q For the election, either him or spouse or
21 people he controlled or knew?

22 A Yes.

23 Q Can you describe those, please?

24 A Basically they were consultation. So we in
25 kind the consultation fees. In other words, he told me

1 how much he generally charged other people, and we wrote
2 that in as a campaign contribution.

3 Q As an in-kind contribution?

4 A Yes. Everything that he did for me in 1999
5 was in-kind. There were no money, he didn't --

6 Q No contributions?

7 A No. As a matter of fact, I financed my first
8 election about 90 percent out of my own pocket.

9 Q So your testimony is then in 1999 the only
10 contribution that Mr. Vasquez made to your campaign was
11 in-kind consultation as you described as your campaign
12 manager?

13 A Correct. And to go on to our spouses, his
14 wife had quit the school district by that time because
15 she was pregnant and had a child. So our two spouses
16 didn't have any other formal I guess working
17 relationship.

18 Q To your knowledge, did your wife's friendship
19 with Mr. Vasquez's wife continue from October 1991 to the
20 present?

21 A Sure, they call each other on the phone. As
22 far as going out, no, they didn't do much. She was
23 raising two children. So they didn't get out very much.
24 Mrs. Vasquez didn't get out very much. It was still a
25 phone call. They are professionals, and they would talk

1 about educational issues probably. I'd define it as on a
2 professional level after that.

3 Q Now can you give us a period of time when
4 they were more social-type friends?

5 A You know, I would have to say from '91 to
6 whatever. You can ask Carlos when his wife quit because
7 I'm not sure exactly of the date. But I would say while
8 they were teaching they did go out on a few things.

9 Q But you know she quit before the '99
10 campaign?

11 A You know, I'm guessing. I think she did.
12 I'm trying to remember. Their child is 12 years old. So
13 I think so.

14 Q Okay.

15 A So if you back that up, I guess it would have
16 been '93 maybe when she quit, I think. But you can ask
17 Carlos.

18 Q Now any other contributions, efforts towards
19 your campaign you can think of in 1999 that relates to
20 Mr. Vasquez or his family or those that he had influence
21 over?

22 A Everything that -- all the in-kind was noted
23 on my campaign disclosure report in 1999.

24 Q Now let's move forward then. When do you
25 next -- well, let me ask you: After the campaign, I'm

1 sure you are happy you are elected; correct?

2 A Correct.

3 Q Now what is your relationship like with
4 Mr. Vasquez after 1999, immediately after the 1999
5 elections?

6 A Then our relationship got closer because he
7 was my campaign manager. So at times I would ask him for
8 political advice.

9 Q And this was after the '99 campaign, before
10 the next campaign, you are close, you are good friends,
11 you are asking him for some political advice as you are
12 going through issues or matters as a city councilman?

13 A Correct.

14 Q Now when do you run again, what year?

15 A 2003. Once again it is a June election.

16 Q So walk us again through that process in
17 terms of Mr. Vasquez's relationship with you in that
18 process.

19 A I asked him again. I said I'm going to run
20 for re-election, would you run my campaign, and he said,
21 I sure will. So we started about three months before the
22 election. And I have to point out that in 1999 I won by
23 41 votes.

24 Q In 1999 you won by 41 votes?

25 A In 1999 I won for 41 votes. In 2003 I won by

1 65 percent to 35 percent.

2 Q So a big improvement?

3 A It was a very big improvement. But I bring
4 that up because I think later on you know, the people
5 seem to like the job I was doing.

6 Q Fair enough. So he continued to do the same
7 type of things that he did for you in '99. He is a good
8 campaign manager, he gets you good, astute, political
9 advice, you take it up, you win, win big this time and
10 you are happy?

11 A I'm very happy.

12 Q Now let's move to the contributions that he
13 made or his spouse made or anybody that you know that he
14 had influence over during the 2003 campaign season.

15 A Once again no money. But he did have
16 consultations with me, and you don't really have to
17 disclose that because, I mean, a meeting is a meeting,
18 but we did because I like everything to be on board. I
19 didn't want anybody to say you didn't disclose it.

20 So we have disclosed, and I can't remember
21 what the in-kind disclosure was as far as how much it
22 was. I really don't remember that one. And I think you
23 have that.

24 Q We have all that information, right. But
25 again, there was, as far as contributions, there was the

1 in-kind consultation as political advisor, campaign
2 manager; correct?

3 A Correct.

4 Q No money, though, in 2003?

5 A No money. And I didn't have to put any of my
6 own money into that race.

7 Q You were supported by campaign contributions?

8 A Yes.

9 Q Now what about his -- what about
10 Mr. Vasquez's spouse or those that he knew that he had
11 influence over or asked to contribute to you, did anybody
12 that you know contribute to you financially or in kind to
13 that 2003 campaign as a result of Mr. Vasquez's efforts?

14 A From his family?

15 Q Or from his friends or people he had
16 influence over.

17 A I know that his family, it was only in kind
18 from Carlos for his consultation services, and then I
19 disclosed everybody else. And if he went and said, hey,
20 Carrigan is a good guy, contribute to his campaign, I
21 don't know who he did that to. Because they usually
22 don't come up to me and say that. They say we would like
23 to support your campaign and here is a contribution.

24 Q Right. In 2003, did you consider Mr.
25 Vasquez's solicitation of campaign contributions to be

1 part of his job duties as your campaign manager?

2 A Yes.

3 Q Is the same true in 1999?

4 A Yes.

5 Q Now, 2003 election concludes, you have won
6 big, you are even happier now. Now describe -- by the
7 way, you spent three months again with him?

8 A About three months.

9 Q About three months during the campaign season
10 with him? Now describe your relationship immediately
11 following the 2003 election.

12 A It was the same as from 1999, the 2003. He
13 was my campaign manager, he is a good political
14 strategist. We became friends, and I asked him for
15 advice, if I needed some advice, and we went out to
16 dinner, and he became a good friend.

17 Q So similar type of relationship that you
18 described following your 1999 campaign?

19 A Yes.

20 Q I mean, you are good friends, he's a trusted
21 political confidante, a personal confidante that you seek
22 for political advice and understanding; right?

23 A Yes.

24 Q You are social, have dinner together, you
25 continue to socialize?

1 A Correct.

2 Q Now during that time do your wives also
3 socialize with you at dinner?

4 A No. At that time, no. She was still home
5 with -- Mrs. Vasquez was still home with her children.
6 So their relationship kind of parted ways. I mean, they
7 still stayed friends, but it was more of a phone call,
8 that type of thing.

9 Q Now when did you run again?

10 A 2006. We switched our election from June to
11 November. So my term was only three and-a-half years.

12 Q Can you describe, please, your relationship
13 with Mr. Vasquez during that 2006 campaign?

14 A Once again I asked him to be my campaign
15 manager and he said yes. And this election is a little
16 longer. This is the first time I had been in the deep
17 end of the pool. We were running in a November election.
18 There was everybody and their brother was running during
19 the same election.

20 So the election season is a little bit
21 longer, and since they moved the primary back to August,
22 we had to start strategizing a little bit earlier. So it
23 was longer than three months from that time. When did we
24 start? February, January or February, something like
25 that probably.

1 Q So how many months would you estimate during
2 the 2006 time period you were spending in close
3 communication and work with Mr. Vasquez?

4 A Six months probably, I'd say. Give or take a
5 month or two.

6 Q Now you were re-elected?

7 A Yes.

8 Q So you were happy about that?

9 A Yeah. I was very happy with this election
10 because it got to be a very contentious election.

11 Q Why was that?

12 A Because one of the power brokers in Sparks,
13 John Asquaga's Nugget, didn't like what I was doing as
14 the City Councilman and basically went out and recruited,
15 tried to recruit people to run against me and finally
16 found one and poured a lot of money into the campaign,
17 and basically they ran a campaign on one thing and that
18 was a project that was in my ward. So he came out, my
19 opponent came out against the project. I had voted for
20 the project. And that was the biggest issue for the
21 whole entire campaign.

22 Q During the 2006 election did the Lazy 8
23 project come up at all as a campaign issue?

24 A That was the campaign issue. My opponent
25 came in front of us in the meeting that we were voting on

1 the Lazy 8 and basically said that 70 percent of the
2 people in Sparks had told him that they didn't want the
3 Lazy 8. That worried me.

4 Because I had the luxury this time of
5 knocking on doors because I was running for election. A
6 lot of times when you are voting on issues you can't talk
7 to all your constituency. This time I could and I was
8 knocking on doors. I knocked on 2500 doors with my wife.
9 How do I know that? Because we made up 2500 fliers, and
10 when they ran out, I was done.

11 Only one family said they didn't support the
12 Lazy 8. So when I heard that I said, well, my
13 constituency wants this. And I don't know where my
14 opponent is coming from because his numbers were
15 completely different than mine.

16 So yes, that whole campaign was run on one
17 project. Now I have to tell you that I won that election
18 by 62 percent, 62 to 38. So it was a little bit closer
19 to what I had thought than what my opponent had thought.

20 In other words, that campaign was strictly on
21 one thing. If the citizens of Sparks didn't want that
22 Lazy 8, they knew where I stood on it, I wouldn't be
23 here. And the interesting thing is that a city
24 councilwoman that did vote for the project got voted out
25 of office -- or didn't vote for the project, got voted

1 out of office.

2 Q So your testimony, Councilman, is that the
3 2006 election really was a referendum on the Lazy 8
4 project?

5 A I didn't want to make it that, but my
6 opponent did, and so that's where it went. And when he
7 came out and was supporting against the casino, then he
8 shifted the whole paradigm of the election, and that's
9 all anybody wanted to talk about. They didn't want to
10 talk about anything else. So I would have to classify it
11 as yes, that was pretty much the whole election.

12 Q Now staying with our pattern here, can you
13 talk about any contributions that Mr. Vasquez made during
14 the course of the 2006 campaign, please?

15 A I remember all of these now because he gave
16 in kind of about \$875 for a logo. In other words, his
17 firm designed a new logo, because instead of saying Elect
18 Mike Carrigan, it was Retain Mike Carrigan. We had to
19 switch over to a new logo. So his advertising agency did
20 that, and so we marked that down as in kind.

21 And then once again, it was all consultation
22 fees and that was listed as in kind. So that was all I
23 got from Carlos or anybody in his family or any of his
24 businesses was only in kind.

25 And wasn't anything tangible either. In

1 other words, they didn't give me billboards or they
2 didn't give me anything else. It was strictly advice,
3 and once again, we didn't have to do that but I wanted to
4 put it down.

5 Q During the 2006 campaign did your campaign
6 pay Mr. Vasquez's ad agency?

7 A If you see in my campaign disclosure report
8 that I wrote about \$46,000 worth of checks to Carlos's ad
9 agency, but that was a pass through fee. In other words,
10 we had -- this is the first time we had to go on TV, and
11 if any of you have ever seen a campaign, it is very
12 expensive. So they would buy TV time, and I would write
13 the check to his company, and his company would write the
14 check to whatever the outlet was.

15 So in other words, he didn't charge any kind
16 of a commission fee or anything. It was all that money
17 was a pass through. In other words, I wrote him a check
18 for whatever it was, and he passed it through to the
19 whatever agency needed to get paid.

20 Q How do you know that?

21 A How do I know he did it?

22 Q That it was a pass through. How do you know
23 there was a pass through?

24 A Because of the books we kept.

25 Q That question has come up, and you asked and

1 inquired and you learned that it was a pure pass through,
2 there was no -- a lot of times ad agencies will add on an
3 administrative fee or add on some sort of profitability
4 fee or a consultation fee.

5 A I looked at the books all the time. One of
6 the reasons that we kept such good books is because it
7 was a very contentious election. We wanted to make sure
8 that we were above board with every single thing we did.
9 We wanted to make sure that everybody knew that he didn't
10 get paid. I mean, he ran every single campaign for free.

11 Q Now do you think or do you know whether as a
12 result of his ad agency you were actually as a candidate
13 able to get better deals on air time or radio time?

14 A I really wish that was the case, because
15 during that election was also a presidential election and
16 senatorial election. You couldn't buy time on Channel 8
17 or 2 or 4 because they had it all wrapped up. So I wish
18 he did have a better -- it would have helped me out, but
19 the answer to your question is no. We were just like
20 everybody else.

21 Q So you're saying the demand was just too
22 great, nobody was cutting you a deal?

23 A Exactly. The way you work is you get a hold
24 of all the TV and a lot of the cable, there is a lot of
25 cable. You get a hold of them and say do you have any

1 time and how much is it going to cost, and they say here
2 it is and you just buy it. You have kind of no choice
3 when they run it. Sometimes if you are up at three
4 o'clock in the morning with nothing better to do you will
5 see an ad. Because it's the cheapest time.

6 Q Now following the 2006 election then, it is a
7 contentious election, you win it still with what you feel
8 is a pretty comfortable margin; right?

9 A If anybody in this state can win by 62
10 percent, it is more than comfortable.

11 Q You are happy at the end of the election?

12 A I'm very happy.

13 Q Your relationship with Mr. Vasquez is the
14 same, that he continues to be a very good friend of
15 yours, a trusted political advisor, somebody who you
16 consult on political issues and subjects, and that
17 relationship continues till today?

18 A Yes.

19 VICE CHAIRMAN HUTCHISON: That's the overview
20 that I wanted to lay. And I want to now pass the
21 questioning on to any other of my fellow Commissioners
22 who would like to follow up. Commissioner Flangas.

23 **EXAMINATION**

24 BY COMMISSIONER FLANGAS:

25 Q Well, Mr. Carrigan, in looking at your --

1 just for clarification, in your original election you had
2 a \$5,000 from the Art Associates and 5,000 each from
3 Carlos and Laurie Vasquez. Now that was in kind?

4 A Yes, it was all in kind.

5 Q Do I have that right?

6 A Yes, sir.

7 Q Now my principal question here is on August
8 23rd, you had a Sparks City Council meeting, and from I
9 have seen here, it was very contentious and fairly
10 dramatic. Now in that meeting John Mayer, Phil Salerno
11 and Judy Moss voted against the Lazy 8, and you and Ron
12 Schmitt voted in favor.

13 A That is correct.

14 Q Now then on or about August 24th, 25th, the
15 developer Harvey Whittemore threatened to sue Sparks for
16 damages in the hundred million dollar range. The
17 developer argued that he had the right to move a 1994
18 casino development approval from Whittemore's Wingfield
19 Springs in Sparks to the Pyramid Highway. And in spite
20 of the Sparks Planning Commission having voted four to
21 three against the Lazy 8 a month prior to that.

22 So that took place in that time frame.

23 A Correct. The Planning Commission voted it
24 down, and so did the City Council, against the advice of
25 our attorney, by the way.

1 Q Now on or about September 1st, a private vote
2 was taken to settle the threatened lawsuit.

3 MR. CREEKMAN: Excuse me, Mr. Vice Chair, I'm
4 going to have to object to this line of questioning. The
5 incident which gave rise to this proceedings occurred on
6 the 23rd of August. Anything which occurred subsequent
7 to the 23rd of August should, in my mind, have no
8 relevance.

9 VICE CHAIRMAN HUTCHISON: The events in
10 question that are being elicited by this line of
11 questioning deal with events post August 23rd, '06?

12 MR. CREEKMAN: Yes, Your Honor. Council
13 Member Flangas's question started or line of questioning
14 started with the 23rd of August, moved to the 25th of
15 August and to a lawsuit, this was brought against the
16 City of Sparks on that date, and the latest question just
17 went to activities or events which occurred on September
18 1st.

19 VICE CHAIRMAN HUTCHISON: Counsel, I would be
20 interested to just kind of talk with you about this a
21 minute. I could see where in a broad sense post August
22 23 events could have some impact on whether the
23 Councilman had a particular type of relationship,
24 business relationship, was involved in a financial
25 arrangement, had an economic dependence on somebody. So

1 are you saying that no matter what the question is post
2 August 23rd, that the Commission just cannot inquire? Is
3 it sort of a blanket position or is it more of a fact
4 specific?

5 MR. CREEKMAN: It is a blanket position that
6 I'm taking. Whatever occurred after the 23rd of August
7 should have no relevance to this Commission's proceeding
8 today. It was the disclosure made by Councilman Carrigan
9 on the 23rd of August which gave rise to the complaints
10 which gave rise to all of us being here today.

11 VICE CHAIRMAN HUTCHISON: Go ahead. I'm
12 sorry.

13 MR. CREEKMAN: Commissioner Flangas did ask a
14 very relevant question of Councilman Carrigan, and that
15 went to the question of his vote and Councilman
16 Carrigan's response went to the fact that he voted on the
17 losing side of the issue on the 23rd of August. Again,
18 what happened in the Second Judicial District Court, what
19 happened with the City Council at any point subsequent to
20 the 23rd of August, in my mind, has no relevance.

21 If you were to expand the relevance, you
22 would be -- you would expand this Commission's
23 jurisdiction into proceedings that are now pending before
24 the Nevada Supreme Court. I mean, the logical expansion
25 of that argument or extension of that argument would take

1 you into the chambers of the Justices of our Supreme
2 Court where the litigation presently resides.

3 VICE CHAIRMAN HUTCHISON: Counsel, I think
4 your objection is well taken on a case-by-case basis and
5 on particulars. But I can certainly envision where the
6 issues are before this Commission dealing with a
7 relationship between Mr. Vasquez and Mr. Carrigan to be
8 relevant on post August 23rd issues. I mean, if there is
9 some evidence that can be presented that may impact on
10 that relationship. I do agree with you, though, in terms
11 of getting into collateral matters that don't necessarily
12 bear on the issues like relationship and what type of
13 relationship that there is between Mr. Vasquez and
14 Carrigan.

15 MR. CREEKMAN: I respect your conclusion,
16 sir. But I do want it on the record that the City of
17 Sparks on behalf of Councilman Carrigan is objecting to
18 this post August 23rd line of questioning and to any
19 incidents which may have occurred after August the 23rd,
20 which again, we feel have absolutely no relevance to this
21 proceedings.

22 VICE CHAIRMAN HUTCHISON: Objection noted.
23 Yes, counsel.

24 MR. THORNLEY: Mr. Vice Chair, I suppose I'm
25 a bit confused. Are we here because of one instance that

1 thing. I know that he's trying to protect the City. So
2 I understand that.

3 But please put it on the record that I have
4 no problem answering any single question you want to ask
5 me because I'm not here to cover anything up. I will
6 answer Mr. Flangas's questions on what happened after
7 that with no problem.

8 VICE CHAIRMAN HUTCHISON: And I would just
9 like to just have Commission counsel, if you want to
10 chime in at all, or do you think it is necessary to chime
11 in or should we just move forward?

12 MS. FRALICK: I just wanted to point out that
13 we have Mr. Carrigan's Exhibit L is the stipulation and
14 judgment and order that was filed on September 1st, 2006,
15 and that is a matter that occurred after the date in
16 question, and this is submitted, this was submitted for
17 the consideration of the Commission. So just to have
18 that on the record that we didn't just come up with any
19 dates out of the clear sky. This is something that was
20 filed on behalf of Mr. Carrigan. And it is in the
21 exhibit book, and perhaps, I don't know, but I'm sure
22 that Commissioner Flangas did look at that.

23 VICE CHAIRMAN HUTCHISON: So after having had
24 said all that, counsel, is there anything else you think
25 you need to say for the record?

1 MR. CREEKMAN: One other point I would like
2 to have included in the record. This proceedings was
3 noticed under the Open Meeting Law with respect to an
4 August 23rd violation. To the extent a decision is
5 ultimately made with any basis from my perspective on
6 events which occurred subsequent to August 23rd, I
7 question this proceedings compliance with the Open
8 Meeting Law. I just would like that established in the
9 record also.

10 VICE CHAIRMAN HUTCHISON: Sure. And counsel,
11 I'll just note that one of the statutes at issue here
12 deals with whether or not the Councilman has a
13 substantial or continuing business relationship with
14 somebody, Mr. Vasquez in particular. Also there is a
15 question as to whether or not he has a commitment or
16 relationship that is substantially similar to interests
17 that are disclosed in NRS 281.

18 So that's why I think there are some subjects
19 that could in fact be relevant. But I think we ought to
20 move forward with that.

21 With that, Commissioner Flangas, I'm sure you
22 will limit your questioning to relevant matters regarding
23 this occurrence.

24 COMMISSIONER FLANGAS: For the record, I
25 thank Mr. Carrigan forthrightly agreeing that he will

1 answer any question that comes to him. Now getting back
2 to my question.

3 VICE CHAIRMAN HUTCHISON: Go ahead.

4 COMMISSIONER FLANGAS: We're going to be
5 dealing today with three potential violations of the
6 ethics law.

7 VICE CHAIRMAN HUTCHISON: Yes, we are.

8 BY COMMISSIONER FLANGAS:

9 Q There is a sequence of events that took place
10 within a month there that are interrelated and in no way
11 that they can be separated. So when the meeting took
12 place on or about September 1, 2, whatever that date was,
13 that meeting was a secret meeting, it was not posted --

14 A Sir.

15 Q It violated the --

16 VICE CHAIRMAN HUTCHISON: Wait a minute. Let
17 me just stop everybody for just a second.

18 Commissioner Flangas, if you have questions,
19 let's go ahead and elicit questions from the Councilman.
20 But really we shouldn't be making conclusions or drawing
21 conclusions.

22 COMMISSIONER FLANGAS: I'll rephrase that.

23 VICE CHAIRMAN HUTCHISON: We should ask
24 questions to elicit factual information.

25 BY COMMISSIONER FLANGAS:

1 Q When that meeting took place did anybody on
2 the Commission ask the question was this meeting posted,
3 is it a legal meeting, does it violate the ethics --

4 MR. THORNLEY: That meeting was an
5 attorney-client session.

6 THE WITNESS: Let me answer your question
7 because this has been in the media 10,000 times calling
8 it a secret meeting. If you want, some of you are
9 attorneys so you will understand this because it was all
10 about attorney-client privilege.

11 COMMISSIONER FLANGAS: You and I have
12 something in common.

13 THE WITNESS: You and I aren't attorneys,
14 sir. So I am going to tell you --

15 COMMISSIONER FLANGAS: We're not.

16 VICE CHAIRMAN HUTCHISON: Wait a minute.
17 Let's just have some decorum, order. Nobody is to be
18 talking over each other.

19 Commissioner Flangas, please yield the floor
20 to the Councilman and allow him to speak.

21 THE WITNESS: First of all, according to our
22 attorney, it wasn't a meeting, it was an attorney-client
23 privilege. In other words, you don't have to post that
24 because that's what our attorney said.

25 So to answer your question, no, because we

1 have done this many times before when we're settling
2 lawsuits, he said, okay, come in, we have a lawsuit here,
3 settlement agreement. Do you guys think that this is
4 okay? Yes, no, whatever it may be.

5 Okay. We give him the direction, go ahead
6 and settle it or not settle it. But as what happened in
7 that meeting is attorney-client privilege.

8 So yes, there was a nonmeeting because that's
9 what it was. I don't know what you call it. It was a
10 gathering of --

11 VICE CHAIRMAN HUTCHISON: It was a meeting
12 with your lawyers that was privileged.

13 THE WITNESS: That was privileged, exactly.
14 And here is what happened. That if you are on the other
15 side of this project and you don't want anything to
16 happen, you get a hold of the press -- I happen to be a
17 journalist, too, unfortunately -- and you get your PR
18 team in place and you say let's tell them it was a secret
19 meeting. Why? Because that looks bad.

20 So every single time they have come up and
21 called it a secret meeting, our City Attorney and our
22 Assistant City Attorney, whoever is sitting at the
23 meeting, will get up and say, please, it was not a
24 meeting, it wasn't secret. And kept going.

25 So that has been laid out a thousand times.

1 Once again, if it is in the press, it's got to be true.

2 VICE CHAIRMAN HUTCHISON: Councilman
3 Carrigan, you have been very clear on that point, and in
4 response to Commissioner Flangas's inquiry, that was a
5 meeting that was held with counsel, it's confidential,
6 it's privileged, and that's the makeup of the meeting.
7 We understand that.

8 THE WITNESS: Correct. But if you notice, a
9 week or two later we came into a Council meeting and we
10 voted to settle the agreement. So we did it in public
11 because of all the press and we said, okay, let's go in
12 public and we vote on it in public.

13 VICE CHAIRMAN HUTCHISON: Counsel.

14 MR. CREEKMAN: And I will add that, and
15 although I'm not testifying, I want to assist the
16 Commission in dealing with these issues, any action taken
17 at what I prefer to call the attorney-client session, to
18 avoid the use of the "meeting" word, I can represent to
19 you was action taken by, coincidentally by our assembled
20 City Council members, but it was action over which the
21 City Council has no jurisdiction, control or supervision
22 back on September the 1st. To which the Open Meeting Law
23 does not apply.

24 Not only did it not apply by virtue of the
25 fact that it wasn't a meeting, it was an attorney-client

1 session, any action that they took, and I can't go any
2 further with respect to this issue, but any action they
3 took was action over which the City Council has no
4 jurisdiction, control or supervision. It was completely
5 outside the ambit of the Open Meeting Law, contrary to
6 representations that have consistently been made in the
7 press.

8 VICE CHAIRMAN HUTCHISON: I'd like to try to
9 avoid trying to respond to every point that's been made
10 in the press or the media. And I understand there is a
11 frustration level and you want to be able to express
12 yourself, and I'm happy to allow that to occur to the
13 extent it deals with these issues.

14 THE WITNESS: Well, sir, you know what, I
15 don't mind answering those questions because it sure
16 clears up a lot here for me rather than listen to the
17 media or read it in the newspaper article. Because they
18 got it wrong. I mean, that's as simple as that.

19 VICE CHAIRMAN HUTCHISON: Listen, we just
20 want you, and I'm sure you are already doing that, to
21 respond to questions to the best of your ability, and to
22 the extent that that requires you to elaborate in a way
23 that is responsive to the question, great. I would
24 rather, though, not go into, as your counsel has already
25 pointed out, collateral matters that aren't important to

1 this hearing. So let's just stay with questions and
2 answers.

3 Commissioner Flangas, do you have any further
4 questions?

5 COMMISSIONER FLANGAS: No more at this time.

6 VICE CHAIRMAN HUTCHISON: All right. Any
7 other Commissioner? Commissioner Jenkins.

8 **EXAMINATION**

9 BY COMMISSIONER JENKINS:

10 Q Welcome, Councilman Carrigan. I want to go
11 back a little bit to our Vice Chair's questioning about
12 the in-kind donations in '99, '03 and '06, if I may.

13 In 1999, when you were working with Mr.
14 Vasquez, did you know anything about the plans for this
15 Lazy 8 project?

16 A No.

17 Q Did you know Harvey Whittemore?

18 A No.

19 Q Did you know of any of Mr. Vasquez's other
20 projects, other than working on your campaign?

21 A I was such a rookie, I didn't know anybody.
22 The only person I knew in politics was Carlos, and that's
23 why I asked him to be my campaign manager.

24 Once again, like I said, I was -- I got into
25 the race two weeks before the filing date. So that was

1 kind of a last-minute decision.

2 Q Did Mr. Vasquez in '99 ever ask you to
3 support any of the projects he was working on?

4 A Carlos has never lobbied me, ever. But the
5 opposite is true. If you want to get on to that
6 questioning, I could tell you how that works.

7 Q But you did ask him for political advice
8 after you were elected?

9 A I wouldn't say -- I would say we sat down and
10 talked about a few things. So I guess you could say -- I
11 didn't flat out say how do you think I should vote on
12 something, but we talked about politics. I wouldn't say
13 I asked him about advice. I would say we discussed
14 political matters.

15 Q Did you at any time after you were elected
16 in '99 and before this 2006 campaign got going learn of
17 the Lazy 8 project, Mr. Whittemore or Vasquez's
18 involvement in the same?

19 A The Lazy 8 project, I'm not sure exactly. I
20 think it was probably a year before it came before us.
21 So it was probably in the summer before we voted on it.
22 Carlos wasn't even working for Red Hawk Land Company at
23 the time.

24 Q So it came to your attention in your capacity
25 as a Council member?

1 A Yes, it was because it was going into my
2 ward. Actually, if you want to know kind of the
3 background on it --

4 Q Actually I don't. It being the Lazy 8, the
5 new location of the casino, was to go into your ward and
6 that is the geographical area you represent; right?

7 A Correct.

8 Q And that was really the issue, was to whether
9 to approve it for construction in your ward, was it not?

10 A Yes, ma'am.

11 Q So it was being proposed to be going into
12 your ward in 2005 when it came to your attention?

13 A That's correct.

14 Q Now what did you do then in response to this
15 proposal to determine the tenor of your constituency's
16 response to that proposal?

17 A Like I said, I was telling the Vice Chairman,
18 I was in a really great position because during that time
19 I was running a re-election. And I got to knock on
20 doors, and that's all anybody wanted to talk about. So
21 when I knocked on their door, my first question was, hey,
22 what do you think about the Lazy 8? Because I represent
23 ward -- I'm sorry, go ahead.

24 Q Let me stop you really quickly because you
25 have just told me that you learned about the proposal

1 about a year before the election.

2 A Correct.

3 Q Were you campaigning for reappointment or
4 re-election in 2006, a year before that election took
5 place?

6 A Actually, no.

7 Q So let's say your election in that year was
8 in November, was it not?

9 A Correct.

10 Q So when approximately did you become aware of
11 the proposed location of the Lazy 8 project?

12 A That was a year before.

13 Q And did you do anything to take the
14 temperature of your constituency at that time before you
15 started campaigning?

16 A I started to take -- actually that's why I
17 want to go into a little background.

18 Q All right.

19 A They have a floating gaming license, and they
20 could have put up a stand-alone casino, and the people in
21 my ward did not want that. So I took it upon myself to
22 go talk to Harvey Whittemore and say, look, you are never
23 going to get this thing passed in the constituency of
24 Sparks if it's a stand-alone casino.

25 I had also talked to the Nugget. The Nugget

1 told me we won't oppose this project if they build a
2 200-room hotel because we're on a level playing field.
3 They later went back on their word, by the way. They
4 said it on the record, and then they said it on the
5 record that, well, yeah, but now we're opposed to it.

6 But I went out there and said, look, if you
7 build this, as a retail commercial area with more product
8 to it, that's what the constituency of Sparks would like.
9 The Nugget won't argue about it. So that is what I did
10 up until I started knocking on doors.

11 Q At what point in your knowledge did
12 Mr. Vasquez become involved with the Lazy 8 project?

13 A You know, you would have to ask him when they
14 hired him. I don't know. But it had to do -- it was
15 sometime between that summer and the next summer.

16 Q And when did it become known to you that your
17 former campaign manager for two campaigns and personal
18 friend, to an extent, was a part of this very contentious
19 issue in your ward?

20 A Well, he called me up and said that he was
21 hired by Harvey Whittemore. But he has a lot of other
22 things he does. This is just one of them.

23 Q Okay. When you were talking with
24 Mr. Whittemore and trying to figure out how to keep
25 everybody happy, my characterization of your testimony

1 with regard to the Nugget and other large players in this
2 game, was that a political discussion? Were you trying
3 to balance the interests or were you -- what was your
4 intention?

5 A My intent was to get the best product for the
6 City of Sparks and my citizens, and my constituency were
7 telling me what they want and I was trying to do that.

8 Q When you say that your constituency, your
9 voters were telling you what they wanted, how was that
10 communicated to you other than during the campaign?

11 A Telephone calls, e-mails, face-to-face,
12 supermarkets.

13 Q So you had in your mind how you felt or how
14 you intended to vote after considering all the
15 information with regard to the Lazy 8 project well before
16 Mr. Vasquez became involved?

17 A If all those pieces fell into place I was
18 going to vote for the project because that's what 70
19 percent of the people I was talking to or more than 70
20 that I talked to, it turned out, I guess I could say 62
21 percent since that's how many points I got re-elected.
22 Yeah, that's my intention.

23 Q So when Mr. Vasquez called you and said he
24 was just hired, did anything run through your mind about,
25 gee, I wonder how that might affect my opinion or my

1 actions with regard to Lazy 8 as a Council member?

2 A No. I have known Carlos for a long time. He
3 has never ever asked me for anything. And so I didn't
4 think he was going to start.

5 Q Did he at any time make it known to you that
6 if this project went through, he'd have a boon to his
7 business?

8 A I asked him -- I did ask him, I said, if this
9 thing goes through or fails, does it matter to you
10 financially. He said no. He was on a contract and --
11 well, and the good example is he is still working for
12 him.

13 And you have to remember, in August of 2006,
14 this thing failed. In other words, the City Council
15 voted against it, and he didn't get fired. So I guess
16 the answer to your question would be it didn't matter.

17 Q Now earlier in the questioning that I believe
18 Commissioner Hutchison was going through you stated that
19 you wanted everybody to know that Vasquez wasn't getting
20 paid.

21 A Correct.

22 Q Why?

23 A Because I didn't want -- I'll give you a
24 quick background for me. I graduated from the Naval
25 Academy. We have an honor code that says you won't lie,

1 you won't cheat, you won't steal, and you won't tolerate
2 anybody that does. And that's been ingrained in me.

3 I wanted to be above board with everything
4 because I didn't want somebody to come back and say, oh,
5 somebody got you elected, now you owe them something.
6 And that's just in my character. That is one of the
7 reasons I told Mr. Flangas, I don't care what questions
8 you ask me because in my mind, I have done nothing
9 incorrect and I'll answer anything you got.

10 So I just -- I'm above board on everything.

11 The other thing is when I was in the military
12 I had a top secret clearance, I was cleared for the
13 ridiculous. I have probably 10 background checks on me.
14 So my family is very used to people coming over and
15 asking about us. I mean, my life is an open book. I
16 mean, I have had my finances checked, my background
17 checked ten times by government.

18 Q And Councilman, I want to assure you that I
19 don't mean to infer that you have done anything wrong or
20 right in this instance.

21 A Ma'am, I just wanted to let you know where I
22 came from. That is why I wanted a report. That is why
23 every single time I have a campaign disclosure report I
24 report everything, in-kind. If he and I talk about
25 something, to me, that is a consultation and I'm going to

1 report it.

2 Q Okay. Is it your -- I mean, is it typical in
3 City Council races that, in your opinion, that the
4 campaign managers don't get paid?

5 A You know, this one, I'm not sure. You can
6 ask Carlos about it. I know he's run a couple or helped
7 with a couple campaigns. I think he even helped with
8 Kenny Guinn's campaign, and I don't think he got paid for
9 that either.

10 I don't think you are -- what he does isn't
11 for money. I think he does it for the love of the game.

12 Q My question really goes to whether there was
13 any special provision of services to you even if it
14 wasn't for compensation, so to speak. In your
15 experience, that's typical?

16 A I think with Carlos it's typical. There may
17 be some other campaign, run campaigns that get paid for
18 it, but for him I think he does a lot of it for free.

19 Q Why did you go to your attorneys and ask for
20 advice about disclosure and abstention as it related to
21 the Lazy 8?

22 A Because Carlos got hired by the company that
23 owns the Lazy 8 project. I asked our City Attorney for
24 an opinion because I wanted to make sure that it was
25 legal and proper for me to vote. So before the

1 election -- excuse me -- before the vote I asked our City
2 Attorney for an opinion because I wanted to make sure
3 that everything was out in the open.

4 Q What in your mind was the concern?

5 A My concern was I did not want somebody to
6 think that I was voting in a certain way because Carlos
7 is a friend of mine.

8 Q Have you ever asked the City Attorney for a
9 similar opinion regarding any other vote?

10 A Yes.

11 Q I don't need to know what they were. And
12 have you a history of abstaining from votes? In your
13 recollection of your service on the Council, have there
14 been significant number of disclosures and/or
15 abstentions?

16 A I abstained once.

17 Q And have there been more than one disclosure?

18 A I disclosed -- no, I abstained once because
19 of something that happened. I never had to make a
20 disclosure because nothing has ever come up that I had to
21 disclose.

22 Q But in this event you disclosed your
23 relationship and then did not abstain from voting?

24 A I did not. And the reason I did that, if you
25 want to know, is because with my attorney's advice, he

1 went over the NRS with me, and basically said if you
2 don't have any financial dealings, if you don't think you
3 are giving anybody a privilege that you wouldn't give any
4 other citizen, and you think that you can vote, then you
5 go ahead and vote. I properly disclosed.

6 Here is the interesting fact. The next day
7 after I disclosed, we were on three channels, TV channels
8 and in the newspaper as breaking news, they said this is
9 breaking news. I said it the night before. So it wasn't
10 that breaking.

11 I mean, you know, I admitted that he was a
12 friend of mine, and I laid out the disclosure exactly
13 like the City Attorney gave it to me. And then I said
14 I'm going to vote on this, I'm not going to abstain.

15 And I have to tell you why another reason.
16 My citizens, I represent 87,000 people. If you keep
17 abstaining every time, I'm not doing them any good, and
18 I'd quit if I had to do that.

19 COMMISSIONER JENKINS: Thank you, Councilman.
20 I don't have anything further at this time. I'll give
21 someone else a chance.

22 VICE CHAIRMAN HUTCHISON: Thank you,
23 Commissioner Jenkins. Other Commissioners?

24 Commissioner Hsu. Commissioner Cashman, go
25 right ahead.

EXAMINATION

BY COMMISSIONER CASHMAN:

Q Thank you, and good morning, Mr. Carrigan.

A Good morning.

Q Councilman. You indicated to us that you are career Navy, I believe?

A Yes, sir.

Q What was your final rank? Can you give me a brief synopsis of your career?

A My final rank was commander. I was in the Navy for 24 years. And I was a naval aviator, and I have a subspecialty in intelligence.

Q That would explain your top secret clearance.

A Yes, sir.

Q You retired in 1993, you said?

A It was actually January 1st, 1992.

Q What did you do after that?

A After that I went back to the University of Nevada, Reno, and got a Master's Degree in journalism. Then I went to work for a newspaper for a while, and then in 1997 after I received my Bachelor's Degree, University of Nevada, Reno, asked me to be an instructor part time. So I teach media writing and ethics.

Q Do you still work for UNR today?

A Yes, sir, I do.

1 Q Explain a little bit more to me how you
2 decided to get into politics.

3 A Actually it was my wife. I had been retired
4 out of the military, and the same reason I got into
5 journalism because I didn't like journalists, because I
6 didn't like the way they did some things, so she told me
7 to get a degree and try to change it. Our City
8 Councilwoman was not running again, and I said -- I was
9 making a comment at dinner one night and said, boy,
10 whoever gets elected, I hope they know what's going on.
11 And I kept going and going. And because of my military
12 background I follow politics a lot, and my wife said,
13 well, if you think you can do a better job, why don't you
14 try.

15 So I picked up the phone and said, Carlos,
16 would you like to run my campaign, and that was seriously
17 about two weeks before the filing date.

18 Q That was the beginning of your conversation
19 with Carlos as it relates to the campaign there? You
20 hadn't discussed with him in the previous to that running
21 or politics or being elected or anything along those
22 lines?

23 A No, sir.

24 Q I think it's fair, and tell me if this is
25 true or not, that Carlos has been your campaign manager

1 for your three campaigns and he is your primary political
2 advisor?

3 A Yes, sir.

4 Q I think you said that he was instrumental in
5 getting you elected in the first go round, and maybe so;
6 is that correct?

7 A He was instrumental in all three elections.

8 Q Did he give you any political advice
9 regarding the Lazy 8?

10 A No, sir, he did not.

11 Q You had indicated that he was a political
12 advisor, and then I think to a subsequent question maybe
13 that changed a little bit. Can you go into the
14 background of political advice and the kind of advice
15 that he has given you over the past seven, eight years?

16 A You know, I wouldn't say it was as much
17 advice as it was we'd talk about certain issues. And
18 we'd kind of work it out and say where are we. It's very
19 rare that we ever talked about -- we never talked about
20 anything that he worked on at all. In other words, if
21 you are asking did he come up and say I'm working on this
22 project and this is what I think you should do
23 politically, he has never done that.

24 Q Did you ever bring issues -- and you have
25 already answered the question relative to the Lazy 8 --

1 but did you bring -- politics are full of thorny
2 decisions and thorny issues. Did you ever go to him and
3 talk through the relative merits of particular decisions
4 and things as one might expect you would with a political
5 advisor?

6 A Yes, on certain issues.

7 Q Relating to the City?

8 A Relating to -- yeah. I'm trying to think of
9 some specific to give, and I can't think of any right
10 now.

11 Q But nothing specific to the Lazy 8?

12 A Nothing specific to anything he's done in the
13 city.

14 COMMISSIONER CASHMAN: I think that's all my
15 questions for right this moment, Mr. Chairman.

16 VICE CHAIRMAN HUTCHISON: Thank you,
17 Commissioner Cashman. Commissioner Hsu.

18 COMMISSIONER HSU: Thank you, Mr. Chairman.

19 **EXAMINATION**

20 BY COMMISSIONER HSU:

21 Q Good morning, Mr. Carrigan. Thank you for
22 your patience during this proceedings. I want to try to
23 put your testimony in context of some of the documents
24 that we have been presented as exhibits.

25 Let's start with the Commission's exhibit

1 book. Do you have the materials in front of you
2 somewhere? It would be the green hearing exhibit book,
3 if you have that.

4 A Yes, sir, I have it.

5 Q And then you will notice that there's Bates
6 stamp numbers on these documents. So if you go to Tab 2,
7 and the Bates stamp 52. Are you there?

8 A Yes, sir.

9 Q And this is a letter -- it goes to the
10 following page, but it is a letter that you signed;
11 right?

12 A Yes, sir.

13 Q I guess there is no date on it. But it is a
14 letter to Patrick Hearn, who was the Executive Director
15 of this Commission, just so we are clear for the record.
16 But anyway, if you could go to the fourth paragraph where
17 it says, "First, my business relationship with
18 Mr. Vasquez is neither 'substantial' nor
19 'continuing.' My friendship with Mr. Vasquez
20 can be so characterized, but not my business
21 relationship."

22 Do you see that?

23 A Yes, sir.

24 Q And this is an accurate statement?

25 A That is very accurate.

1 Q So the way I read this, then, is that you are
2 saying you don't have a substantial business or
3 substantial and continuing business relationship with
4 Carlos Vasquez, it's intermittent because you only do
5 campaigns every four years or so; would that be fair to
6 say?

7 A That is fair.

8 Q With respect to the business relationship you
9 have with Mr. Vasquez, you testified earlier that Carlos
10 never got paid for managing your campaign.

11 A That's correct.

12 Q And do you know if that's basically his
13 practice for all campaigns?

14 A You will have to ask him that. I'm not sure.
15 I think I only know of one other one that I know he
16 worked on the Governor's campaign, and I know he didn't
17 get paid for that.

18 But you know, when you say business, to me it
19 means that money goes back and forth. I really couldn't
20 consider even when we run campaigns as a business
21 relationship because there isn't any money involved.

22 Q Okay. So would it be fair to say that
23 because there is no money involved where he gets paid
24 from your campaign, that he is doing this based on his
25 friendship with you?

1 A I would say that is probably correct.

2 Q He doesn't have a substantial and continuing
3 business relationship with you, but he would have a
4 substantial and continuing friendship with you?

5 A That's correct.

6 Q Accurate statement?

7 A It is. I think that is what it says in
8 there.

9 Q I just wanted to make sure.

10 A No.

11 Q I understood what you were saying there.

12 A I didn't mean to be derogatory. That's
13 correct.

14 Q This friendship really took off in 1999 with
15 the first campaign that Carlos worked on; right?

16 A Yes, sir.

17 Q I wanted to try to get a little bit of a
18 flavor of that. You said you went to -- do you still go
19 to dinners regularly?

20 A Not regularly. But we still go to dinner.

21 Q When is the last time you have gone to
22 dinner?

23 A I'm trying to remember. A month ago maybe.

24 Q Do you have dinners at your home? I mean, do
25 you guys go to each other's homes and visit family?

1 A Generally it is go out to dinner.

2 Q Is it with family or is it just you two alone
3 generally?

4 A Generally it's with family. So it's my wife.
5 And he's been divorced recently. So his ex-wife doesn't
6 come any more.

7 Q But previously when he was married, you would
8 have dinners as a family?

9 A It wasn't that. She was basically raising
10 children, so we didn't get out very much at all. We
11 would be lucky if we got out once every six months to go
12 to dinner only because everybody was too busy.

13 Q I guess where I'm getting at, were these
14 dinners that you would go out with Carlos Vasquez, were
15 they more social in nature?

16 A They were totally social.

17 Q So it wasn't necessarily to talk politics?

18 A You know, if you have been in politics eight
19 years like I have, my wife doesn't want to hear any more
20 about it when we go out to dinner. So we kind of have a
21 pact if we go out to dinner you knock off talking about
22 politics.

23 Q How about -- I mean, these are kind of maybe
24 nitpicky questions, but I want to get a better idea.
25 Like, for example, you have a cell phone; right?

1 A Yes.

2 Q Do you have Carlos on speed dial?

3 A Yes.

4 Q It would be because of your friendship with
5 him?

6 A Yes.

7 Q Have you ever referred business to Carlos?

8 A No.

9 Q In 1999, when he served as your campaign
10 manager, do you know if Carlos was also in the lobbying
11 business?

12 A In 1999?

13 Q Yes.

14 A I think he was.

15 Q You think he was? But you are not sure?

16 A I'm not sure. I really didn't know -- I
17 didn't get into his business at all prior to that.

18 Q So at any point during this relationship from
19 1999 forward, did you become aware of more particulars
20 with respect to some of the lobbying activities Carlos
21 might be engaging in?

22 A Yes.

23 Q Can you give me a ballpark of when you
24 started wondering about that?

25 A I think probably after I got elected. And

1 then I was plugged into the political arena. So you go
2 to different things and hear different people talk.

3 Q After you got elected were you aware of
4 Carlos engaging in lobbying activities on certain matters
5 that went before the Sparks Council?

6 A He never come before the City Council. I
7 think he did it before I got there, but since I was in
8 1999 on the first thing he brought forward, in other
9 words, I guess one of his clients or whatever you want to
10 call it was Red Hawk Land, and then later on he has
11 another client that came in.

12 Q So the first client, so to speak, of Carlos
13 that you were aware of that was coming before the City
14 Council was Red Hawk Land, and that's essentially the
15 proponents of the Lazy 8 matter; right?

16 A Correct.

17 Q And that would be in 2005, 2005 time frame?

18 A Yeah, I knew about the Lazy 8 before he got
19 hired by Red Hawk Land because it was coming before the
20 City before that.

21 Q Thank you. I want to switch directions real
22 quick just to clarify the record and my own mind. If you
23 could go to Tab 7 of the green book and Bates stamp 152.
24 I'm sorry, Bate stamp 150. I just want to clarify
25 things.

1 Are these campaign contribution reports
2 relating to your 1999 campaign? That would be fair to
3 say; right?

4 A Yes.

5 Q If we look at No. 1, Bate stamp 150, about
6 the in-kind contributions, there is an entry for Carlos
7 Vasquez, Laurie Vasquez and Electrographics. Do you see
8 that?

9 A Yes, sir.

10 Q Again, they are in kind. I think I remember
11 hearing you testify that it was basically consulting time
12 that was being reported as in kind.

13 A Correct. And then there was Electrographics
14 is I think it was another designing the logo signs and
15 all that.

16 Q Owned by the Vasquez family?

17 A Yes.

18 Q So when you look at that first entry Carlos
19 Vasquez at \$2500 of in-kind contributions, that would be
20 based on your conversations and consulting?

21 A Again, we listed all of our conversations or
22 consultations.

23 Q So then when you get to the next entry of
24 Laurie Vasquez, and as you heard my disclosure, I
25 represented Laurie Vasquez, who is his father -- are you

1 aware of that?

2 A I am aware because his office was right next
3 to Carlos at the time. And that once again, Laurie sat
4 in on some of our campaign strategy, and so I wanted to
5 list it.

6 Q And that is why he has a separate entry
7 because he provided some kind of time?

8 A To the best of my recollection, that is why
9 we did it that way.

10 Q And then as you have indicated,
11 Electrographics is a company of Carlos Vasquez?

12 A Right.

13 Q And again, that was the in-kind contribution,
14 there was some graphics?

15 A I think it was some printing and graphics.

16 Q Then there is also somewhere in these
17 documents another company called Art Associates.

18 A Correct.

19 Q And that would be another -- was it a
20 printing company?

21 A I think that is the advertising part of the
22 company.

23 Q So just to distinguish for the record, there
24 are two companies, there is Electrographics, which is
25 print?

1 A I think you can ask Carlos. I'm not sure. I
2 think it is more they do design graphics.

3 Q And then there is the Art Associates which is
4 the advertising?

5 A I think it is on the advertising. But once
6 again, please don't hold me to that.

7 Q I'm trying to get your understanding, if you
8 have an understanding about the difference between those
9 two companies.

10 A Yes, I understand they are two different
11 companies.

12 Q Now if you could go to Tab 2 of the green
13 book, and Bates stamp 69. Do you see that? It is a
14 memorandum from the City Attorney's office to the Mayor
15 and Sparks City Council members?

16 A Yes.

17 Q Dated August 17, 2006?

18 A Yes, sir.

19 Q Now do you know what prompted the City
20 Attorney to write this memo?

21 A I do. I asked for it, an opinion.

22 Q So it was you and not other people?

23 A No. It was just me.

24 Q It was with respect to the issues that we
25 have been talking about today; right?

1 A Yes, sir.

2 Q Your concern about having a relationship with
3 Carlos Vasquez?

4 A Correct. And I wanted to make sure that I
5 was okay to vote on it, so I asked for an opinion.

6 Q Based on your review of this legal
7 memorandum, you acted accordingly?

8 A Yes, sir, I disclosed before the meeting and
9 basically came out with the disclosure that said now that
10 I have disclosed and, you know, kind of like what you did
11 today, and said that I still can vote on this because it
12 has not swayed me. And really the last, second to the
13 last paragraph is the one that really kind of says it
14 all, that it says, and this is out of your own --

15 Q On page 71 are you looking at?

16 A I'm looking at 71, the second paragraph. It
17 says: "The Nevada Ethics in Government Law
18 further provides that if a financial or
19 personal detriment or benefit which accrues
20 to a public official is not greater than
21 that occurring to any other member of the
22 general business," you can vote on it. And I felt
23 that I wasn't any different than anybody else. So that's
24 part -- that was part of the reason.

25 But if you read the entire -- it is kind of a

1 long opinion.

2 Q You read this pretty closely?

3 A Very closely.

4 Q So if you look at the last paragraph, for
5 example, where it says, "For the foregoing reasons,

6 it is our opinion that prior statements of
7 position on an issue of public importance
8 by either a candidate or by an elected
9 official do not require disqualification
10 of that individual at a time the individual
11 is charged with deciding upon the issue."

12 I read that correctly; right?

13 A Yes, sir.

14 Q And is it your understanding based on that
15 sentence I just read that -- actually let me rephrase
16 that. Was the issue your relationship with Carlos
17 Vasquez, or was the issue prior statements on a public
18 importance? I see a little difference there.

19 A There is a difference. I asked because of my
20 personal relationship with Carlos.

21 I also asked because whenever a City
22 Councilman made a statement earlier in the year that he
23 didn't care where this thing was going, he was going to
24 vote no on it. And so that's why the City Attorney came
25 up with this other part that said prior, I think prior

1 admittance is not bias.

2 Q And I understand that part of it. I mean,
3 politicians will say certain things.

4 A Correct.

5 Q You are not acting as judges, you are acting
6 on things of certain public --

7 A That was his opinion, and I'm sure that he
8 had a good reason for it, just like I had a reason to
9 vote for it. He thought he had a reason to vote against
10 it, and that is why we get elected is to make those
11 decisions.

12 Q With respect to the opinion on predisposition
13 or prior opinions, that really wasn't something that you
14 were concerned about?

15 A No, sir. I was only concerned with my
16 personal relationship with Carlos and if there was --
17 whatever the opinion was. And whatever the opinion from
18 the City Attorney I was going to follow. If he said you
19 need to recuse yourself, I would have recused myself that
20 night.

21 Q So if you go to the next sentence that we
22 just read in the last paragraph, "The only type
23 of bias which may lead to disqualification
24 of a public official must be grounded in
25 facts demonstrating that the public official

1 "stands to reap either a financial or personal
2 gain or loss as a result of the official
3 action."

4 Do you see that?

5 A Yes, sir.

6 Q I read that correctly?

7 A You did.

8 Q And is that a sentence that you took note of?

9 A Yes, sir, I did.

10 Q And then when we go into the actual, your
11 actual disclosure, we have both minutes and apparently a
12 transcript. What I want to do is get you through the
13 yellow exhibit book, which is exhibits presented by the
14 City Attorney's office, and go to Tab K, and Bates stamp
15 62. On the top of that -- this purports to be a
16 transcript. It says, "Mike Carrigan Disclosure." Do you
17 see that?

18 A Yes, sir.

19 Q And then there is what appears to be you
20 being quoted verbatim. Can you look that over and tell
21 me whether or not this is an accurate reflection of what
22 you disclosed on that day?

23 A Yeah. I told our City Attorney -- I don't
24 remember saying all the "uh's" in there.

25 VICE CHAIRMAN HUTCHISON: None of us ever do.

1 THE WITNESS: Did you all notice that, too?
2 But yes, that is. It was written out for me and I read
3 it verbatim. I added my own "uh's."

4 BY COMMISSIONER HSU:

5 Q Again, when you look at some of the language
6 it says, "I do not stand to reap either a financial or
7 personal gain or loss as a result of any official
8 action." Do you see that language there?

9 A Yes, sir.

10 Q Was that directly from the legal opinion that
11 you -- that we just read from the City Attorney's office?

12 A This was directly from the City Attorney that
13 printed this up for me and told me to read it.

14 Q So did the City Attorney actually provide the
15 written or draft this disclosure for you?

16 A Yes, sir.

17 Q With respect to this disclosure, we now know
18 about your friendship, your substantial and continuing
19 friendship with Mr. Vasquez. I'd like to kind of pose
20 some hypotheticals in your mind. Let's say it wasn't
21 Mr. Vasquez. Let's say it was your father who was the
22 lobbyist for this project.

23 Would you have felt internally a need to
24 abstain?

25 A Yes, sir.

1 Q And why?

2 A Because, well, first of all, it's your
3 father, and according to the ethics rules in the State of
4 Nevada, that if you disclose that he's your relative,
5 then you have to say, well, this isn't going to sway me.
6 I would think that any reasonable person thinking about
7 it would say that anybody that is in your household,
8 unless it is your sister, would sway you. So I try to
9 take the high road. If it would have been a relative, I
10 would have stepped down from voting.

11 Q You joke about your sister, but if it was
12 really your sister --

13 A It was, and I just made a joke.

14 Q I just wanted to make sure that --

15 A She doesn't live in this state either. So I
16 can say that.

17 Q Okay. I mean, let me ask you this with
18 respect to your relationship with Carlos Vasquez. I
19 mean, he is a pretty close friend of yours now; right?

20 A Yes, sir.

21 Q I mean, close enough of a relationship like a
22 brother?

23 A I wouldn't go that far.

24 Q Why not?

25 A Because he's -- we don't have that close of a

1 relationship.

2 Q Do you have a brother?

3 A No, I have a sister.

4 Q Who lives out of state?

5 A Who lives out of state.

6 Q Do you socialize with your sister?

7 A As little as possible, but yeah, once in a
8 while I do.

9 Q Okay. I mean --

10 A No, I understand.

11 Q You confide on matters with Carlos Vasquez,
12 do you not?

13 A I do.

14 Q And you confide in matters that you wouldn't
15 normally confide with your sister on?

16 A Correct.

17 Q And I appreciate you being honest about this.
18 I mean, I know this is a very difficult process here, and
19 unfortunately, we're here to really look at what the laws
20 require us to.

21 A I understand. I just kind of get confused on
22 why I'm here. If somebody asked me the question I can
23 explain that.

24 Q With respect to the Lazy 8 project, you said
25 Carlos never talked to you about that issue, or the vote?

1 A He never lobbied me at all. But the opposite
2 is not true.

3 Q Meaning what, you talked to him?

4 A Meaning I went up to him and I said, if this
5 thing is going to pass, this is what we need.

6 Q So you were basically advocating a City's
7 position communicating through Carlos as to what --

8 A Before Carlos got in I was communicating with
9 Harvey Whittemore. When Carlos came in I found it easier
10 to talk to him.

11 Q And you were saying -- what was the nature of
12 what you were telling him?

13 A The nature of what I was telling him, a
14 stand-alone casino was not going to work, in my city.
15 Because we didn't want it. The constituency didn't want
16 that. What they did want is some entertainment.

17 So if you take a look at the evolution of
18 this project, it started off as an 18,000-foot
19 stand-alone casino, and it is now a 300,000 square foot
20 entertainment area that has a 14-screen TV -- or a
21 14-screen movie theater, 5 restaurants; made it so you
22 can't come from the casino and go anywhere else, you
23 either have to come in and out of the casino, because
24 that is what some of the citizens wanted. In other
25 words, they didn't want to be able to walk from the

1 casino to the movie theater because of kids.

2 They acquiesced to all of that. We asked for
3 \$300,000 for them to donate for affordable housing, and
4 we asked them to build us a 7400 square foot public
5 facility for either a police substation or a fire
6 station.

7 We also asked them to move a road and to buy
8 some land behind it so we could square away the roads in
9 Sparks. Somewhere along the line that project went from
10 whatever it was going to be to about \$50 million more
11 because of what I asked to be put into it.

12 So if you want to go over reverse lobbying,
13 in other words, they started off a certain level and they
14 ended up with 50 million or more because of what I asked
15 them to put into it.

16 Q Why did you feel it was your role to be
17 asking this as opposed to the City Manager or City staff,
18 the Mayor or someone else?

19 A Because the entire project was going in my
20 ward, and that's the -- well, it was in my ward.

21 COMMISSIONER HSU: Thank you, Mr. Chair. I
22 don't have any other questions at this time.

23 VICE CHAIRMAN HUTCHISON: Thank you,
24 Commissioner Hsu.

25 We have talked about various exhibits.

1 Counsel, let me just make sure just for the record that
2 we have these exhibits admitted. Do you have any
3 objection to admitting the exhibits that are marked NCOE,
4 Nevada Commission on Ethics exhibits, or obviously, your
5 own exhibits?

6 MR. THORNLEY: No, Mr. Vice Chair, we don't.

7 VICE CHAIRMAN HUTCHISON: We will go ahead
8 and admit those into the record.

9 Are there any further questions of the
10 Councilman by any other Commissioners? Yes.
11 Commissioner Capurro, please.

12 **EXAMINATION**

13 BY COMMISSIONER CAPURRO:

14 Q I just have a question. I'm not a lawyer.

15 A There are three of us here, then.

16 COMMISSIONER HSU: Four.

17 BY COMMISSIONER CAPURRO:

18 Q In hindsight, would you have done anything
19 different regarding the charges that have been filed
20 against you and the way you have handled this matter?

21 A Absolutely not. One of the things you have
22 to look at is these five people that filed ethics
23 complaints against me, which was in my opinion a
24 political move to try to get me out of the office. If
25 the citizens of Sparks thought I did anything that was

1 inconsistent, I wouldn't have gotten 62 percent of the
2 vote because you have to remember, this incident happened
3 in August. There was a primary right afterward and a
4 general election in November. And I won re-election. So
5 62 percent of the people in Sparks obviously thought that
6 I was doing a good job.

7 COMMISSIONER CAPURRO: That is all I have.

8 VICE CHAIRMAN HUTCHISON: Let's go ahead and
9 take a quick break. Commissioner Cashman.

10 **FURTHER EXAMINATION**

11 BY COMMISSIONER CASHMAN:

12 Q Thank you, Mr. Vice chairman. I have a
13 follow-up to a question that Commissioner Hsu asked.

14 You indicated that you did significant
15 reverse lobbying, if you will; is that correct?

16 A That is correct.

17 Q First through Harvey Whittemore and then
18 through Carlos?

19 A Yes, sir.

20 Q How many conversations would that have been?

21 A I think I had two conversations with Harvey
22 Whittemore before, and after that with Carlos probably
23 maybe two or three. I don't think it was more than that.
24 I laid out what we wanted, and this was about it.

25 Q Did he ever come back to you and say, boy,

1 you are really asking for the moon here, we can give you
2 X but not Y and you know how much money this is going to
3 cost us?

4 A Oh, yeah. He whined a lot.

5 Q In your mind, is his whining or his feedback
6 to you lobbying?

7 A No, I think it was just whining.

8 Q I mean, in the give and take --

9 A In the give-and-take part of it they didn't
10 take anything back. In other words, I said this is what
11 we need and they said okay.

12 Q I'm having some trouble, because you have
13 made a representation that Carlos never lobbied you on
14 the project.

15 A Correct.

16 Q Yet there was substantial conversation
17 between the two of you regarding the project, in which
18 case you just indicated that he had feedback, and in my
19 mind, any time that feedback occurs, that's lobbying.

20 A Oh, okay. Well, to me, lobbying is if he
21 came up to me and said, look, I would like you to vote on
22 this project and this is why I want you to vote on it.
23 To me, he was just responding from the people that own
24 the property on what I had told them that I wanted. And
25 basically it wasn't really a give and take. It was more

1 of a they took. We didn't give anything, they took it
2 all. And I did that. Not to say this is the first time
3 that I have ever done that.

4 One of the things that a lot of people don't
5 understand is when a project first comes in front of a
6 city, it's probably a hundred percent of the time I would
7 say never approved by the way the person puts it in. So
8 there is a lot of things happen in the background, and if
9 you are part of Summerset, you know exactly what I'm
10 talking about.

11 Q There is a lot of negotiation. There is no
12 question about that.

13 A And maybe I should qualify that as not
14 lobbying but negotiation. Is that a better word?

15 Because I guess from my point of view, I was
16 pretty hard lined with what we needed. So I'm not sure
17 if that is the way -- I never lobbied before, so I'm not
18 sure if that could be defined as lobbying. But that's
19 what I told him we needed.

20 Q Would it be fair to say that at that time
21 when you were having the conversations prior to the vote,
22 that Carlos understood, either you told him or otherwise
23 or maybe you had already formed your opinion based on
24 what your constituents had thought that if you do this
25 for me I will vote for the project?

1 A That is a good question, and I could tell you
2 that I was following more of what my constituency wanted
3 me to do more than anything else. I got part of that
4 from them, and so I guess the answer would be yeah. If
5 they put that in there, and that would make my
6 constituency happy, I would vote for it.

7 COMMISSIONER CASHMAN: Thank you. No further
8 questions.

9 VICE CHAIRMAN HUTCHISON: Commissioner
10 Jenkins.

11 **FURTHER EXAMINATION**

12 BY COMMISSIONER JENKINS:

13 Q I really like this format because I get to
14 take many bites at the apple. In court you only get one,
15 and this is really much better.

16 Councilman, when you first went to your
17 attorneys for advice about whether you should participate
18 in the Lazy 8 discussion, were you aware that you could
19 come to this Commission for a confidential first-party
20 opinion request?

21 A You know, I have read the -- there is a
22 little pamphlet that the Ethics Commission sends out, and
23 one of the things it says in there, if you are confused,
24 look for your attorney, if you have a personal opinion,
25 to ask them for your advice.

1 So to answer your question, it was my
2 understanding that if I asked for this from my City
3 Attorney, if he had any problems, he would ask the
4 Commission if he had any legal questions. So the answer
5 to your question is I didn't come to you because we have
6 a good City Attorney and good Assistant City Attorneys.
7 That is the reality of it.

8 Q But were you aware that you could come to us
9 for advice in addition to going to your attorneys?

10 A Yes.

11 Q And you chose not to do that at that time?

12 A I did because I thought my City Attorney had
13 already done that. If you look at some of the things
14 that he wrote in his opinion, he quoted some of the
15 Ethics Commission rules and regulations.

16 Q Stuff.

17 A Stuff.

18 Q Got it. And after you received the opinion,
19 the August 17th I think opinion from the gentlemen who
20 flank you today, who did you ask to write out your
21 disclosure for you?

22 A Mr. Creekman.

23 Q And did he do that?

24 A Yes, he did.

25 Q So the disclosure you read into the record

1 that was reflected in the transcript was written by your
2 lawyer, Mr. Creekman?

3 A Yes, and he also sent out an e-mail right
4 before we voted to say don't forget to disclose if you
5 have anything to disclose.

6 Q And I believe that e-mail is in our material
7 and we have been made aware of that. Do you have any
8 understanding about why the City Attorney's office did a
9 subsequent memorandum to the Council after the August
10 23rd?

11 A You mean the --

12 Q The vote.

13 A Is that the March 12th one?

14 Q Yes. I don't know what the exact date is.

15 A Because March 12th, 2007, that was in
16 response to a letter from the Ethics Commission Executive
17 Director to me to expound on some questions that he had.
18 So I went to our City Attorney and I said, can you please
19 help me out with this. Because it came out that the five
20 ethics complaints turned out to be different when they
21 got back to me. In other words, those things were kind
22 of thrown out and some new things were brought in.

23 Q After reading the March 12, 2007, memorandum,
24 do you feel that -- I'm asking for your opinion -- do you
25 feel that your disclosure and your decision to

1 participate were proper in retrospect?

2 A Yes, I do because, once again, I just want to
3 bring this up, Monday, just two days ago, we voted again
4 on the final handbook of the Lazy 8. I disclosed exactly
5 the same disclosure, and it was interesting to me because
6 the City Councilman that sits three down from me said on
7 the record that he had contacted this Ethics Commission
8 and that somebody, and he didn't say who it was, gave him
9 the opinion that if he disclosed, that he had a working
10 relationship, a business, an ongoing business
11 relationship with John Asquaga's Nugget that was totally
12 against this project, it was okay for him to vote.

13 So that is kind of why I'm confused today is
14 because he did something on Monday night that somebody
15 from the Ethics Commission said it was okay, yet I'm
16 sitting in front of you being accused of doing the same
17 thing. And I'm not sure what the difference is.

18 Q And frankly, I need to tell you that I don't
19 have any idea what the other Council member was referring
20 to and that information, I'm not privy to it.

21 A Right, neither am I, but I just thought it
22 was interesting.

23 Q It may have been a confidential opinion
24 request, it may have been a telephone call to a member of
25 our staff, it may have been any of a number of things.

1 A Correct.

2 Q And the facts and circumstances of his advice
3 given may be different from yours.

4 A Correct.

5 Q I don't know that it is or it wasn't, it's
6 just possible. So don't get confused by what other
7 people do. There is some good advice.

8 I was more interested in the disclosure that
9 was written for you.

10 A Once again, like I said, I disclosed the same
11 thing on Monday, which I didn't have to because it was --
12 once again, I have no financial or business interest.

13 Q Do you keep that slip of paper in your wallet
14 or something, or do they rewrite it each time?

15 A No, they rewrote it for me again. They left
16 out the "uh's" this time so it sounded a little better.

17 COMMISSIONER JENKINS: Thank you.

18 VICE CHAIRMAN HUTCHISON: All right, I would
19 like to clarify that we don't know what the other
20 Councilman is talking about. We haven't received any
21 proof that anybody from this Commission has rendered any
22 kind of opinion or talked with anybody or anything else.
23 And we have asked for that, and so we don't know if that
24 ever happened.

25 Are there any other questions by any other

1 Commissioners before we take a quick break for our court
2 reporter and the rest of us?

3 Let's go ahead and go off the record then,
4 and we will take a 10-minute break, and then please be
5 back in at about 11:30. Thank you.

6 (Recess taken at 11:20 a.m.)
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CARSON CITY, NEVADA, WEDNESDAY, AUGUST 29, 2007

11:31 A.M.

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VICE CHAIRMAN HUTCHISON: Let's go ahead and call the meeting to order.

I don't believe that there are any other questions of Mr. Carrigan, are there, by any counsel members? If not, we would like to proceed with Carlos Vasquez.

MR. THORNLEY: Mr. Vice Chair, we would like to ask some questions, please.

VICE CHAIRMAN HUTCHISON: You know what, go right ahead. I'm sorry, counsel. My mistake.

EXAMINATION

BY MR. THORNLEY:

Q Councilman Carrigan, has Sparks grown since 1999?

A Yes.

Q How much?

A I think we grow at a rate about 4 percent a year. I think in 1999 it might have been 50,000 people and we're up to 87,000 now.

Q With that change in population, have the elections changed in that time?

1 A Yes.

2 Q How so?

3 A They have gotten bigger, and especially since
4 we're on the November ballot now.

5 Q You say they have gotten bigger. What do you
6 mean by that?

7 A Well, we have more voters to reach. So in
8 other words, there is more registered voters.

9 Q Would it be fair to say that as they have
10 gotten bigger they have become more expensive?

11 A Yes.

12 Q Why have they become more expensive?

13 A Because in order to get re-elected nowadays
14 you have to advertise. And so advertising fees generally
15 go up during an election year, and so it's more expensive
16 to get the word out.

17 Q Earlier you told us that you campaigned
18 longer in 2006 than you did in 1999. Why did you feel a
19 need to do that?

20 A Because they moved the primary election back,
21 and so it made it a little bit longer of an election
22 year.

23 Q Now each time you run for election Carlos has
24 served as your campaign manager; is that right?

25 A That is correct.

1 Q Did you ask him each time?

2 A Yes.

3 Q Why?

4 A Because I didn't think he was going to
5 volunteer.

6 Q So is it your testimony that it was not
7 understood between yourself and Carlos Vasquez that
8 Carlos would represent you in each subsequent election?

9 A No, I think he dreaded the phone call every
10 four years.

11 Q Councilman Carrigan, are you subject to term
12 limits?

13 A Yes.

14 Q Are you able to run for City Councilman of
15 Sparks again?

16 A No, I'm on my third term, so I'm termed out.

17 Q At the August 23rd, 2006, meeting of the
18 Sparks City Council, did you disclose your relationship
19 with Carlos Vasquez?

20 A I did.

21 Q Did you disclose your friendship?

22 A I did.

23 Q Did you disclose that he was your campaign
24 manager?

25 A I did do that, too.

1 Q At the time you made that disclosure did you
2 believe that you could faithfully and impartially
3 discharge your duties as an elected official?

4 A Yes.

5 Q We have talked in detail about campaign
6 contributions that Carlos made to you; is that right?

7 A Yes.

8 Q Did you report every campaign contribution
9 you received from Carlos in a complete and timely fashion
10 to the Secretary of State?

11 A Yes, I did.

12 Q Have you ever accepted a gift from Carlos
13 Vasquez?

14 A Yes, I have.

15 Q What was it?

16 A Before I got to elected office he gave me a
17 model of an airplane I used fly.

18 Q Why did he give you that model?

19 A Because he thought it was kind of a neat
20 gift.

21 Q Have you ever accepted a loan from Carlos
22 Vasquez?

23 A No.

24 Q Do you measure your relationship with Carlos
25 Vasquez by the amount of time he's donated to your

1 campaigns?

2 A No.

3 Q Has Carlos Vasquez ever contributed any type
4 of cash to your campaigns?

5 A No, he has not.

6 Q Do you have a financial interest in the Red
7 Hawk Land Company?

8 A No, I do not.

9 Q Are you affiliated with Red Hawk Land Company
10 in any way?

11 A No.

12 Q Do you have any financial interest in the
13 Lazy 8 project?

14 A No, I do not.

15 Q Is Carlos a member of your household?

16 A No.

17 Q Is he related to you by blood?

18 A No.

19 Q Is he related to you by marriage?

20 A No.

21 Q Is he related to you by adoption?

22 A No.

23 Q Does Carlos employ you?

24 A No, he does not.

25 Q Does he employ your wife?

1 A No.

2 Q Does Carlos employ either of your daughters?

3 A No.

4 Q Do you have a business relationship with
5 Carlos Vasquez?

6 A The only business relation I have with him
7 is, if you can call it a business relationship, is when
8 we run campaigns.

9 Q You say if you can call it a business
10 relationship. How do you define a business relationship?

11 A Well, I'm not a businessman. I was former
12 military. But I always thought in business you were
13 there to make money. So I would say that if you make
14 money or if money changes hands one way or another, then
15 that would be a business relationship.

16 Q But you say that your relationship with
17 Carlos as your campaign manager is not a business
18 relationship. Or at least you wouldn't classify it that
19 way. Earlier you said that each time he ran for election
20 you asked Carlos if he would represent you; is that
21 right?

22 A Yes.

23 Q So it wasn't a continuing relationship?

24 A No.

25 Q We have discussed a couple times now that you

1 and Carlos had conversations between elections. What
2 types of things would you talk about?

3 A We used to talk a lot about the military, a
4 lot about the Navy. It's interesting right now because
5 my classmates from the United States Naval Academy are in
6 every key position in the United States Navy, first time
7 since 1944. By the way, the CNO is a classmate of mine,
8 and all the fleet admirals. We talked a lot about local,
9 national politics and state politics.

10 Q How did you vote on the Lazy 8 project?

11 A I voted to approve the Lazy 8.

12 Q What did you base that vote on?

13 A I based that vote more on what my
14 constituency was telling me to do.

15 Q Did you ever receive any legal advice as it
16 pertained to the Lazy 8 matter?

17 A Yes.

18 Q What was that?

19 A Well, it was the opinion from our City
20 Attorney whether I could vote or not vote on the issue.

21 Q Did you ever receive any legal advice as it
22 pertains to the project itself and not whether or not you
23 could vote on the issue?

24 A Yes. Well, before any project comes before a
25 city council it always has a legal stamp on it. So we

1 did get a legal vote. Some of the questions were could
2 they legally move it from one place to another and things
3 like that. So yes.

4 Q What was the advice of the City Attorney in
5 that case?

6 A The advice from the City Attorney, that they
7 had the legal right to do what they were trying to do.

8 Q Did that influence your vote in any way?

9 A Yes, it did. One of the things is if it is
10 legal to do, and according to NRS, if you are going to
11 vote no on a project you have to stipulate why you are
12 voting no. And I could not find any reason through the
13 NRS to vote, to legally say no to the project.

14 MR. THORNLEY: That's all we have for
15 Mr. Carrigan.

16 VICE CHAIRMAN HUTCHISON: Great, thank you,
17 counsel. Let's go ahead and call in Carlos Vasquez, sir,
18 please.

19 THE WITNESS: Sir, do you want me to still
20 sit here?

21 VICE CHAIRMAN HUTCHISON: Actually we're
22 going to have the next witness sit right next to you. So
23 you can sit right there, Councilman, yes.

CARLOS VASQUEZ

called as a witness,

was examined and testified as follows:

EXAMINATION

BY VICE CHAIRMAN HUTCHISON:

Q Good morning, Mr. Vasquez. How are you?

A I'm fine, sir. Good morning.

Q Good. Thank you for being here. We appreciate your testimony.

I think you were here for the procedures and the summary of what we're doing. We have just concluded the Councilman's testimony, and now we have moved on to your testimony. All the Commissioners will have an opportunity to question you, and then Mr. Carrigan's counsel will also have a chance to question you as well. I'll just start off with some basic overview questions for you.

First, Mr. Carrigan has I think already established what his relationship is with you in terms of you having worked as his campaign manager in '99, 2003, 2006. He's also established that you contributed in-kind contributions to him by your consultation and services as campaign manager.

He's also indicated that you have become friends, very good friends since 1999. He is somebody

1 who will seek you out for your political insight and
2 advice, consultation, you are close confidante of his.

3 Would you agree with all that?

4 A I would agree with everything except for the
5 statement that we have become good friends since 1999.
6 We actually met much earlier previous to Mr. Carrigan's
7 political career.

8 Q And he did testify to that. I should have
9 gone a little farther back. So fair enough.

10 Now why did you perform your campaign
11 management services for no fees for the Councilman?

12 A A couple reasons. Primarily being which is
13 that we have been long-term friends. Mr. Carrigan and
14 his wife and my wife at the time worked together in 1991,
15 and we got to know each other very well, became friends,
16 and when Mike decided he wanted to run for office, I
17 believed he would be a great candidate and he would be a
18 great Council person.

19 And I have been involved politically, Mr.
20 Chairman, my whole life. I walked houses for Ronald
21 Reagan's first campaign when I was 11 years old. So
22 politics has always been a part of my life.

23 I donate my time to a variety of candidates,
24 not just Mr. Carrigan, and I have virtually from middle
25 school on. So it was not unusual or unique for me to do

1 so.

2 But I did so because I believed in
3 Mr. Carrigan as a political candidate and as a City
4 Council person, and I thought that the City needed some
5 help at the time.

6 Q Since 1999, have you served as campaign
7 chairman for any other candidates or politicians?

8 A Oh, sure, absolutely.

9 Q How many? I'm not talking about working on
10 their campaign. I'm talking about campaign chairman,
11 chair their campaign -- or manager. Sorry.

12 A I was just going to say, there is a big
13 difference between chairman and campaign manager.

14 Q Campaign manager. The same position that you
15 provided services for the Councilman. How many other
16 candidates between the Councilman have you served in that
17 position since 1999?

18 A I can't be accurate in the number without
19 actually sitting down and writing it down. Since '99?
20 50, 60.

21 Q You served as the campaign manager --

22 A Yeah.

23 Q -- for 50 or 60 candidates since 1999?

24 A Uh-huh.

25 Q Have you been compensated for any of those

1 services?

2 A Some of them, yes, and some of them, no. It
3 depends on the office and the candidate and what my role
4 is.

5 Compensated, Mr. Chairman, and I don't want
6 to step on anything here, but I own a couple of firms
7 that provide services for these candidates. So when you
8 asked me if I'm compensated, I'm assuming that if my
9 printing company or my ad agency is compensated, that
10 that is compensation.

11 In terms of compensation for actually
12 managing the campaign as a campaign paid manager, very
13 seldom has that ever happened for me. Usually I'm
14 involved with campaigns that don't have those kind of
15 resources. So no.

16 Q So how do you make your living or how have
17 you made your living since 1999? Would you consider your
18 political consultation services to be the source of your
19 living since '99, or do you have another source?

20 A No, I have got a variety of different
21 business interests. I own an ad agency, I own a printing
22 company, I own an Internet firm, I own a gym. I own a
23 variety of other things.

24 Q You own a GM, what is that?

25 A A gym.

1 Q A gym. I thought like a GM dealership.

2 A It is the Caughlin Club. I have got a
3 variety of different business interests.

4 But my primary role in life is as a public
5 relations political advocate and strategist, and that is
6 primarily what I do. As a part of that I have
7 diversified and do a lot of other things and grown into
8 other businesses.

9 Q You said an ad agency, a printing company,
10 you own a gym. Was there a fourth one I missed?

11 A Little Internet company.

12 Q Little Internet company.

13 A Here in Nevada.

14 Q Now are the ad agencies and the printing
15 company, is the ad agency and the printing company
16 related to your work as a political consultant?

17 A Yeah.

18 Q Or do you have independent customers who are
19 not politically related, oriented?

20 A The bulk of our customers in both of those
21 companies are not politically related. Very few of them
22 actually are politically related.

23 Mr. Chairman, I do have another firm that,
24 and I think of them as one, but I have a company called
25 Cat Strategies which is my political arm and my public

1 relations arm.

2 Q Now you became involved with the Lazy 8
3 project at some point; is that correct?

4 A Yes, sir.

5 Q Can you describe that for us?

6 A I became involved with the Lazy 8 project
7 when Harvey Whittemore and the Peppermill, Peppermill who
8 I have worked off and on since I was 16 years old as a
9 busboy there, became -- when they started to bring the
10 project forward, I was asked to come on board and handle
11 the public relations, the public opinion, and to kind of
12 help wrangle in the entitlement process.

13 I have a lot of experience with plan
14 development, handbook development, and authoring and
15 writing and working with the engineering firms and laying
16 those things out. So my job was to kind of handle the
17 public opinion, wrangle up our team and kind of head up
18 the process on that for Mr. Whittemore and the
19 Peppermill.

20 Q When did you become involved in handling the
21 public opinion of that project?

22 A Oh, gosh. They had a meeting with the CAB,
23 so they had already started the process, and I had had
24 other dealings with Mr. Whittemore and the Peppermill
25 previous to this over the previous 15 years. They had a

1 meeting out there at the CAB, and I was brought on to
2 this project right after that. I am trying to think. I
3 believe it was about two and-a-half years ago, three
4 years ago. I don't have that exact date.

5 Q Would it be accurate to say that you were in
6 charge of the public relations campaign for the Lazy 8 at
7 the time that you served as campaign manager for the
8 Councilman in 2006?

9 A Oh, yeah.

10 Q And would you agree with me that your job was
11 to create as much public, favorable public opinion and
12 favorable public perception of the project as possible?
13 Was that one of your jobs?

14 A That was one of my jobs. But really it was
15 more about managing the requests for interviews and
16 trying to manage the misinformation that was already out
17 for that. We weren't going to win a public relations
18 war. We were under no illusions we would. It was more
19 to try and manage all the personalities involved, both
20 from internal and external, in terms of the media and
21 everything else.

22 Q Sure. But you were in charge of putting a
23 positive spin on whatever the media information that was
24 out there or you were in charge of making sure that
25 people thought positively as much as possible of this

1 project?

2 A Yes. I'm sorry, Mr. Chairman. Yes, that's
3 part of it.

4 Q Now in 2006, the Councilman runs. You guys
5 together put together a formidable campaign in what was
6 my understanding to be a very contentious campaign
7 season? Would you agree with that?

8 A Oh, absolutely.

9 Q And my understanding is it was contentious
10 because of the Lazy 8 project; is that right?

11 A Largely so, yes. I think there were other
12 issues that contributed to that also relating to a very
13 organized opponent, well funded by a special interest.
14 But yeah, it was a large part of it.

15 Q And then you continued on and up until the
16 August 23rd meeting that we have been speaking about here
17 today continued on and worked for the Lazy 8 project in
18 the capacity that you just described; is that right?

19 A Yes. And it isn't fair to -- well, I just
20 want to disclose, I have other responsibilities for
21 Wingfield Nevada outside of Lazy 8. So it isn't my
22 primary and only focus for them.

23 Q So you have extensive business ties, then, to
24 the Lazy 8?

25 A No. Other than as the public relations, I

1 have no business tie to it. I'm a paid consultant
2 through Wingfield Nevada.

3 Q And you do a lot of consulting beyond the
4 Lazy 8, is that what you are saying, for the company?

5 A Other development projects, other things that
6 the Whittemore family is involved with or Wingfield
7 Nevada is involved with.

8 Q Now did you -- my understanding is that the
9 Councilman actually talked with you about issues
10 concerning the Lazy 8 after the 2006 campaign and before
11 the August 23rd meeting; is that right? I'm trying to
12 kind of narrow some time frames here.

13 A Yeah. The Council as a whole, each of the
14 different Council people had talked to me at different
15 times about the process, what was happening. We met with
16 them to show them the project to take them through the
17 scope of what we were trying to do.

18 When you deal with a plan development
19 handbook, the City is very involved in the development of
20 that project, and what you start with and what you end up
21 with can be radically different as you go through kind of
22 that process of working with the staff and then working
23 with the elected officials, because they each have things
24 that they think need to happen for the surrounding
25 neighborhoods, the city and the impacted areas.

1 Through that process we met with Mr. Carrigan
2 and with all the Council people, and the project evolved
3 enormously. And Mr. Carrigan put some pretty significant
4 changes into this project that ended up costing a lot of
5 money.

6 Q Right. During the course of your meetings
7 with Mr. Carrigan concerning the Lazy 8, did you both
8 talk about what would be needed in order for Mr. Carrigan
9 to support the project, needed in terms of
10 characteristics of the project, amenities for the
11 project, how the project would need to be developed?
12 Were those subjects part of what you discussed with him?

13 A Not necessarily in that term. Each of the
14 Council people, Mr. Carrigan included -- I'll give you a
15 good example. Mr. Carrigan was very up front with us
16 that this project would not have his support unless we
17 built 200 hotel rooms to level the playing field with
18 other properties. That's an easy thing to ask. It is a
19 very, very expensive thing, particularly for a company
20 that already has a grandfathered nonrestricted license
21 that they just bought.

22 So that was -- and he had already had a
23 previous discussion with Mr. Whittemore about that. So
24 that was something that was presented to us that would
25 have to change or he was not going to be supporting.

1 At no point in time were we ever assured of
2 Mike's vote or position, but we knew the things we had to
3 change. We knew we had to change that.

4 We knew we had to build a public building.
5 We were asked for a donation of \$300,000 to affordable
6 housing. These were also things that came from different
7 entities at the City demanding that these things be
8 changed.

9 Mr. Carrigan was very clear our initial
10 design of this project in his opinion was inappropriate
11 for the area. And caused us to redesign the project.

12 Q Did you at any time ever ask Councilman
13 Carrigan for his vote in favor of the project or that he
14 support the project? Did you ever ask him to do that?

15 A No, sir. I never asked Councilman Carrigan
16 for his vote on this project.

17 Q Did you ask Councilman Carrigan for his input
18 in terms of what would need to happen from his point of
19 view to make the project happen?

20 A Yeah, I asked him for his opinion on what it
21 would take in his opinion to make this more ameliabile
22 with the neighbors, what he thought would be -- it is in
23 his ward. So the ward holder, if this project were in
24 anybody else's ward, that is who we would have been
25 spending more time with.

1 But we met with every Council member. When
2 you do PUD development, whoever's ward you are in has an
3 enormous impact on the project, and it was no different
4 than when we did the Sparks Galleria Mall down the road.

5 I have been involved with hundreds of these
6 types of projects. And it's always a different council
7 person or a county commissioner. And it you get to
8 understand what it is that they want to have happen in
9 their city and in their community, and you can either
10 bring a project that is inappropriate, it isn't going to
11 be good for anybody, or you can take that input from not
12 only the elected officials but the staff and the public
13 and try and create something that works ultimately.

14 It's a free market. If you build what nobody
15 wants, it fails, even if you get it entitled.

16 So yeah, we got a lot of input from not only
17 Mr. Carrigan but the other City Council people and an
18 enormous amount from the City staff.

19 Q Now one of the jobs of a campaign manager is
20 to raise campaign contributions and funds; wouldn't you
21 agree with that?

22 A That is generally the campaign chairman who
23 does that. The campaign manager handles mainly strategy,
24 tactics, implementation of the products that you need to
25 put on the campaign. The campaign chairperson is usually

1 the person who goes out and raises the funds in these
2 type of races.

3 Now when you get into larger races, the
4 Senate race, gubernatorial race, Congressional race or
5 even a Las Vegas County Commission race or a Las Vegas
6 City Council, well, the money is so much larger, that you
7 can have a finance chairman and you can have a big staff
8 of people who can come on board and do these things for
9 these candidates. These races up here in the north,
10 Mr. Chairman, are minuscule in comparison to our
11 neighbors in the south. There aren't the luxuries of
12 having that kind of a staff.

13 So as campaign, as a chairman, your job is to
14 go out and you raise money. You usually pick somebody to
15 be chairman who has the time, will donate the time, but
16 also has a great deal of community contacts and
17 influence.

18 In the case of most of these city races up
19 here, there is usually a campaign manager, the candidate
20 and then close friends of the candidate working in more
21 of like a kitchen cabinet. You got to kind of have to do
22 everything. So my job as campaign manager was to do kind
23 of everything in these small races.

24 So yes, I organized fund-raising letters, we
25 picked a list, we sent them out, and did those kind of

1 activities in this process. But the candidates up here
2 in the north really have to make the calls and raise the
3 money because, quite frankly, nobody wants to hear from
4 us. It's too close. This is a small community. If you
5 want to meet with the Mayor, you call him, you can go
6 meet him. It's not like San Francisco where you got no
7 chance at that.

8 Q And as you were involved in the efforts to
9 obtain campaign contributions for Councilman Carrigan,
10 did you ask the Lazy 8 or anyone or company affiliated
11 with the Lazy 8 to make campaign contributions to him?

12 A No, I did not ask the Lazy 8 to do that.
13 That's between -- there is no Lazy 8. It was Harvey
14 Whittemore or Wingfield Nevada and the Peppermill.

15 Q So any of those entities, your testimony is
16 you never asked Mr. Whittemore or any of his affiliates
17 or companies --

18 A I didn't directly ask them for it. I did
19 send them fund-raising letters, absolutely. I absolutely
20 did. No question.

21 Q So that would be a solicitation for a fund
22 raising. You didn't personally ask them for it, but you
23 solicited a fund raising?

24 A Oh, sure.

25 Q You solicited a campaign contribution?

1 A Yes. I have a list of about 700 donors, and
2 I sent letters and stuff to every single one of them.

3 Q Now one of the things that we will be looking
4 at today is whether or not you benefited from any vote or
5 action that the Councilman may have taken. And of
6 course, the focus is on the August 23rd vote.

7 So I'll just ask you directly the question.
8 What benefit did you gain when the Councilman voted in
9 favor of the Lazy 8 project on August 23rd?

10 A Absolutely none. We lost. So I got
11 absolutely no benefit.

12 Now my --

13 Q Now a critic may say or somebody who wanted
14 to be a devil's advocate could say you lost but you also
15 got some yea votes that ultimately have turned into a
16 complete victory for your client. So maybe this was a
17 progress. How would you respond to that?

18 A Well, I can tell you the night of the 23rd we
19 didn't feel it was a progress.

20 Q I'm not asking about the night of the 23rd
21 how you felt. What I'm saying is, did you benefit from
22 Council Carrigan's --

23 A No.

24 Q -- vote in favor of the Lazy 8?

25 A No. Mr. Chairman, my role with Wingfield

1 Nevada is not predicated on a win or a loss. I'm not
2 compensated more, I'm not compensated less. I bill
3 either winning or losing. I don't have a win bonus, I
4 don't have any kind of partnership, I don't have a piece
5 of the equity. I'm a paid consultant, and I'm paid the
6 same amount of money win, loss or draw or whatever
7 happens. It doesn't change for my compensation.

8 Q Okay. Now during the August 23rd vote, did
9 Councilman Carrigan actually bring the motion in favor of
10 the Lazy 8? Do you recall?

11 A Yeah, it's in his ward. He would have had to
12 have.

13 Q So he actually brought the motion to bring
14 the matter to the table and put it on the table, so to
15 speak?

16 A Right. Whatever ward the project is in, that
17 is the Councilman that makes the motion.

18 Q Do you know whether or not if Councilman
19 Carrigan had failed to make that motion if the item would
20 have died for lack of a motion because nobody would have
21 or could have brought it?

22 A Well, no. I think somebody else would have
23 made the motion. I think it still would have died.
24 There weren't the votes to pass it.

25 Q Who else would have made the motion, in your

1 view?

2 A I don't know if -- I think just to conclude
3 the issue, I don't think they would have wanted to leave
4 it hanging. I think that one of the other Councilmen
5 would have stepped up and put it on a motion so they
6 could vote it and conclude it. I don't think they would
7 have left it.

8 Projects like this that become so big in the
9 community, I just don't see -- this is my opinion only --
10 that they would have left it hanging. Somebody would
11 have made the motion and the vote would have happened.

12 Q You know that there's been a lot of critics
13 who were not happy with the vote that evening in terms of
14 the Councilman's vote and felt that that wasn't
15 appropriate and that sort of thing, obviously, as that
16 has been in the papers and that sort of thing.

17 I'm going to give you a chance to respond to
18 what may be a critic's view of what happened on the 23rd.
19 What would you say to somebody who said, well, sure, the
20 project may have failed, but Mr. Vasquez delivered his
21 man. Council Carrigan voted in favor of it, and
22 ultimately we have learned that the matter passed and
23 Councilman Carrigan voted in favor of it again.

24 A Mr. Chairman, my man is not Councilman
25 Carrigan. My job, what I was hired for partially, part

1 of my responsibilities was to get this project approved.
2 I failed to do that on the 23rd. There was no delivery
3 of my man. It doesn't work that way.

4 I don't have a specific Council person in
5 Sparks, Reno or Washoe County, and I appear in all three
6 jurisdictions constantly on a variety of development
7 issues. I probably have 30 or 40 development projects
8 right now that I'm working on.

9 Q But don't people hire you, Mr. Vasquez,
10 because you have access? I mean, you pick up the phone
11 and call somebody that you worked on their campaign, they
12 will answer your phone call?

13 A Very few of them have I worked on their
14 campaign any more. I haven't been running campaigns for
15 a while. I can pick up the phone and call many people
16 whose campaigns I have not ever run and never will.

17 Q But would you agree with me if you have run
18 their campaign or been involved in their campaign, they
19 are more likely to return your phone call than if
20 somebody calls them who they don't even know?

21 A No, I would not.

22 Q You wouldn't agree with that proposition?

23 A Somebody who calls me who I know, no, I would
24 agree with. But in the process of what I do, I end up
25 working with all of these guys constantly. It is just

1 part of what I do. I'm constantly working with the
2 electeds, whether I'm working on their campaigns or not.

3 Q Sure, but that is my point. You are a
4 political access person. That is one of the benefits you
5 give your clients; wouldn't you agree with that?

6 A Absolutely. I think also managing public
7 opinion and understanding the process of putting together
8 these handbooks, my niche is kind of plan development
9 handbooks and understanding how to put a plan development
10 together.

11 VICE CHAIRMAN HUTCHISON: Thank you,
12 Mr. Vasquez. Thank you again for being here this
13 afternoon.

14 Any other Councilman, or Commissioners --
15 sorry -- any other Commissioners have questions for Mr.
16 Vasquez? Yes, you have been promoted. Anybody else?
17 Commissioner Cashman.

18 **EXAMINATION**

19 BY COMMISSIONER CASHMAN:

20 Q Thank you, Mr. Vasquez, for coming and
21 testifying today on behalf of us and this hearing.

22 I wanted to delve a little bit more into your
23 conversations with Councilman Carrigan regarding the Lazy
24 8. I certainly understand that as the representative of
25 the ward where a project is located, they have a

1 significant input and a significant amount of say in and
2 a lot of times the Council will follow the vote of that
3 person as well. Tell me about the conversations that you
4 had with the Councilman prior to the vote regarding the
5 project.

6 A It was primarily about the scope of what we
7 were building and how we were building it and the issues
8 that the City had and he had and staff had with -- well,
9 Commissioner, there were all kinds of conversations about
10 lighting, about height that were significant concerns
11 about the height of the project. There were concerns
12 that what we would show would be built, which is why we
13 went on the record with that and that was part of the
14 settlement agreement that what we showed would actually
15 be built.

16 There were issues about the square footage of
17 the gaming floor, concerns about the parking structure.
18 We had concerns about Pyramid Highway, what was happening
19 with the RTC with the expansion of Pyramid Highway, which
20 forced us to completely redesign it a third time.

21 We had all kind of issues with how to be a
22 good neighbor to the neighbors. The original design was
23 much more of a downtown product type and didn't really
24 match with the surrounding environment, which caused a
25 redesign, to make it into -- I don't know if you have

ORIGINAL

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FILED

IN THE SUPREME COURT OF THE STATE OF NEVADA

JUN 30 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *R. Malone*
DEPUTY CLERK

MICHAEL A. CARRIGAN, Fourth Ward
City Council Member, of the City of Sparks,

Docket No. 51920

Appellant,

vs.

MOTION FOR
EXPEDITED APPEAL

THE COMMISSION ON ETHICS OF THE
STATE OF NEVADA,

Respondent. /

Appellant Michael A. Carrigan, by and through the undersigned counsel of record, hereby moves this Court for its Order expediting this particular proceeding.¹ This motion is made upon the Memorandum of Points and Authorities attached hereto, any Record that has been transmitted from

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¹ All statutes relevant to this matter and cited herein are accurately reproduced in "Exhibit A" included in the Appendix to this Motion and filed concurrently herewith. Appellant notes that the Nevada Ethics in Government Law has been amended since the conclusion of the proceeding before the Nevada Commission on Ethics, and now resides in NRS Chapter 281A instead of NRS Chapter 281. The body of this pleading employs the former statutory citations because those are the citations contained in every supporting document to this claim. The new citations are present and highlighted in Exhibit A.

JUN 30 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
DEPUTY CLERK

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1 the District Court, all of the documents, pleadings and papers on file in the above-entitled matter,
2 arguments of counsel and any other matters that may properly come before the Court for its
3 consideration in this matter.

4 Respectfully submitted this 30th day of June 2008.

5 **CHESTER H. ADAMS**
6 Sparks City Attorney

7 By: 

8 **DOUGLAS R. THORNLEY**
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12 (775) 353-2324
13 **Attorneys for Appellant**

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1 About three weeks later, several nearly identical ethics complaints were filed against Sparks
2 City Councilman Michael Carrigan with the Nevada Commission on Ethics (hereinafter
3 "Commission" or "Commission on Ethics"). *See* "Exhibit B" (*In re: Carrigan*, Commission on Ethics
4 Opinion (CEO) 06-61, 06-62, 06-63, 06-64). The complaints alleged that Councilman Carrigan used
5 his position as a Sparks City Councilman to secure unwarranted benefits for himself from Carlos
6 Vasquez and that Mr. Vasquez had an "undue influence" over Councilman Carrigan.

7 Mr. Vasquez has been friends with Councilman Carrigan since 1991, and served as the
8 volunteer campaign manager for Councilman Carrigan during his initial election to the Sparks City
9 Council in 1999, and each of his subsequent re-elections. *Id.*

10 Councilman Carrigan disclosed this relationship prior to the public hearing on the Red Hawk
11 application, and unequivocally stated that he was not in a position to reap any type of benefit from
12 the project, and that he could faithfully and impartially discharge his duties as an elected official in
13 this case. *Id.* Nevertheless, the Commission commenced an investigation into the actions of
14 Councilman Carrigan, and ultimately charged Councilman Carrigan with (1) using his position in
15 government to secure an unwarranted benefit for Mr. Vasquez; (2) failing to make an adequate
16 disclosure of his relationship with Mr. Vasquez; and (3) failing to abstain from voting on the Red
17 Hawk application on August 23, 2006. *Id.*

18 The Nevada Commission on Ethics convened on August 29, 2007 and held a hearing
19 regarding the ethics complaints filed against Councilman Carrigan. *Id.* The Commission found that
20 the Councilman (1) did not use his position in government to secure or grant unwarranted privileges,
21 preferences, exceptions or advantages for Carlos Vasquez; and (2) that Councilman Carrigan
22 adequately disclosed his relationship with Mr. Vasquez. *Id.* However, the Commission applied the
23 unconstitutionally vague definition of "commitment in a private capacity to the interests of others"
24 supplied by NRS 281.501(8), and inconsistently determined that Councilman Carrigan should have
25 abstained from voting on the Red Hawk application at the August 23, 2006 meeting of the Sparks City
26 Council due to his connection to Mr. Vasquez, despite concluding that a majority of Councilman
27 Carrigan's constituency favored the proposed Red Hawk application. *Id.* The Commission on Ethics
28 published a formal opinion regarding its findings at the August 29, 2007 hearing on October 8, 2007.

1 *Id.* Councilman Carrigan filed a Petition for Judicial Review in Carson City on October 9, 2007 (First
2 Judicial District Court Case No. 07-OC-012451B).

3 On May 12, 2008 a hearing regarding Councilman Carrigan's Petition for Judicial Review was
4 held in Department Two of the First Judicial District Court. *See* "Exhibit C" (Order of First Judicial
5 District Court). In an Order dated May 28, 2008, the District Court upheld the decision of the Nevada
6 Commission on Ethics. *Id.* Subsequently, Councilman Carrigan petitioned this Court for a writ of
7 mandamus, but on June 19, 2008 the petition was denied because the Court considered an appeal to
8 be more appropriate. *See* "Exhibit D" (Order of Supreme Court)

9 Councilman Carrigan has now appealed the District Court's decision on June 24, 2008. For
10 the reasons below, it is respectfully submitted that this Court should order an expedited schedule for
11 this appeal.

12 **A. Certain Provisions of the Nevada Ethics in Government Law are Unconstitutionally**
13 **Vague and Deceptive**

14 The void-for-vagueness doctrine derives from the Due Process Clause of the Fourteenth
15 Amendment to the United States Constitution. *Silvar v. District Court*, 122 Nev. 289, 293, 129 P.3d
16 682, 685 (2006). The Nevada Supreme Court has established a two-part test for determining whether
17 a statute is unconstitutionally vague: a statute is facially invalid if it (1) fails to provide notice
18 sufficient to enable persons of ordinary intelligence to understand what conduct is prohibited, and (2)
19 lacks specific standards, thereby encouraging, authorizing, or even failing to prevent arbitrary and
20 discriminatory enforcement. *Id.*; *City of Las Vegas v. District Court*, 118 Nev. 859, 862, 59 P.3d 477,
21 480 (2002). In particular, questions of vagueness must be more closely examined where, as in this
22 case, First Amendment rights are implicated. *Ashton v. Kentucky*, 384 U.S. 195, 200, 86 S.Ct. 1407,
23 16 L.Ed.2d 469 (1966); *Reno v. American Civil Liberties Union*, 521 U.S. 844, 870-872, 117 S.Ct.
24 2329, 138 L.Ed.2d 874 (1997) (noting that even if a statute is not so vague as to violate due process,
25 it may be impermissibly vague under the First Amendment if it chills protected speech).

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2 NRS 281.501(8) enumerates various relationships that amount to a “commitment in a private
3 capacity to the interests of others” under the Nevada Ethics in Government Law.² In this case,
4 Councilman Carrigan is challenging the two subsections of NRS 281.501(8) that the Commission on
5 Ethics applied in this case – subsection (d) and subsection (e). *See* Exhibit B; “Exhibit F” (Transcript
6 of August 29, 2007 Proceeding Before the Commission on Ethics) p. 193, lns. 2-13; p. 193-194, lns.
7 21-2; p. 197, lns. 10-21.

8 NRS 281.501(8)(d) classifies a “substantial and continuing business relationship” as a
9 “commitment in a private capacity to the interests of others.” The phrases “business relationship” and
10 “substantial and continuing” have never been defined by the Nevada Legislature. No state case law
11 or published opinion of the Commission on Ethics exists to clarify what these phrases mean - in the
12 context of the Ethics in Government Law or otherwise. Is a business relationship an attempt to turn
13 a profit, or is making money not a relevant factor? Does it include volunteer relationships? Are
14 political relationships encompassed by this subsection? If a public officer is a party to a business
15 relationship, what standards are used to determine if the relationship is substantial and continuing?
16 Is a relationship substantial because it represents a certain percentage of an individual’s income, or
17 is there some unidentified, previously determined amount of money? Is money even involved in the
18 analysis? Is a relationship continuing because it existed for some undefined fixed period of time, or
19 is there an unpublished standard that contemplates frequency of dealings? Without guidance from
20

21 ² NRS 281.501 Additional standards: Voting by public officers; disclosures required of public
22 officers and employees; effect of abstention from voting on quorum; Legislators authorized
23 to file written disclosure.

- 24 8. As used in this section, “commitment in a private capacity to the interests of others”
25 means a commitment to a person:
26 (a) Who is a member of his household;
27 (b) Who is related to him by blood, adoption or marriage within the third degree of
28 consanguinity or affinity;
(c) Who employs him or a member of his household;
(d) With whom he has a substantial and continuing business relationship; or
(e) Any other commitment or relationship that is substantially similar to a commitment
or relationship described in this subsection.

1 Nevada's Legislature, Nevada's Courts, or the Nevada Commission on Ethics, there can be no well
2 settled or commonly understood meaning of "business relationship" or the conditions that make a
3 business relationship "substantial and continuing." Consequently, public officers across Nevada are
4 forced to guess at the boundaries of the statute. Where terms contained in a statute are so poorly
5 defined as to leave persons "guessing" at what behavior is, or is not, lawful, the statute is void-for-
6 vagueness. *Childs v. State*, 107 Nev. 584, 585, 816 P.2d 1079, 1079-1080 (1991).

7 NRS 281.501(8)(e) provides that any relationship that is "substantially similar" to any other
8 relationship enumerated in NRS 281.501(8) also amounts to a "commitment in a private capacity to
9 the interests of others." The phrase "substantially similar" establishes a standard that is so subjective
10 and so expansive, that it is impossible for a person of ordinary intelligence to discern which
11 relationships fall within the purview of the statute – nearly any relationship could be made to satisfy
12 the broad and unfettered grasp of NRS 281.501(8)(e). The Legislature, the Nevada Courts, and the
13 Commission on Ethics have never established standards under which a relationship is analyzed for
14 substantial similarity under NRS 281.501(8)(e). Without a statutory definition or well settled and
15 commonly understood meaning of the term "substantially similar," public officers in the State of
16 Nevada must rely on their own best guesses and advice from similarly confused attorneys, while the
17 Nevada Commission on Ethics is left to its own unfettered predilections to determine whether a
18 relationship is substantially similar to one of the relationships enumerated in subsection (e).

19 NRS 281.501(2) requires public officers in the State of Nevada to abstain from voting on
20 matters when the independence of judgment of a reasonable person would be materially affected in
21 any of three cases: (1) his acceptance of a gift or loan; (2) his pecuniary interest; or (3) his
22 commitment in a private capacity to the interests of others. The Commission and the First Judicial
23 District Court did not address the first two conditions, but specifically invoked the third, as defined
24 by NRS 281.501(8). *See* Exhibit B; Exhibit C. A statute which "forbids or requires the doing of an
25 act in terms so vague that men of common intelligence must necessarily guess at its meaning and
26 differ as to its application, violates the first essential of due process of law." *Connally v. General*
27 *Construction Co.*, 269 U.S. 385, 391, 46 S.Ct. 126, 70 L.Ed. 322 (1926); *Dunphy v. Sheehan*, 92 Nev.
28 259, 262, 549 P.2d 332, 334 (1976); *Nevada Comm'n on Ethics v. Ballard*, 120 Nev. 862, 868, 102

1 P.3d 544, 548 (2004). Because the definition of “commitment in a private capacity to the interests of
2 others” proffered by NRS 281.501(8) is unconstitutionally vague, there is no reliable way for an
3 ordinary public officer to determine whether or not he is required to abstain from voting in certain
4 situations without guessing. Accordingly, in cases such as this, where the application of NRS
5 281.501(2) relies on subsections (d) or (e) of NRS 281.501(8), NRS 281.501(2) is unconstitutionally
6 vague.

7 Elected officials around the State of Nevada deal with the Ethics in Government Law on a
8 nearly daily basis - yet no authority exists to clarify the unconstitutionally vague subsections of NRS
9 281.501(8). In *Ashokan v. State Department of Insurance*, this Court elected to exercise its
10 constitutional prerogative to entertain a writ petition “despite the availability of an adequate legal
11 remedy.” *Ashokan*, 109 Nev. 662, 667, 856 P.2d 244, 247 (1993). In that case, the Court had not yet
12 had the opportunity to interpret the statute in question, and found that the facts presented by the
13 petition afforded the Court a “unique opportunity to define the precise parameters” of the statute. *Id.*
14 By entertaining the writ petition, the Court in *Ashokan* protected other parties subject to the
15 questioned statute by explaining the boundaries of the law in an *expedited fashion* so that appropriate
16 measures could be taken to guard against future violations. *Id.* (emphasis added).

17 Here, the boundaries of the statutes in question have never been explored or interpreted by this
18 Court. Public officers across Nevada are unable to discern which relationships amount to a conflict
19 of interest under NRS 281.501(8) and which relationships require abstention under NRS 281.501(2).
20 This Appeal raises important legal issues that are likely to be the subject of extensive litigation in
21 Nevada’s District Court system, especially following the upcoming election. Because inconsistent
22 rulings at that level are a likely result, and because avoidance of multiple actions involving identical
23 claims will conserve judicial resources at the Supreme Court and in the District Courts, this Court
24 should order an expedited schedule in this case.

25 **B. The Vagueness of NRS 281.501(8) and NRS 281.501(2) Offends the First Amendment**
26 **to the United States Constitution**

27 Although no Nevada Court has previously answered the question of whether legislative voting
28 is protected speech, all three federal courts that have directly considered the issue concluded that the

1 act of voting on public issues by a member of a public agency or board comes within the freedom of
2 speech guarantee of the First Amendment. *Miller v. Town of Hull*, 878 F.2d 523 (1st Cir. 1989);
3 *Clarke v. United States*, 886 F.2d 404 (D.C.Cir. 1989); *Wrzeski v. City of Madison*, 558 F.Supp. 664
4 (W.D.Wisc. 1983). A legislator's vote is inherently expressive, *Clarke*, 886 F.2d at 411 (D.C.Cir.
5 1989), and legislative voting has been recognized by the United States Supreme Court as the
6 "individual and collective expression of opinion." *Hutchison v. Proxmire*, 443 U.S. 111, 133, 99 S.Ct.
7 2675, 2697, 61 L.Ed.2d 411 (1978). Voting by public officials comes within the "heartland of First
8 Amendment doctrine," and "...the status of public officials' votes as constitutionally protected speech
9 is established beyond peradventure of doubt". *Stella v. Kelly*, 63 F.3d 71, 75 (1st Cir. 1995). Simply
10 put, there can be no more definitive expression of an opinion protected by the First Amendment than
11 when an elected official votes on a controversial subject. *Mihos v. Swift*, 358 F.3d 91, 107, 109 (1st
12 Cir. 2004); *Miller*, 878 F.2d at 532 (1st Cir. 1989).

13 The Constitution demands a high level of clarity from a law if it threatens to inhibit the
14 exercise of a constitutionally protected right, such as the right of free speech or religion. *Colautti v.*
15 *Franklin*, 439 U.S. 379, 391, 99 S.Ct. 675, 58 L.Ed.2d 596 (1979); *Smith v. Goguen*, 415 U.S. 566,
16 573, 94 S.Ct. 1242, 1247, 39 L.Ed.2d 605 (1974); *Grayned v. City of Rockford*, 408 U.S. 104, 109,
17 92 S.Ct. 2294, 2299, 33 L.Ed.2d 222 (1972); *Keyishian v. Board of Regents*, 385 U.S. 589, 603-604,
18 87 S.Ct. 675, 683-684, 17 L.Ed.2d 629 (1967). An unconstitutionally vague law tends to chill the
19 exercise of First Amendment rights by causing citizens to "steer far wider of the unlawful zone ... than
20 if the boundaries of the forbidden areas were clearly marked." *Grayned v. City of Rockford*, 408 U.S.
21 104, 109 (1972) (quoting *Baggett v. Bullitt*, 377 U.S. 360, 372 (1964)).

22 Given the vague contours of NRS 281.501(8), NRS 281.501(2) unquestionably silences some
23 speakers whose messages are entitled to constitutional protection. Because it could be avoided by a
24 more carefully drafted statute, the burden placed on protected speech by the Ethics in Government
25 Law cannot be justified. In this case, the vagueness that permeates the Ethics in Government Law not
26 only chills Councilman Carrigan's First Amendment right to vote on matters before the Sparks City
27 Council, but ensnares the rights of the citizens of Sparks' Fourth Ward to a representative voice in
28 the City's government. This Court should order an expedited schedule in this case to quickly

1 illuminate the boundaries of NRS 281.501(8) and prevent further irreparable harm to the
2 constitutionally protected rights of Councilman Carrigan and the citizens of Sparks, Nevada.

3 **C. An Informal System of Prior Restraint**

4 Governmental regulations or actions that prohibit or limit the future dissemination of
5 constitutionally-protected speech constitute prior restraints. *Fantasy Book Shop, Inc. v. City of Boston*,
6 652 F.2d 1115 (1st Cir. 1981). The term is generally used to describe administrative and judicial orders
7 forbidding certain communications when issued before such communications are to occur. *DVD Copy*
8 *Control Ass'n., Inc. v. Bunner*, 31 Cal.4th 864, 75 P.3d 1 (2003); *Hobart v. Ferebee*, 692 N.W.2d 509
9 (S.D. 2004). A prior restraint imposes in advance a limit upon the right to speak, *State v. Haley*, 687
10 P.2d 305 (Alaska 1984), or otherwise prevents the expression of a message. *Hamilton Amusement*
11 *Center v. Verniero*, 156 N.J. 254, 716 a.2D 1137 (1998). The United States Supreme Court has
12 condemned any system of prior restraint of first amendment rights. *Near v. Minnesota*, 283 U.S. 697,
13 51 S.Ct. 625, 75 L.Ed. 1357 (1931). The protection of political speech is a primary function of the
14 guarantee of freedom of speech. *Del Papa v. Steffen*, 112 Nev. 369, 915 P.2d 245 (1996); *Kirksey v.*
15 *City of Jackson*, 663 F.2d 659 (5th Cir. 1981) (*decision clarified on denial of reh'g*, 669 F.2d 316 (5th
16 Cir. 1982)); *CBS, Inc. v. F.C.C.*, 629 F.2d 1 (D.C. Cir. 1980) (*judgment aff'd*, 453 U.S. 367 (1981)),
17 and there is no more definitive expression of a political opinion protected by the First Amendment
18 than when an elected official votes on a controversial subject. *Mihos*, 358 F.3d at 107, 109 (1st Cir.
19 2004); *Miller*, 878 F.2d at 532 (1st Cir. 1989).

20 Moving forward from the conclusions of the Nevada Commission on Ethics and the First
21 Judicial District Court, Councilman Carrigan and every other public officer in the State of Nevada
22 is still faced with the same disconcerting decision – to vote on matters before his respective
23 governmental body without understanding the boundaries of an unconstitutionally vague statute, or
24 abstain from voting and fail to represent the citizens that make up his constituency.

25 The First Judicial District Court determined that the challenged provisions of the Ethics in
26 Government Law are not unconstitutionally vague because public officers are free to seek advisory
27 opinions from the Commission on Ethics before they vote on a matter. In its Order, the District Court
28 explained that Councilman Carrigan should have sought an advisory opinion from the Commission

1 on Ethics if he were unsure of the boundaries of lawful behavior. See Exhibit C, p. 18, Ins. 1-7;
2 “Exhibit E” (Transcript of May 12, 2008 hearing before the First Judicial District Court) p. 38, Ins.
3 1-12. Warnings from a court with respect to the exercise of speech have a bearing on whether there
4 is a prior restraint. *Multimedia Holdings Corp. v. Circuit Court*, 544 U.S. 1301, 1306, 125 S.Ct. 1624,
5 161 L.Ed.2d 590 (2005). The District Court’s conclusion presupposes that every possible factual
6 scenario is either already covered by existing advisory opinions, or that an on-point advisory opinion
7 will be issued in time for a concerned public officer to act (or not act) based on that guidance.³ Nearly
8 every opinion published in the last decade by the Nevada Commission on Ethics contains the
9 following disclaimer:

10 *Note: The foregoing opinion applies only to the specific facts and circumstances*
11 *described herein. Facts and circumstances that differ from those in this opinion may*
12 *result in an opinion contrary to this opinion. No inferences regarding the provisions*
of the Nevada Revised Statutes quoted and discussed in this opinion may be drawn to
apply generally to any other facts and circumstances. See, e.g., Exhibit B.

13 Although the Commission on Ethics has never published an opinion clarifying the provisions of NRS
14 281.501(8), or an opinion similar to that fact pattern presented in the instant case, this disclaimer
15 eviscerates any precedential value of an opinion or decision of the Nevada Commission on Ethics,
16 even in cases where a relevant publication exists. The Commission lacks jurisdiction to render
17 advisory opinions where the request for an opinion seeks general guidance, *In re: Rural County*
18 *District Attorney*, CEO 99-48, and the Commission is only authorized to opine on specific questions
19 regarding specific facts and circumstances, *In re: Public Officer*, CEO 02-22; *In re: Eklund - Brown*,
20 CEO 02-23. Therefore, the realistic effect of the District Court’s finding coupled with the disclaimer
21 detailed above is that Councilman Carrigan has no choice but to either seek a prior, binding advisory
22 opinion from the Commission each and every time he has a concern regarding NRS 281.501(8) or act
23 without understanding the boundaries of the law and risk the myriad of penalties enumerated in NRS
24 281.551. Requiring public officers to seek an advisory opinion from a panel before speaking or acting

26 ³ Moreover, even if the supposition were accurate, it does not alter the fact that subsections (d)
27 and (e) of NRS 281.501(8) are insufficiently specific to put public officers in the State of
28 Nevada on notice as to which relationships rise to the level of a “commitment in a private
capacity to the interests of others.”

1 – for fear of disciplinary action and sanctions – is the “ultimate in prior restraint.” *Spargo v. New York*
2 *State Comm’n on Judicial Conduct*, 2003 WL 2002762, N.D.N.Y. (2003) (not reported in F.Supp.2d
3 – vacated on basis of Younger Abstention by *Spargo v. New York State Comm’n on Judicial Conduct*,
4 351 F.3d 65 (2nd Cir. 2003)).

5 As a practical matter, seeking an advisory opinion every time a public officer is unsure
6 regarding the interpretation or application of an unconstitutionally vague statute is not a viable
7 solution or cure of the constitutional infirmities of the Ethics in Government Law. The Nevada Open
8 Meeting Law mandates that written notice of all meetings must be given at least three working days
9 before the meeting. NRS 241.020(2). The Sparks City Council is required to hold regular meetings
10 at least twice a month, at times established by ordinance. Sparks City Charter, Art. 2, Sec. 2.030(1).
11 The Sparks Municipal Code (SMC) designates the second and fourth Mondays of each month as the
12 times for regular meetings of the City Council. SMC 1.10.020(A). Accordingly, under NRS
13 241.020(2), the agenda for a regular meeting of the Sparks City Council is published on the first and
14 third Wednesdays of each month, three working days prior to the meeting. The agenda and its
15 supporting material are also distributed to the Council Members three working days prior to a
16 scheduled meeting – prior to the dissemination of this information, the Council Members are unaware
17 of the issues on the agenda, and are therefore unable to identify any potential conflicts.

18 NRS 281.551 allows the Commission on Ethics to take up to forty-five days to render an
19 advisory opinion after receiving a request from a public officer. In practice, the Commission has
20 declined to provide advisory opinions to the Sparks City Council until the concerned Council Member
21 has received an opinion from the City Attorney’s Office. Once the City Attorney’s Office prepares
22 a perfunctory opinion, a letter is drafted to the Commission explaining that the Council Member
23 remains unsure of the interpretation of the Ethics in Government Law. These documents, along with
24 the Commission’s official opinion request form, are then faxed and mailed to the Executive Director
25 of the Commission on Ethics. The Executive Director thereafter gathers information relating to the
26 request for an advisory opinion and attempts to secure a quorum of the Commissioners to hold a
27 hearing regarding the advisory opinion. Once a hearing is held, *the resulting opinion is binding upon*
28 *the public officer’s future conduct*. NRS 281.551(1)(a) (emphasis added). As there are only three

1 working days between the date the Sparks City Council Members are provided with the agenda and
2 supporting materials and the date of the actual City Council meeting, the Commission's procedure
3 cannot be completed. Consequently, a public officer who requests an advisory opinion from the
4 Commission on Ethics has three options: (1) a public officer may abstain from voting on an issue until
5 the Commission issues an advisory opinion, at which time, in all likelihood, it will be too late for the
6 public officer to represent the will of his constituents by voting; (2) a public officer may choose to
7 risk fines, removal from office, and criminal prosecution by performing his duties as an elected
8 representative of the citizens of Sparks by voting without any certainty regarding the boundaries of
9 the law; or (3) although impermissible in some situations where statutory deadlines are implicated,
10 the public officer may request that the public body table an issue until the Commission renders an
11 advisory opinion. Thus, Councilman Carrigan is being forced to choose between delaying political
12 speech that he has a right to make as a Sparks City Councilman and as an American citizen, and
13 risking fines, removal from office and potential criminal prosecution.

14 By essentially forcing public officers to seek a binding advisory opinion regarding the
15 boundaries of an unconstitutionally vague statute before speaking or acting – for fear of disciplinary
16 action and sanctions – the Nevada Commission on Ethics and the First Judicial District Court have
17 established a system of prior restraint that must be reviewed quickly by this Court. Accordingly, an
18 Order imposing an expedited schedule for this appeal is appropriate.

19 **D. Statewide Implications**

20 The notion that campaign contributions disqualify the recipient from participating in
21 governmental decisions has been expressly and emphatically rejected by courts across the United
22 States. See, *O'Brien v. State Bar of Nevada*, 114 Nev. 71, 952 P.2d 952 (Nev. 1998); *Cherradi v.*
23 *Andrews*, 669 So.2d 326, (Fla.App 4th Dist. 1996); *J-IV Investments v. David Lynn Mach, Inc.*, 784
24 S.W.2d 106 (Tex.App. Dallas 1990). Foreclosing upon an elected official's ability to act on particular
25 matters because a person or group associated with the matter had made a campaign contribution to
26 that official threatens constitutionally protected political speech and association freedoms.
27 "Governmental restraint on political activity must be strictly scrutinized and justified only by
28 compelling state interest." *Buckley v. Valeo*, 424 U.S. 1, 25, 96 S.Ct. 637-638, 46 L.Ed.2d 659, 691

1 (1976). While disqualifying contribution recipients from voting would not prohibit contributions *per*
2 *se*, it would unconstitutionally chill contributors' First Amendment rights. See, *Woodland Hills*
3 *Residents Assn., Inc. v. City Council*, 26 Cal.3d 938, 609 P.2d 1029 (1980); *Let's Help Florida v.*
4 *McCrary*, 621 F.2d 195 (5th Cir. 1980), judgment aff'd, 454 U.S. 1130, 102 S.Ct. 985, 71 L.Ed. 2d
5 284 (1982). Representative government would be thwarted by depriving certain classes of voters of
6 the constitutional right to participate in the electoral process.

7 In this case, the Nevada Commission on Ethics determined that Councilman Carrigan should
8 have abstained from voting on a matter before the Sparks City Council when the applicant was
9 represented by a friend of Councilman Carrigan's who had made contributions to Carrigan's re-
10 election campaign and served as a political volunteer. To reach this conclusion, the Commission
11 employed the unconstitutionally vague subsections (d) and (e) of NRS 281.501(8) and essentially
12 created an unwritten, unexplained point at which campaign contributions and political activity amount
13 to a disqualifying conflict of interest for Nevada's elected officials. Although the state has an interest
14 in securing the ethical performance of governmental functions, that alone is not strong enough to
15 overcome the rights of the citizens of Nevada and all of the State's elected officials. NRS 294A.100
16 limits the amount of money, or value of services, any person can contribute to a campaign for public
17 office in Nevada. Moreover, NRS 294A.100 controls the time frame in which political donations can
18 be made. Failure to comply with the provisions of NRS 294A.100 is a category E felony. Any concern
19 that the government may have regarding campaign contributions and the ethical performance of
20 governmental functions is alleviated by the limitations imposed on political contributions by NRS
21 Chapter 294A. If properly received and reported campaign contributions are allowed to amount to a
22 disqualifying conflict of interest under NRS Chapter 281, the Ethics in Government Law will serve
23 as the *de facto* limitation on campaign contributions without specifically enumerating the point at
24 which a contribution becomes a disqualifying conflict of interest.

25 The vagueness of certain provisions of the ethics in Government Law is an issue that burdens
26 every elected official in the State of Nevada, along with the citizens who contribute to political
27 campaigns and volunteer for political purposes. With the impending election, this issue is
28 extraordinarily important and should be reviewed by this Court in an expedited fashion.

1 **E. Most of the Issues Presented by this Appeal were Fully Briefed in the Proceeding Below**

2 With the exception of the prior restraint issue presented for this Court's review by Councilman
3 Carrigan, each of the issues included in this appeal were fully briefed in the proceeding before the
4 First Judicial District Court - therefore, the imposition of an expedited schedule for this appeal is not
5 an unassailable hardship for either party. Because the issues in this case raise an important question
6 of first impression regarding the constitutionality of a state statute, and the potential for irreparable
7 harm is great, this Court should review this matter as quickly as possible.

8 **III.**

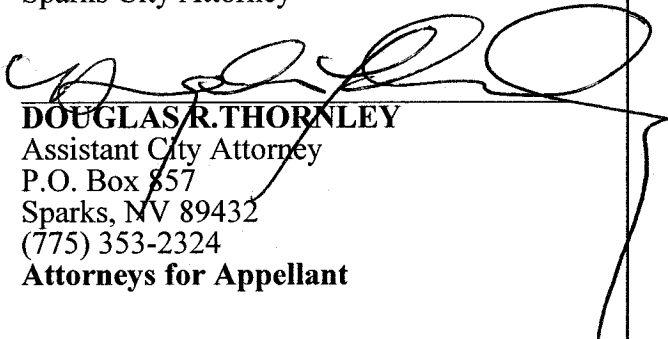
9 **CONCLUSION**

10 The Nevada Commission on Ethics and the First Judicial District Court have employed
11 unconstitutionally vague statutes to strip Councilman Carrigan of his First Amendment right to vote
12 on legislative matters, his right to receive campaign contributions, Carlos Vasquez of his right to
13 associate with political campaigns, and the citizens of Sparks, Nevada, of their voice in representative
14 government. Moreover, the actions of the Commission and the District Court implicate the
15 constitutionally guaranteed rights of all Nevadans, from the man or woman in the street to the long-
16 time voter to all of the State's elected officers. Operating in a world apart from either the United
17 States or Nevada Constitution the Commission on Ethics and the First Judicial District Court have
18 established an informal system of prior restraint on political speech, irreparably damaging the most
19 fundamental rights enjoyed by Americans and upon which our nation is based. For these reasons, this
20 Court should expedite this Appeal.

21 Respectfully submitted this 30th day of June 2008.

22 **CHESTER H. ADAMS**
23 Sparks City Attorney

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DATED this 30th day of June 2008.

Shawna L. Liles

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IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL A. CARRIGAN, Fourth Ward
City Council Member, of the City of Sparks,

Appellant,

vs.

**THE COMMISSION ON ETHICS OF THE
STATE OF NEVADA,**

Respondent. /

Docket No. 51920

District Court No. 07-OC-012451B

APPELLANT CITY OF SPARKS'

APPENDIX TO

MOTION FOR EXPEDITED APPEAL

VOLUME I

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MICHAEL CARRIGAN**



1 **INDEX OF EXHIBITS**

2 **Volume I**

- 3 Exhibit A NRS 241.020; NRS 281.501 (presently codified at NRS 281A.420); NRS 281.551
4 (presently codified at NRS 281A.440); NRS 294A.100; Sparks City Charter, Article
2, Sec. 2.030; Sparks Municipal Code 1.10.020.
- 5 Exhibit B Nevada Commission on Ethics Opinion *In re: Carrigan*, 06-61; 06-62; 06-66; 06-68,
6 dated October 8, 2007.
- 7 Exhibit C First Judicial District Court's Order and Judgment Denying the Petitioner's Petition
8 for Judicial Review and Affirming the Final Decision of the Nevada Commission on
Ethics, dated May 28, 2008
- 9 Exhibit D Supreme Court of the State of Nevada's Order Denying Petition for Writ of
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- 14 Exhibit F Transcript of NCOE Hearing regarding Opinion Requests 06-61, 06-62, 06-66, 06-68,
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EXHIBIT “A”

NRS 241.020 Meetings to be open and public; limitations on closure of meetings; notice of meetings; copy of materials; exceptions.

1. Except as otherwise provided by specific statute, all meetings of public bodies must be open and public, and all persons must be permitted to attend any meeting of these public bodies. A meeting that is closed pursuant to a specific statute may only be closed to the extent specified in the statute allowing the meeting to be closed. All other portions of the meeting must be open and public, and the public body must comply with all other provisions of this chapter to the extent not specifically precluded by the specific statute. Public officers and employees responsible for these meetings shall make reasonable efforts to assist and accommodate persons with physical disabilities desiring to attend.

2. Except in an emergency, written notice of all meetings must be given at least 3 working days before the meeting. The notice must include:

- (a) The time, place and location of the meeting.
- (b) A list of the locations where the notice has been posted.
- (c) An agenda consisting of:

(1) A clear and complete statement of the topics scheduled to be considered during the meeting.

(2) A list describing the items on which action may be taken and clearly denoting that action may be taken on those items.

(3) A period devoted to comments by the general public, if any, and discussion of those comments. No action may be taken upon a matter raised under this item of the agenda until the matter itself has been specifically included on an agenda as an item upon which action may be taken pursuant to subparagraph (2).

(4) If any portion of the meeting will be closed to consider the character, alleged misconduct or professional competence of a person, the name of the person whose character, alleged misconduct or professional competence will be considered.

(5) If, during any portion of the meeting, the public body will consider whether to take administrative action against a person, the name of the person against whom administrative action may be taken.

3. Minimum public notice is:

(a) Posting a copy of the notice at the principal office of the public body or, if there is no principal office, at the building in which the meeting is to be held, and at not less than three other separate, prominent places within the jurisdiction of the public body not later than 9 a.m. of the third working day before the meeting; and

(b) Providing a copy of the notice to any person who has requested notice of the meetings of the public body. A request for notice lapses 6 months after it is made. The public body shall inform the requester of this fact by enclosure with, notation upon or text included within the first notice sent. The notice must be:

(1) Delivered to the postal service used by the public body not later than 9 a.m. of the third working day before the meeting for transmittal to the requester by regular mail; or

(2) If feasible for the public body and the requester has agreed to receive the public notice by electronic mail, transmitted to the requester by electronic mail sent not later than 9 a.m. of the third working day before the meeting.

4. If a public body maintains a website on the Internet or its successor, the public body shall post notice of each of its meetings on its website unless the public body is unable to do so because

EXHIBIT

A

of technical problems relating to the operation or maintenance of its website. Notice posted pursuant to this subsection is supplemental to and is not a substitute for the minimum public notice required pursuant to subsection 3. The inability of a public body to post notice of a meeting pursuant to this subsection as a result of technical problems with its website shall not be deemed to be a violation of the provisions of this chapter.

5. Upon any request, a public body shall provide, at no charge, at least one copy of:

- (a) An agenda for a public meeting;
- (b) A proposed ordinance or regulation which will be discussed at the public meeting; and
- (c) Subject to the provisions of subsection 6, any other supporting material provided to the members of the public body for an item on the agenda, except materials:

(1) Submitted to the public body pursuant to a nondisclosure or confidentiality agreement which relates to proprietary information;

(2) Pertaining to the closed portion of such a meeting of the public body; or

(3) Declared confidential by law, unless otherwise agreed to by each person whose interest is being protected under the order of confidentiality.

➡As used in this subsection, "proprietary information" has the meaning ascribed to it in NRS 332.025.

6. A copy of supporting material required to be provided upon request pursuant to paragraph (c) of subsection 5 must be:

(a) If the supporting material is provided to the members of the public body before the meeting, made available to the requester at the time the material is provided to the members of the public body; or

(b) If the supporting material is provided to the members of the public body at the meeting, made available at the meeting to the requester at the same time the material is provided to the members of the public body.

➡If the requester has agreed to receive the information and material set forth in subsection 5 by electronic mail, the public body shall, if feasible, provide the information and material by electronic mail.

7. A public body may provide the public notice, information and material required by this section by electronic mail. If a public body makes such notice, information and material available by electronic mail, the public body shall inquire of a person who requests the notice, information or material if the person will accept receipt by electronic mail. The inability of a public body, as a result of technical problems with its electronic mail system, to provide a public notice, information or material required by this section to a person who has agreed to receive such notice, information or material by electronic mail shall not be deemed to be a violation of the provisions of this chapter.

8. As used in this section, "emergency" means an unforeseen circumstance which requires immediate action and includes, but is not limited to:

(a) Disasters caused by fire, flood, earthquake or other natural causes; or

(b) Any impairment of the health and safety of the public.

(Added to NRS by 1960, 25; A 1977, 1099, 1109; 1979, 97; 1989, 570; 1991, 785; 1993, 1356, 2636; 1995, 562, 1608; 2001, 2395; 2003, 488; 2005, 2243; 2007, 1122)

NRS 281.501 (Presently codified at NRS 281A.420) Additional standards: Voting by public officers; disclosures required of public officers and employees; effect of abstention from voting on quorum; Legislators authorized to file written disclosure.

1. Except as otherwise provided in subsection 2, 3 or 4, a public officer may vote upon a matter if the benefit or detriment accruing to him as a result of the decision either individually or in a representative capacity as a member of a general business, profession, occupation or group is not greater than that accruing to any other member of the general business, profession, occupation or group.

2. Except as otherwise provided in subsection 3, in addition to the requirements of the code of ethical standards, 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:

(a) His acceptance of a gift or loan;

(b) His pecuniary interest; or

(c) His commitment in a private capacity to the interests of others.

➡ It must be presumed that the independence of judgment of a reasonable person would not be materially affected by his pecuniary interest or his commitment in a private capacity to the interests of others where the resulting benefit or detriment accruing to him or to the other persons whose interests to which the member is committed in a private capacity is not greater than that accruing to any other member of the general business, profession, occupation or group. The presumption set forth in this subsection does not affect the applicability of the requirements set forth in subsection 4 relating to the disclosure of the pecuniary interest or commitment in a private capacity to the interests of others.

3. In a county whose population is 400,000 or more, a member of a county or city planning commission 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:

(a) His acceptance of a gift or loan;

(b) His direct pecuniary interest; or

(c) His commitment to a member of his household or a person who is related to him by blood, adoption or marriage within the third degree of consanguinity or affinity.

➡ It must be presumed that the independence of judgment of a reasonable person would not be materially affected by his direct pecuniary interest or his commitment described in paragraph (c) where the resulting benefit or detriment accruing to him or to the other persons whose interests to which the member is committed is not greater than that accruing to any other member of the general business, profession, occupation or group. The presumption set forth in this subsection does not affect the applicability of the requirements set forth in subsection 4 relating to the disclosure of the direct pecuniary interest or commitment.

4. A public officer or employee shall not approve, disapprove, vote, abstain from voting or otherwise act upon any matter:

(a) Regarding which he has accepted a gift or loan;

(b) Which would reasonably be affected by his commitment in a private capacity to the interest of others; or

(c) In which he has a pecuniary interest,

➡ without disclosing sufficient information concerning the gift, loan, commitment or interest to

inform the public of the potential effect of the action or abstention upon the person who provided the gift or loan, upon the person to whom he has a commitment, or upon his interest. Except as otherwise provided in subsection 6, such a disclosure must be made at the time the matter is considered. If the officer or employee is a member of a body which makes decisions, he shall make the disclosure in public to the Chairman and other members of the body. If the officer or employee is not a member of such a body and holds an appointive office, he shall make the disclosure to the supervisory head of his organization or, if he holds an elective office, to the general public in the area from which he is elected. This subsection does not require a public officer to disclose any campaign contributions that the public officer reported pursuant to NRS 294A.120 or 294A.125 or any contributions to a legal defense fund that the public officer reported pursuant to NRS 294A.286 in a timely manner.

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 he 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. After a member of the Legislature makes a disclosure pursuant to subsection 4, he may file with the Director of the Legislative Counsel Bureau a written statement of his disclosure. The written statement must designate the matter to which the disclosure applies. After a Legislator files a written statement pursuant to this subsection, he is not required to disclose orally his interest when the matter is further considered by the Legislature or any committee thereof. A written statement of disclosure is a public record and must be made available for inspection by the public during the regular office hours of the Legislative Counsel Bureau.

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

(a) Prohibit a member of the legislative branch from requesting or introducing a legislative measure; or

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

8. As used in this section, "commitment in a private capacity to the interests of others" means a commitment to a person:

(a) Who is a member of his household;

(b) Who is related to him by blood, adoption or marriage within the third degree of consanguinity or affinity;

(c) Who employs him or a member of his household;

(d) With whom he has a substantial and continuing business relationship; or

(e) Any other commitment or relationship that is substantially similar to a commitment or relationship described in this subsection.

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

NRS 281.551 (Presently codified at 281A.440) Rendering of opinions by Commission: Requests; determination of just and sufficient cause; notice and hearings; confidentiality.

1. The Commission shall render an opinion interpreting the statutory ethical standards and apply the standards to a given set of facts and circumstances as soon as practicable or within 45 days after receiving a request, whichever is sooner, on a form prescribed by the Commission, from a public officer or employee who is seeking guidance on questions which directly relate to the propriety of his own past, present or future conduct as an officer or employee. He may also request the Commission to hold a public hearing regarding the requested opinion. If a requested opinion relates to the propriety of his own present or future conduct, the opinion of the Commission is:

(a) Binding upon the requester as to his future conduct; and

(b) Final and subject to judicial review pursuant to NRS 233B.130, except that a proceeding regarding this review must be held in closed court without admittance of persons other than those necessary to the proceeding, unless this right to confidential proceedings is waived by the requester.

2. The Commission may render an opinion interpreting the statutory ethical standards and apply the standards to a given set of facts and circumstances:

(a) Upon request from a specialized or local ethics committee.

(b) Except as otherwise provided in this subsection, upon request from a person, if the requester submits:

(1) The request on a form prescribed by the Commission; and

(2) All related evidence deemed necessary by the Executive Director and the panel to make a determination of whether there is just and sufficient cause to render an opinion in the matter.

(c) Upon the Commission's own motion regarding the propriety of conduct by a public officer or employee. The Commission shall not initiate proceedings pursuant to this paragraph based solely upon an anonymous complaint.

➡ The Commission shall not render an opinion interpreting the statutory ethical standards or apply those standards to a given set of facts and circumstances if the request is submitted by a person who is incarcerated in a correctional facility in this State.

3. Upon receipt of a request for an opinion by the Commission or upon the motion of the Commission pursuant to subsection 2, the Executive Director shall investigate the facts and circumstances relating to the request to determine whether there is just and sufficient cause for the Commission to render an opinion in the matter. The public officer or employee that is the subject of the request may submit to the Executive Director any information relevant to the request. The Executive Director shall complete an investigation and present his recommendation relating to just and sufficient cause to the panel within 60 days after the receipt of or the motion of the Commission for the request, unless the public officer or employee waives this time limit. If the Executive Director determines after an investigation that just and sufficient cause exists for the Commission to render an opinion in the matter, he shall state such a recommendation in writing, including, without limitation, the specific evidence that supports his recommendation. If, after an investigation, the Executive Director does not determine that just and sufficient cause exists for the Commission to render an opinion in the matter, he shall state such a recommendation in writing, including, without limitation, the specific reasons for his recommendation. Within 15 days after the Executive Director has provided his recommendation in the matter to the panel, the panel shall make a final determination regarding whether just and sufficient cause exists for the Commission to render an opinion in the matter, unless the public officer or employee waives this time limit. The panel shall not determine that there is just and sufficient cause for the Commission to render an opinion unless

the panel has provided the public officer or employee an opportunity to respond to the allegations against him. The panel shall cause a record of its proceedings in each matter to be kept, and such a record must remain confidential until the panel determines whether there is just and sufficient cause for the Commission to render an opinion in the matter.

4. If the panel determines that just and sufficient cause exists for the Commission to render an opinion requested pursuant to this section, the Commission shall hold a hearing and render an opinion in the matter within 30 days after the determination of just and sufficient cause by the panel, unless the public officer or employee waives this time limit.

5. Each request for an opinion that a public officer or employee submits to the Commission pursuant to subsection 1, each opinion rendered by the Commission in response to such a request and any motion, determination, evidence or record of a hearing relating to such a request are confidential unless the public officer or employee who requested the opinion:

(a) Acts in contravention of the opinion, in which case the Commission may disclose the request for the opinion, the contents of the opinion and any motion, evidence or record of a hearing related thereto;

(b) Discloses the request for the opinion, the contents of the opinion, or any motion, evidence or record of a hearing related thereto; or

(c) Requests the Commission to disclose the request for the opinion, the contents of the opinion, or any motion, evidence or record of a hearing related thereto.

6. Except as otherwise provided in this subsection, each document in the possession of the Commission or its staff that is related to a request for an opinion regarding a public officer or employee submitted to or initiated by the Commission pursuant to subsection 2, including, without limitation, the Commission's copy of the request and all materials and information gathered in an investigation of the request, is confidential until the panel determines whether there is just and sufficient cause to render an opinion in the matter. The public officer or employee who is the subject of a request for an opinion submitted or initiated pursuant to subsection 2 may in writing authorize the Commission to make its files, material and information which are related to the request publicly available.

7. Except as otherwise provided in paragraphs (a) and (b), the proceedings of a panel are confidential until the panel determines whether there is just and sufficient cause to render an opinion. A person who:

(a) Requests an opinion from the Commission pursuant to paragraph (b) of subsection 2 may:

(1) At any time, reveal to a third party the alleged conduct of a public officer or employee underlying the request that he filed with the Commission or the substance of testimony, if any, that he gave before the Commission.

(2) After the panel determines whether there is just and sufficient cause to render an opinion in the matter, reveal to a third party the fact that he requested an opinion from the Commission.

(b) Gives testimony before the Commission may:

(1) At any time, reveal to a third party the substance of testimony that he gave before the Commission.

(2) After the panel determines whether there is just and sufficient cause to render an opinion in the matter, reveal to a third party the fact that he gave testimony before the Commission.

8. Whenever the Commission holds a hearing pursuant to this section, the Commission shall:

(a) Notify the person about whom the opinion was requested of the place and time of the

Commission's hearing on the matter;

(b) Allow the person to be represented by counsel; and

(c) Allow the person to hear the evidence presented to the Commission and to respond and present evidence on his own behalf.

➡The Commission's hearing may be held no sooner than 10 days after the notice is given unless the person agrees to a shorter time.

9. If a person who is not a party to a hearing before the Commission, including, without limitation, a person who has requested an opinion pursuant to paragraph (a) or (b) of subsection 2, wishes to ask a question of a witness at the hearing, the person must submit the question to the Executive Director in writing. The Executive Director may submit the question to the Commission if he deems the question relevant and appropriate. This subsection does not require the Commission to ask any question submitted by a person who is not a party to the proceeding.

10. If a person who requests an opinion pursuant to subsection 1 or 2 does not:

(a) Submit all necessary information to the Commission; and

(b) Declare by oath or affirmation that he will testify truthfully,

➡the Commission may decline to render an opinion.

11. For good cause shown, the Commission may take testimony from a person by telephone or video conference.

12. For the purposes of NRS 41.032, the members of the Commission and its employees shall be deemed to be exercising or performing a discretionary function or duty when taking an action related to the rendering of an opinion pursuant to this section.

13. A meeting or hearing that the Commission or the panel holds to receive information or evidence concerning the propriety of the conduct of a public officer or employee pursuant to this section and the deliberations of the Commission and the panel on such information or evidence are not subject to the provisions of chapter 241 of NRS.

(Added to NRS by 1977, 1107; A 1985, 2124; 1987, 2095; 1991, 1598; 1995, 2443; 1997, 3327; 1999, 665, 2739; 2003, 3391; 2007, 615)—(Substituted in revision for NRS 281.511)

NRS 294A.100 Limit on amount that may be contributed to or accepted by candidate; penalty.

1. A person shall not make a contribution or contributions to a candidate for any office, except a federal office, in an amount which exceeds \$5,000 for the primary election or primary city election, regardless of the number of candidates for the office, and \$5,000 for the general election or general city election, regardless of the number of candidates for the office, during the period:

(a) Beginning from 30 days before the regular session of the Legislature immediately following the last election for the office and ending 30 days before the regular session of the Legislature immediately following the next election for the office, if that office is a state, district, county or township office; or

(b) Beginning from 30 days after the last election for the office and ending 30 days before the next general city election for the office, if that office is a city office.

2. A candidate shall not accept a contribution made in violation of subsection 1.

3. A person who willfully violates any provision of this section is guilty of a category E felony and shall be punished as provided in NRS 193.130.

(Added to NRS by 1991, 1401; A 1997, 240)

Sparks City Charter, Article II, Sec. 2.030 Meetings: Regular; special; quorum.

1. The City Council shall hold regular meetings at least twice each month at times it designates by ordinance. When a regular meeting falls on a holiday, the Council must hold the meeting on the next business day.

2. Special meetings may be held on a call of the Mayor or by a majority of the Council. Reasonable effort must be made to give notice of a special meeting to each member of the Council, the Mayor, City Clerk, City Attorney, City Manager and to any other person who has submitted a request for notice to the City Clerk. Notice is not required if the Mayor has declared an emergency.

3. At a special meeting, unless the entire City Council otherwise consents:

(a) Or unless notice of the meeting is published in a newspaper of general circulation in the City at least 1 day before the meeting, a contract or claim involving the expenditure of money may not be approved;

(b) Only emergency ordinances may be passed; and

(c) Only that business which was stated in the call of the meeting may be discussed.

4. Except as otherwise provided in NRS 241.0355, a majority of all members of the City Council constitutes a quorum to do business, but a lesser number may meet and recess and compel the attendance of the absent members.

5. No meeting of the City Council may be held for the purpose of conducting or discussing City business except as provided in this section.

(Ch. 470, Stats. 1975 p. 729; A—Ch. 380, Stats. 1977 p. 715; Ch. 457, Stats. 1979 p. 853; Ch. 450, Stats. 1985 p. 1313; Ch. 255, Stats. 2001 p. 1131)

Sparks Municipal Code, Section 1.10.020 Meetings--Regular, special.

A. The city council must hold regular meetings on the second and fourth Mondays of each month at a time and place convenient to the city council and the public. If a regular meeting date falls on a national, state or city holiday, the council must hold the meeting on the next business day.

B. Special meetings may be held on request of the mayor or of a majority of the city council. Notice of special meetings must be given in compliance with the city charter and the Nevada Open Meeting Law.

(Ord. 1514 § 1, 1985.)

EXHIBIT “B”



STATE OF NEVADA
COMMISSION ON ETHICS

BEFORE THE NEVADA COMMISSION ON ETHICS

**IN THE MATTER OF THE
REQUEST FOR OPINION
CONCERNING THE CONDUCT OF
MICHAEL CARRIGAN, Councilman,
City of Sparks.**

**Opinion Nos. 06-61, 06-62, 06-66
and 06-68**

This matter came before a quorum¹ of the Nevada Commission on Ethics (hereinafter the "Commission") for a hearing on August 29, 2007, pursuant to Requests for Opinion filed with the Commission and a determination made on May 23, 2007, by a Commission panel finding just and sufficient cause for the Commission to hold a hearing on the matter and render an opinion on whether Councilman Carrigan's conduct violated the provisions of NRS 281.481(2), NRS 281.501(2), and/or NRS 281.501(4).

The issues before the Commission in this matter are limited to the following:

1. Did Councilman Carrigan use his official position in government to secure or grant unwarranted² privileges, preferences, exemptions or advantages for himself or any person to whom he has a commitment in a private capacity to the interests of that person in violation of

¹ The quorum consisted of Vice Chairman Hutchison and Commissioners Capurro, Cashman, Flangas, Hsu and Jenkins. Commissioner Keele and Chairman Kosinski served as the panel in this matter. Pursuant to NRS 281.462(4), panel members are prohibited from participating in any further proceedings of the Commission relating to the matter.

² As used in NRS 281.481(2), "unwarranted" means without justification or adequate reason.

NRS 281.481(2) by acting on the Red Hawk Land Company's ("Red Hawk") proposed Lazy 8 development project ("Lazy 8") at the August 23, 2006 Sparks City Council ("Council") meeting?

2. At the August 23, 2006 Council meeting, when the Council was considering approval of the Lazy 8, did Councilman Carrigan fail to sufficiently disclose his relationship with Carlos Vasquez, a consultant and spokesperson for Red Hawk, in violation of NRS 281.501(4)?

3. At the August 23, 2006 Council meeting, did Councilman Carrigan fail to abstain from voting on the Lazy 8 matter in violation of NRS 281.501(2)?

Notice of the hearing was properly posted and served. Councilman Carrigan was present with his counsel, David Creekman, Esq., Senior Assistant City Attorney and Doug Thornley, Esq., Assistant City Attorney and provided sworn testimony. Carlos Vasquez appeared as a witness and provided sworn testimony.

FINDINGS OF FACT

The Commission, after hearing testimony and considering the evidence presented, makes the following Findings of Fact:

1. Michael Carrigan is a Sparks City Council member representing Ward 4.
2. Carlos Vasquez is a consultant for Red Hawk.
3. Carlos Vasquez owns various companies that provide public relations services for candidates running for public office and he also manages campaigns for candidates for public office.
4. Councilman Carrigan and Carlos Vasquez have been friends since 1991.
5. The friendship between Councilman Carrigan and Carlos Vasquez is close, substantial and continuing.

6. Carlos Vasquez served as Councilman Carrigan's volunteer campaign manager in 1999.

7. Councilman Carrigan was elected to the Sparks City Council in 1999.

8. Carlos Vasquez served as Councilman Carrigan's volunteer campaign manager in 2003.

9. Councilman Carrigan was reelected to the Sparks City Council in 2003.

10. Carlos Vasquez served as Councilman Carrigan's volunteer campaign manager in 2006.

11. Councilman Carrigan was reelected to the Sparks City Council in 2006.

12. Carlos Vasquez and his companies provided public relations and advertising services to Councilman Carrigan during all three of his political campaigns.

13. Councilman Carrigan moved the Council to tentatively approve the amendment to Red Hawk's planned development handbook and voted "yes" on the Lazy 8 agenda item at the August 23, 2006 Council meeting; his motion failed.

14. Prior to voting "yes," Councilman Carrigan disclosed to the Council and the public that Carlos Vasquez was his personal friend and campaign manager.

15. A majority of Councilman Carrigan's constituency favored the Lazy 8.

16. The second motion by the Council on the Lazy 8 matter on August 23, 2006 passed by a 3 to 2 vote. The motion called for denial of approval of the amendment to Red Hawk's planned development handbook. Councilman Carrigan was one of the two negative votes.

17. Prior to his August 23, 2006 vote, Councilman Carrigan requested a legal opinion from the Sparks City Attorney regarding whether a conflict existed prohibiting him from acting on the Lazy 8 matter.

18. The Sparks City Attorney advised Councilman Carrigan that unless he stood to reap either financial or personal gain or loss as a result of his official action and because the City Attorney was unaware of any facts establishing the existence of such a gain or loss, nothing prohibited Councilman Carrigan from acting on the Lazy 8 matter at the August 23, 2006 council meeting.

19. Councilman Carrigan relied on his legal counsel's advice and he testified before the Commission that if counsel had told him to abstain on the Lazy 8 matter, he would have done so.

20. Prior to casting his votes on the Lazy 8 matter on August 23, 2006, Councilman Carrigan was aware that he could have asked the Commission for an advisory opinion, but instead he relied on his counsel's advice.

21. Should any finding of fact be better construed as a conclusion of law, it may be so deemed.

CONCLUSIONS OF LAW

1. At all relevant times, Councilman Carrigan was an elected Sparks City Councilman, and as such was a public officer as defined in NRS 281.4365.

2. The Commission has jurisdiction to render an opinion in this matter pursuant to NRS 281.465 and NRS 281.511, subsection 2, paragraph (b).

3. Councilman Carrigan has a commitment in a private capacity to the interest of Carlos Vasquez within the definition of NRS 281.501, subsection 8.

4. Councilman Carrigan did not violate NRS 281.481, subsection 2, and did not use his position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for Carlos Vasquez.

5. Councilman Carrigan did not violate NRS 281.501, subsection 4, and he sufficiently disclosed his relationship with Carlos Vazquez to the Council and to the public.

6. Councilman Carrigan violated NRS 281.501, subsection 2, by not abstaining from voting on the Lazy 8 matter at the August 23, 2006 Council meeting.

7. Councilman Carrigan's violation of NRS 281.501, subsection 2, was not willful under the definition of "willful" in NRS 281.4375.

8. Should any conclusion of law be better construed as a finding of fact, it may be so deemed.

WHEREFORE, based upon a preponderance of the evidence in this matter in support of the foregoing findings of fact and conclusions of law, the Commission renders the following Opinion:

OPINION

The Nevada Legislature has declared it to be the public policy of this state that a "public office is a public trust and shall be held for the sole benefit of the people" and that a "public officer or employee must conduct himself to avoid conflicts between his private interests and those of the general public whom he serves." Further, the Nevada Legislature has declared that, "to enhance the people's faith in the integrity and impartiality of public officers and employees, adequate guidelines are required to show the appropriate separation between the roles of persons who are both public servants and private citizens." NRS 281.421. Therefore, charged with interpreting and enforcing the Ethics in Government Law, the Commission must hold public officers accountable when they fail to place the public interest and public trust ahead of their private interests.

In determining whether Councilman Carrigan violated any of the provisions of the Ethics in Government Law at issue, the Commission must ascertain whether Councilman Carrigan had a "commitment in a private capacity to the interest of" Mr. Vasquez.

NRS 281.501(8) provides:

As used in this section, "commitment in a private capacity to the interests of others" means a commitment to a person:

- (a) Who is a member of his household;
- (b) Who is related to him by blood, adoption or marriage within the third degree of consanguinity or affinity;
- (c) Who employs him or a member of his household;
- (d) With whom he has a substantial and continuing business relationship;

or

(e) Any other commitment or relationship that is substantially similar to a commitment or relationship described in this subsection.

In 1999, the Nevada State Legislature excluded mere friendships from its definition of "commitment in a private capacity to the interests of others." However, the definition contemplated close relationships which rise to such a level of commitment to another person's interests that the independence of judgment of a reasonable person in the public officer's position would be affected. Independence of judgment means a judgment that is unaffected by that commitment or relationship. It is important to note that the test under the statute is not the independence of judgment of the public officer making the assessment whether his independence of judgment is affected. Rather, the test calls for the independence of judgment of a "reasonable person."

The legislature enumerated the commitments and relationships where the independence of judgment of a reasonable person in a given situation is sure to be affected. *See* NRS 281.501(8)(a)-(d). Additionally, the legislature contemplated commitments and relationships that, while they may not fall squarely within those enumerated in NRS 281.501(8)(a)-(d), are substantially similar to those enumerated categories because the independence of judgment may

be equally affected by the commitment or relationship. The legislature enacted NRS 281.501(8)(e) to include such cases. The commitment and relationship shared by Councilman Carrigan and Mr. Vasquez are illustrative of those contemplated by NRS 281.501(8)(e).

In a 1999 meeting of the Senate Committee on Government Affairs, Senator Dina Titus questioned Scott Scherer, Legal Counsel to Governor Guinn, regarding NRS 281.501(8)(e), as follows:

"I just have a question of how this would fit with either the existing language or the new language. One of the cases that had lot of notoriety involved a commissioner and someone who had worked on her campaign. Sometimes people who do campaigns then become lobbyists. If you could not vote on any bill that was lobbied by someone who had previously worked on your campaign, how would all of that fit in here. It is not really a business relationship or a personal relationship, but I don't [do not] know what it is."

Mr. Scherer responded:

"...The way that would fit in ...the new language that the Governor is suggesting is that it would not necessarily be included because it would not be a continuing business relationship. So the relationship would have to be substantial and continuing. *Now, if this was one where the same person ran your campaign time, after time, after time, and you had a substantial and continuing relationship, yes, you probably ought to disclose and abstain in cases involving that particular person.*" [Emphasis added.]

Legislative Minutes re: Hearing on SB 478
before the Senate Committee on
Government Affairs, 70th Leg., at 42 (Nev.,
March 30, 1999).

Councilman Carrigan admits that Mr. Vasquez, who is his campaign manager and political advisor, was instrumental in the success of all three of Councilman Carrigan's elections. Mr. Vasquez was Councilman Carrigan's campaign manager at the time of the August 23, 2006 Council meeting when the Lazy 8 matter was heard.

Councilman Carrigan argues that his relationship with Mr. Vasquez is not a business relationship. Under Councilman Carrigan's view, a "business relationship" is where money

changes hands or a situation where money is made. The Commission rejects such a narrow interpretation of "business relationship."

Councilman Carrigan and Mr. Vasquez both testified that Mr. Vasquez worked in a volunteer capacity on all three of Councilman Carrigan's campaigns for Sparks City Council and that Mr. Vasquez never profited from any of Councilman Carrigan's campaigns. Mr. Vasquez testified that everything he and his companies did for Councilman Carrigan was at cost and that any related funds were a "pass-through," that is, Mr. Vasquez' companies would do work on the campaigns, or farm out the work, and then be reimbursed for costs from Councilman Carrigan's campaign fund. Notwithstanding this at-cost or pass-through arrangement, Mr. Vasquez and his companies provided public relations and advertising services to Councilman Carrigan during all three political campaigns. Councilman Carrigan believes that Mr. Vasquez was instrumental in getting Councilman Carrigan elected in all three of his elections.

Mr. Vasquez has been a close personal friend, confidant and political advisor to Councilman Carrigan throughout the years. Councilman Carrigan confides in Mr. Vasquez on matters where he would not confide in his own sibling. Therefore, The sum total of their commitment and relationship equates to a "substantially similar" relationship to those enumerated under NRS 281.501(8)(a)-(d), including a close personal friendship, akin to a relationship to a family member, and a "substantial and continuing business relationship." The independence of judgment of a reasonable person in Councilman Carrigan's position would be affected by the commitment and relationship Councilman Carrigan shares with Mr. Vasquez.

Therefore, during the August 23, 2006 Council meeting when the Lazy 8 matter was heard, Councilman Carrigan had a "commitment in a private capacity to the interest of" Mr. Vasquez.

1. NRS 281.481(2).

NRS 281.481(2) provides:

A public officer or employee shall not use his position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for himself, any business entity in which he has a significant pecuniary interest, or any person to whom he has a commitment in a private capacity to the interests of that person. As used in this subsection:

(a) "Commitment in a private capacity to the interests of that person" has the meaning ascribed to "commitment in a private capacity to the interests of others" in subsection 8 of NRS 281.501.

(b) "Unwarranted" means without justification or adequate reason.

The Commission finds that a preponderance of the evidence does not exist to conclude that Councilman Carrigan used his position as Sparks City Councilman to secure or grant unwarranted privileges, preferences, exemptions or advantages for himself or for Mr. Vasquez, a person to whose interests he has a commitment in a private capacity. Councilman Carrigan testified that a majority of constituents in his Ward favored the project. No evidence or testimony was presented in this matter to conclude otherwise. Therefore, the Commission finds that Councilman Carrigan did not violate NRS 281.481(2).³

2. NRS 281.501(4).

NRS 281.501(4) provides:

A public officer or employee shall not approve, disapprove, vote, abstain from voting or otherwise act upon any matter:

(a) Regarding which he has accepted a gift or loan;

(b) Which would reasonably be affected by his commitment in a private capacity to the interest of others; or

(c) In which he has a pecuniary interest, without disclosing sufficient information concerning the gift, loan, commitment or interest to inform the public of the potential effect of the action or abstention upon the person who provided the gift or loan, upon the person to whom he has a commitment, or upon his interest. Except as otherwise provided in subsection 6,

³ Commissioners Capurro, Cashman, Hsu, Hutchison and Jenkins voted to approve the motion, while Commissioner Flangas voted nay.

such a disclosure must be made at the time the matter is considered. If the officer or employee is a member of a body which makes decisions, he shall make the disclosure in public to the Chairman and other members of the body. If the officer or employee is not a member of such a body and holds an appointive office, he shall make the disclosure to the supervisory head of his organization or, if he holds an elective office, to the general public in the area from which he is elected. This subsection does not require a public officer to disclose any campaign contributions that the public officer reported pursuant to NRS 294A.120 or 294A.125 in a timely manner.

In the *Woodbury* opinion, the Commission set out the steps that a public officer must take whenever a matter that may affect his independence of judgment comes before the public body in which he serves: first, disclosure is required whenever a public officer's actions would "*reasonably* be affected by his private commitment"; and second, before abstention is also required, a reasonable person's independence of judgment "must be *materially* affected" by that private commitment. *In re Woodbury*, CEO 99-56.

The facts presented at the hearing established that prior to the August 23, 2006 Council meeting, Councilman Carrigan requested a legal opinion from the Sparks City Attorney as to whether or not he had a conflict that prohibited him from acting on the Lazy 8 matter. The Sparks City Attorney advised Councilman Carrigan through a legal memorandum that stated in part: "The only type of bias which may lead to disqualification of a public official must be grounded in facts demonstrating that the public official stands to reap either financial or personal gain or loss as a result of official action...if you anticipate that certain positions you may have previously taken or personal relationships in which you are involved may give rise to allegations of bias against you, you should simply err on the side of caution and disclose sufficient information concerning the positions or relationships before you consider and vote on the issue." The Sparks City Attorney also prepared a disclosure for Councilman Carrigan to make before voting. Relying on this advice, Councilman Carrigan disclosed the following: "...I have to disclose for the record something...I'd like to disclose that Carlos Vasquez, a consultant for Red

Hawk...Land Company is a personal friend, he's also my campaign manager. I'd also like to disclose that as a public official, I do not stand to reap either financial or personal gain or loss as a result of any official action I take tonight. Therefore, according to NRS 281.501, I believe that this disclosure of information is sufficient and that I will be participating in the discussion and voting on this issue..."

Councilman Carrigan's actions on August 23, 2006 would reasonably have been affected by his private relationship and commitment to Mr. Vasquez and therefore, a disclosure by Councilman Carrigan of sufficient information concerning this commitment to inform the public of the potential effect of the action or abstention upon Mr. Vasquez or Councilman Carrigan's interest was necessary. Based on Councilman Carrigan's disclosure, the Commission finds that Councilman Carrigan did not violate NRS 281.501(4).⁴

3. *NRS 281.501(2).*

NRS 281.501(2) provides:

Except as otherwise provided in subsection 3, in addition to the requirements of the code of ethical standards, 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:

- (a) His acceptance of a gift or loan;
- (b) His pecuniary interest; or
- (c) His commitment in a private capacity to the interests of others.

It must be presumed that the independence of judgment of a reasonable person would not be materially affected by his pecuniary interest or his commitment in a private capacity to the interests of others where the resulting benefit or detriment accruing to him or to the other persons whose interests to which the member is committed in a private capacity is not greater than that accruing to any other member of the general business, profession, occupation or group. The presumption set forth in this subsection does not affect the applicability of the requirements set forth in subsection 4 relating to the disclosure of the pecuniary interest or commitment in a private capacity to the interests of others.

⁴ Commissioners Capurro, Cashman, Hsu and Jenkins voted for the motion, while Commissioners Flangas and Hutchison voted Nay.

In *Woodbury* the Commission opined:

...[T]he public (and an elected official's constituents) have an interest in matters which come before such officers and employees. Abstention deprives the public and that official's constituents of a voice in governmental affairs. And, public officers and employees should have the opportunity to perform the duties for which they were elected or appointed, *except where private commitments would materially affect one's independence of judgment*. Compliance with disclosure requirements informs the citizenry as to how its public officers and employees exercise their discretion and independent judgment. And, in exercising their discretion and independent judgment, public officers and employees are accountable to their constituents or their appointing authority. The burden, therefore, is appropriately on the public officer or employee to disclose private commitments and the effect those private commitments can have on the decision-making process, and to make a proper determination regarding abstention where a *reasonable person's* independence of judgment would be *materially* affected by those private commitments. *In re Woodbury*, CEO 99-56. [Emphasis added.]

Under the *Woodbury* analysis, the burden was appropriately on Councilman Carrigan to make a determination regarding abstention. Abstention is required where a reasonable person's independence of judgment would be materially affected by his private commitment.

A reasonable person in Councilman Carrigan's position would not be able to remain objective on matters brought before the Council by his close personal friend, confidant and campaign manager, who was instrumental in getting Councilman Carrigan elected three times. Indeed, under such circumstances, a reasonable person would undoubtedly have such strong loyalties to this close friend, confidant and campaign manager as to materially affect the reasonable person's independence of judgment.

Therefore, the Commission unanimously finds that Councilman Carrigan violated NRS 281.501(2) by not abstaining from voting on the Lazy 8 matter on August 23, 2006. However, because the Commission also finds that Councilman Carrigan's violation was not willful, as he reasonably relied on his counsel's advice, and because he did not consider his relationship with Mr. Vasquez a relationship that falls under the statute, it imposes no civil penalty.

CONCLUSION

Based on the foregoing, the Commission finds that Councilman Carrigan's actions did not violate NRS 281.481(2) or NRS 281.501(4). The Commission finds one violation by Councilman Carrigan of NRS 281.501(2). However, because the Commission finds that Councilman Carrigan's violation is not willful, it imposes no civil penalty.

NOTE: THE FOREGOING OPINION APPLIES ONLY TO THE SPECIFIC FACTS AND CIRCUMSTANCES DESCRIBED HEREIN. FACTS AND CIRCUMSTANCES THAT DIFFER FROM THOSE IN THIS OPINION MAY RESULT IN AN OPINION CONTRARY TO THIS OPINION.

DATED: October 8, 2007.

NEVADA COMMISSION ON ETHICS

By: 

MARK HUTCHINSON, Vice Chairman

EXHIBIT “C”

1 **ADRIANA G. FRALICK, #9392**
2 General Counsel
3 **NEVADA COMMISSION ON ETHICS**
3476 Executive Pointe Way, Suite 10
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Attorney for Respondent

RECORDED & FILED
2008 MAY 30 PM 4:51

DEAN GLOVER

BY C. Cooper CLERK

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

9 **MICHAEL A. CARRIGAN, Fourth Ward**
City Council Member, of the City of Sparks

10 Petitioner,

Case No.: 07-OC-012451B
Department No.: II

11 vs.

12 **THE COMMISSION ON ETHICS OF THE**
13 **STATE OF NEVADA**


14 Respondent.

16 **NOTICE OF ENTRY OF ORDER**

17
18 **PLEASE TAKE NOTICE** that on the 28th day of May, 2008, an Order and Judgment
19 was entered in the above-entitled action, a copy of which is attached hereto.

20
21 DATED this 30th day of May, 2008.

22 Submitted by:

23
24 
25 **Adriana G. Fralick, Esq. (NV Bar No 9392)**
26 3476 Executive Pointe Way, Ste. 10
27 Carson City, Nevada 89706
28 Telephone: (775) 687-5469
Facsimile: (775) 687-1279
Attorney for Respondent

EXHIBIT

JUN 03 2008

CERTIFICATE OF SERVICE

I certify that I am an employee of the Nevada Commission on Ethics and that on this 30th day of May, 2008, I placed a true and correct copy of the foregoing Notice of Entry of Order in an envelope at Carson City, Nevada and caused same to be delivered via Reno Carson Messenger, next business day delivery, to the following:

CHESTER H. ADAMS
Sparks City Attorney
DOUGLAS R. THORNLEY
Assistant City Attorney
431 Prater Way
Sparks, NV 89431
Attorneys for Petitioner

BRENDA J. ERDOES, Legislative Counsel
KEVIN C. POWERS, Senior Principal Deputy Legislative Council
Legislative Counsel Bureau
401 S. Carson Street
Carson City, Nevada 89701
Attorneys for Amicus Curiae Legislature of the State of Nevada


An Employee of the Nevada Commission on Ethics

REC'D & FILED

2008 MAY 28 PM 4:36

ALAN GLOVER
J. HIGGINS CLERK
BY _____
JUDITH

Case No.: 07-OC-012451B

Dept. No.: II

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

MICHAEL A. CARRIGAN, Fourth Ward City
Council Member of the City of Sparks,

Petitioner,

vs.

THE COMMISSION ON ETHICS OF THE
STATE OF NEVADA,

Respondent.

**ORDER AND JUDGMENT DENYING
THE PETITIONER'S PETITION FOR
JUDICIAL REVIEW AND AFFIRMING
THE FINAL DECISION OF THE
NEVADA COMMISSION ON ETHICS**

JUN 03 2008

PROCEDURAL HISTORY

On October 9, 2007, Petitioner MICHAEL A. CARRIGAN, a member of the Sparks City Council, filed a Petition for Judicial Review pursuant to the Administrative Procedure Act (NRS 233B.130-233B.135) asking the Court to reverse a final decision of Respondent NEVADA COMMISSION ON ETHICS (Commission). In the Commission's final decision, which it issued on October 8, 2007, the Commission found that Councilman Carrigan violated the Nevada Ethics in Government Law (Ethics Law) when he failed to abstain from voting upon the application of Red Hawk Land Company (Red Hawk) for tentative approval of its Lazy 8 resort and casino project (Lazy 8 project). Specifically, the Commission determined that, at the time of the vote, Councilman Carrigan had a disqualifying conflict

1 of interest under subsections 2 and 8 of NRS 281A.420 because his campaign manager, political advisor,
2 confidant and close personal friend, Mr. Carlos Vasquez, was a paid consultant and lobbyist for Red
3 Hawk and was urging the City Council to approve the Lazy 8 project.¹

4 In support of his Petition for Judicial Review, Councilman Carrigan filed an Opening Brief on
5 January 7, 2008. The Commission filed an Answering Brief on February 25, 2008. In addition, on
6 February 25, 2008, the Legislature of the State of Nevada (Legislature) filed a Motion for Leave to File
7 an Amicus Curiae Brief and for Permission to Participate as Amicus Curiae in any Oral Argument or
8 Hearing on this matter. The Legislature conditionally filed its Amicus Curiae Brief along with its
9 Motion. The Amicus Curiae Brief was limited to addressing Councilman Carrigan's claims that
10 subsections 2 and 8 of NRS 281A.420 are unconstitutional because they: (1) impermissibly restrict
11 protected speech in violation of the First Amendment; and (2) are overbroad and vague in violation of
12 the First and Fourteenth Amendments. On March 20, 2008, the Court granted the Legislature's Motion
13 and permitted the Legislature to file its Amicus Curiae Brief and to participate as Amicus Curiae in any
14 oral argument or hearing on this matter.

15 On March 26, 2008, Councilman Carrigan filed a Reply Brief and also filed a Request for Hearing
16 on this matter pursuant to NRS 233B.133(4). On April 16, 2008, the Court set a hearing date of May 12,
17 2008, to receive oral argument from the parties and Amicus Curiae regarding the Petition.

18 On May 12, 2008, the Court commenced the hearing on the Petition shortly after 9:00 a.m. in the
19 courtroom of Department No. II. The following counsel were present in the courtroom: CHESTER H.
20 ADAMS, Sparks City Attorney, and DOUGLAS R. THORNLEY, Assistant City Attorney, who
21 appeared on behalf of the Petitioner; ADRIANA G. FRALICK, General Counsel for the Nevada

22
23 ¹ At the time of the City Council meeting on August 23, 2006, the Ethics Law was codified in NRS 281.411-281.581. In
24 2007, the Legislature enacted Senate Bill No. 495, which directed the Legislative Counsel to move the Ethics Law into a
new chapter to be numbered as NRS Chapter 281A. See Ch. 195, 2007 Nev. Stats. 641, § 18. Because the relevant events
in this case occurred before the recodification of the Ethics Law into NRS Chapter 281A, the Commission's final decision
and the briefs of the parties cite to NRS 281.411-281.581. Nevertheless, for purposes of consistency with the Ethics Law as
presently codified, the Court's order and judgment will cite to the appropriate provisions of NRS Chapter 281A.

1 Commission on Ethics, who appeared on behalf of the Respondent; and KEVIN C. POWERS, Senior
2 Principal Deputy Legislative Counsel, Legislative Counsel Bureau, who appeared on behalf of the
3 Legislature as Amicus Curiae.

4 Having considered the pleadings, briefs, documents, exhibits and administrative record on file in
5 this case and having received oral argument from the parties and Amicus Curiae, the Court enters the
6 following findings of fact and conclusions of law pursuant to N.R.C.P. 52 and enters the following order
7 and judgment pursuant to N.R.C.P. 58 and NRS 233B.135:

8 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

9 1. Michael A. Carrigan is the Petitioner herein. He is a member of the Sparks City Council.

10 2. The Nevada Commission on Ethics is the Respondent herein. The Commission is charged
11 with the statutory duty of administering and enforcing the Ethics Law, which is codified in the Nevada
12 Revised Statutes as NRS Chapter 281A.

13 3. On August 23, 2006, the Sparks City Council held a special meeting to determine whether to
14 grant Red Hawk tentative approval for its Lazy 8 project, which would be built within a planned
15 development in the City commonly known as Tierra Del Sol. (ROA000002-4, 170-171, 176-209.)² All
16 five members of the City Council were present at the meeting and actively participated in the discussion
17 regarding the merits of Red Hawk's application. (ROA000175, 202-209.)

18 4. At the time of the meeting, Councilman Carrigan was a candidate for reelection to a third term
19 on the City Council, and Mr. Carlos Vasquez was his campaign manager. (ROA000002-4, 23, 43-44.)
20 Vasquez started serving as campaign manager in January or February 2006, and he served in that
21 capacity until Councilman Carrigan was reelected at the November 2006 general election. Id. In prior
22 elections, Vasquez served as Councilman Carrigan's campaign manager for at least 3 months in both
23

24

² Parenthetical citations are to the Administrative Record on Appeal (ROA), which the Commission transmitted to the Court pursuant to NRS 233B.131(1) and which consists of Bates Pages Nos. ROA000001 to ROA000570, inclusive.

1 1999 and 2003, when Councilman Carrigan was elected to his first and second terms on the City
2 Council. (ROA000002-4, 21-23.) Vasquez and Councilman Carrigan also have a close personal
3 friendship that has been ongoing since 1991. (ROA000002-4, 20-21, 41.)

4 5. Vasquez has served as campaign manager for at least 50 to 60 candidates since 1999.
5 (ROA000041.) For some candidates, Vasquez was paid compensation for his services as campaign
6 manager, but for Councilman Carrigan's three consecutive campaigns, Vasquez was not paid
7 compensation. (ROA000002-4, 21-23, 41.) However, several companies owned by Vasquez were paid
8 for providing printing, advertising and public relations services for Councilman Carrigan's three
9 campaigns. (ROA000002-4, 24, 33-34, 51.) These services were provided at cost, and Vasquez and his
10 companies did not make any profit from these services. Id.

11 6. Councilman Carrigan would routinely discuss political matters with Vasquez throughout his
12 terms in office, not just during political campaigns, and he considered Vasquez to be a trusted political
13 advisor and confidant. (ROA000022-23, 25, 31, 35.) In fact, Councilman Carrigan would confide in
14 Vasquez regarding political matters that he would not normally discuss with members of his own family
15 such as siblings. (ROA000035.) When Vasquez was asked by the Commission to describe the kind of
16 political matters he discussed with Councilman Carrigan from 1999 to 2006, he responded: "Everything.
17 When you are running a campaign you have to take a look at all the factors that could affect that
18 candidate and that community." (ROA000046.)

19 7. During Councilman Carrigan's 2006 reelection campaign, the predominant campaign issue
20 was the Lazy 8 project, and the public and the media focused most of their attention on that project.
21 (ROA000023-24, 47.) As campaign manager, Vasquez actively solicited campaign contributions for the
22 benefit of Councilman Carrigan. (ROA000043-44.) As part of that solicitation, Vasquez relied on his
23 many community and business contacts, and he sent fund-raising letters to approximately 700 potential
24 donors, including persons who were principals either in Red Hawk or one of its affiliates, or who were

1 otherwise directly interested in the success of the Lazy 8 project. Id.

2 8. Vasquez's primary occupation is to act as a paid public relations political advocate and
3 strategist. (ROA000042.) In that capacity, Vasquez is paid to provide political consulting, lobbying and
4 public relations services, and one of his specialties is providing such services to developers who are
5 seeking approval from local governments for their planned developments. (ROA000041-53.)

6 9. Vasquez was hired by Red Hawk or one of its affiliates to provide political consulting,
7 lobbying and public relations services for the Lazy 8 project. (ROA000029, 42.) Vasquez was paid to
8 oversee public relations regarding the project, and he was actively and openly involved in efforts to
9 manage information in the media and to influence and improve the public's opinion regarding the
10 project. (ROA000042-46.) Vasquez also was actively and openly involved in efforts to secure the City
11 Council's approval of the project. Id.

12 10. Councilman Carrigan testified before the Commission that Vasquez never asked him to vote
13 a particular way on the Lazy 8 project. (ROA000035-37, 42-46.) However, the record reflects that
14 Vasquez's efforts were instrumental in securing support for the project from Councilman Carrigan. Id.
15 For example, Vasquez met numerous times with Councilman Carrigan and other council members to
16 discuss the project. Id. At those meetings, Vasquez sought support for the project through discussions
17 and negotiations regarding the specific details of the project that Red Hawk could change to satisfy the
18 concerns of the council members. Id. As a result of his discussions and negotiations, Vasquez conveyed
19 information directly to Red Hawk, which then changed the specifications of the project to obtain the
20 support of Councilman Carrigan and other council members. Id.

21 11. At the beginning of the City Council meeting on August 23, 2006, Councilman Carrigan
22 made the following disclosure, as found in the transcripts of the meeting:

23 Thank you Mayor. I have to disclose for the record something, uh, I'd like to disclose that
24 Carlos Vasquez, a consultant for Redhawk, uh, Land Company is a personal friend, he's also
my campaign manager. I'd also like to disclose that as a public official, I do not stand to
reap either financial or personal gain or loss as a result of any official action I take tonight.

1 [T]herefore according to NRS 281.501 [now codified as NRS 281A.420] I believe that this
2 disclosure of information is sufficient and that I will be participating in the discussion and
voting on this issue. Thank you.

3 (ROA000507.)

4 12. At the City Council meeting, Vasquez appeared and testified as a paid consultant and
5 representative for Red Hawk, and he actively and openly lobbied and advocated on behalf of Red Hawk
6 and urged the City Council to approve the Lazy 8 project. (ROA000187-190.)

7 13. After receiving additional testimony at the meeting from supporters and opponents of the
8 Lazy 8 project, the City Council took action on Red Hawk's application. (ROA000190-209.)
9 Councilman Carrigan made a motion to grant tentative approval for the Lazy 8 project. (ROA000206-
10 209.) That motion failed by a vote of two in favor (Carrigan and Schmitt) and three opposed (Mayer,
11 Salerno and Moss). Id. Councilman Mayer then made a motion to deny tentative approval for the
12 Lazy 8 project. (ROA000209.) That motion passed by a vote of three in favor (Mayer, Salerno and
13 Moss) and two opposed (Carrigan and Schmitt). Id.

14 14. In September 2006, four members of the public filed separate but similar ethics complaints
15 against Councilman Carrigan. (ROA000075-107.) Each complaint alleged that Councilman Carrigan's
16 participation in the City Council meeting violated the Ethics Law because, at the time of the meeting,
17 Councilman Carrigan's campaign manager, political advisor, confidant and close personal friend was
18 acting as a paid consultant and lobbyist for Red Hawk and was urging the City Council to approve the
19 Lazy 8 project. Id.

20 15. On August 29, 2007, the Commission held a hearing and received testimony and evidence
21 concerning the ethics complaints. (ROA000016-71.) On October 8, 2007, the Commission issued its
22 final decision finding that Councilman Carrigan violated subsection 2 of NRS 281A.420 when he voted
23 upon the Lazy 8 project. (ROA000001-13.) However, because the Commission found that Councilman
24 Carrigan's violation was not willful, the Commission did not impose a civil penalty against Councilman

1 Carrigan. (ROA000012-13.)

2 16. Subsection 2 of NRS 281A.420 provides in relevant part:

3 [I]n addition to the requirements of the code of ethical standards, a public officer shall not
4 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:

5 (a) His acceptance of a gift or loan;

6 (b) His pecuniary interest; or

(c) His commitment in a private capacity to the interests of others.

7 ➔ It must be presumed that the independence of judgment of a reasonable person would not
be materially affected by his pecuniary interest or his commitment in a private capacity to
the interests of others where the resulting benefit or detriment accruing to him or to the other
8 persons whose interests to which the member is committed in a private capacity is not
greater than that accruing to any other member of the general business, profession,
9 occupation or group. The presumption set forth in this subsection does not affect the
applicability of the requirements set forth in subsection 4 relating to the disclosure of the
10 pecuniary interest or commitment in a private capacity to the interests of others.

11 17. In its final decision, the Commission determined that when Councilman Carrigan voted upon
12 the Lazy 8 project, Councilman Carrigan improperly voted upon "a matter with respect to which the
13 independence of judgment of a reasonable person in his situation would be materially affected
14 by...[h]is commitment in a private capacity to the interests of others." NRS 281A.420(2)(c).
15 (ROA000011-13.)

16 18. In reaching its conclusion, the Commission relied upon the statutory definition of
17 "commitment in a private capacity to the interests of others," which is found in subsection 8 of NRS
18 281A.420:

19 8. As used in this section, "commitment in a private capacity to the interests of others"
means a commitment to a person:

20 (a) Who is a member of his household;

21 (b) Who is related to him by blood, adoption or marriage within the third degree of
consanguinity or affinity;

22 (c) Who employs him or a member of his household;

(d) With whom he has a substantial and continuing business relationship; or

23 (e) Any other commitment or relationship that is substantially similar to a commitment
or relationship described in this subsection.

24 (Emphasis added.) (ROA000006-8.)

1 19. The Commission found that Councilman Carrigan's relationship with Vasquez came within
2 the scope of paragraph (e) of subsection 8 of NRS 281A.420, as "[a]ny other commitment or
3 relationship that is substantially similar to a commitment or relationship described in this subsection."
4 (ROA000006-8.) In particular, the Commission determined that "[t]he sum total of their commitment
5 and relationship equates to a 'substantially similar' relationship to those enumerated under NRS
6 281.501(8)(a)-(d) [now codified as NRS 281A.420(8)(a)-(d)], including a close personal friendship, akin
7 to a relationship to a family member, and a 'substantial and continuing business relationship.'"
8 (ROA000008.)

9 20. Because the Commission found that the independence of judgment of a reasonable person in
10 Councilman Carrigan's situation would be materially affected by his commitment in a private capacity
11 to the interests of his campaign manager, political advisor, confidant and close personal friend, the
12 Commission concluded that Councilman Carrigan was required by subsection 2 of NRS 281A.420 to
13 abstain from voting. Specifically, the Commission stated:

14 Under the Woodbury analysis, the burden was appropriately on Councilman Carrigan to
15 make a determination regarding abstention. Abstention is required where a reasonable
16 person's independence of judgment would be materially affected by his private
17 commitment.

18 A reasonable person in Councilman Carrigan's position would not be able to remain
19 objective on matters brought before the Council by his close personal friend, confidant and
20 campaign manager, who was instrumental in getting Councilman Carrigan elected three
21 times. Indeed, under such circumstances, a reasonable person would undoubtedly have such
22 strong loyalties to this close friend, confidant and campaign manager as to materially affect
23 the reasonable person's independence of judgment.

24 (ROA000012.)

21 **Petitioner's Claims**

22 21. In his Petition for Judicial Review, Councilman Carrigan raises multiple claims challenging
23 the Commission's final decision.

24 22. First, Councilman Carrigan contends that the Commission's final decision should be

1 reversed under the Administrative Procedure Act because the final decision is in violation of
2 constitutional provisions. NRS 233B.135(3)(a). Specifically, Councilman Carrigan contends that
3 subsections 2 and 8 of NRS 281A.420 are unconstitutional because they: (1) impermissibly restrict
4 protected speech in violation of the First Amendment; and (2) are overbroad and vague in violation of
5 the First and Fourteenth Amendments.

6 23. Second, Councilman Carrigan contends that the Commission's final decision should be
7 reversed under the Administrative Procedure Act because the final decision is affected by error of law.
8 NRS 233B.135(3)(d). Specifically, Councilman Carrigan contends that the Commission improperly
9 interpreted and applied subsection 2 of NRS 281A.420 because it ignored the presumption contained in
10 that subsection without receiving any evidence that rebutted the presumption.

11 24. Third, Councilman Carrigan contends that the Commission's final decision should be
12 reversed under the Administrative Procedure Act because the final decision is not supported by reliable,
13 probative and substantial evidence on the whole record. NRS 233B.135(3)(e).

14 25. Fourth, Councilman Carrigan contends that the Commission's final decision should be
15 reversed under the Administrative Procedure Act because the final decision is arbitrary and capricious
16 and characterized by abuse of discretion. NRS 233B.135(3)(f).

17 26. Finally, Councilman Carrigan contends that the Commission's final decision should be
18 reversed under the Administrative Procedure Act because the final decision violates his constitutional
19 rights to due process and was made upon unlawful procedure. NRS 233B.135(3)(a) & (c). Specifically,
20 Councilman Carrigan contends that his constitutional rights to due process were violated because
21 Commissioner Flangas and Commissioner Hsu each had conflicts of interest which created an
22 appearance or implied probability of bias and which disqualified them from participating in the
23 Commission's hearing regarding the ethics complaints against Councilman Carrigan.

24 27. Having reviewed each of Councilman Carrigan's claims, the Court finds that the claims do

1 not have merit and, therefore, the Court denies the Petition for Judicial Review and affirms the final
2 decision of the Commission pursuant to NRS 233B.135(3).

3 **Standard of Review**

4 28. Under the Administrative Procedure Act, Councilman Carrigan bears the burden of proof to
5 show that the final decision of the Commission is invalid. NRS 233B.135(2); Weaver v. State, Dep't of
6 Motor Vehicles, 121 Nev. 494, 498 (2005). To meet his burden of proof, Councilman Carrigan must
7 prove that substantial rights have been prejudiced by the final decision of the Commission because the
8 final decision is:

- 9 (a) In violation of constitutional or statutory provisions;
10 (b) In excess of the statutory authority of the agency;
11 (c) Made upon unlawful procedure;
12 (d) Affected by other error of law;
13 (e) Clearly erroneous in view of the reliable, probative and substantial evidence on the
14 whole record; or
15 (f) Arbitrary or capricious or characterized by abuse of discretion.

16 NRS 233B.135(3).

17 29. In reviewing the final decision of the Commission, the standard of deference accorded to the
18 Commission's determinations turns largely on whether the determinations are more appropriately
19 characterized as findings of fact or conclusions of law. S. Nev. Operating Eng'rs v. Labor Comm'r, 121
20 Nev. 523, 527 (2005).

21 30. The Commission's findings of fact are entitled to a deferential standard of review. Id. at
22 527-28. Under that deferential standard, the Court may not look beyond the administrative record or
23 substitute its judgment for that of the Commission as to the weight of evidence on any findings of fact.
24 NRS 233B.135(3); Weaver, 121 Nev. at 498. Thus, the Court must uphold the Commission's findings
of fact if they are supported by substantial evidence in the record, regardless of whether the Court would
have reached the same view of the facts as the Commission. Wright v. State, Dep't of Motor Vehicles,
121 Nev. 122, 125 (2005). For purposes of this standard, substantial evidence is defined as evidence

1 which a reasonable mind might accept as adequate to support a conclusion. Id. Substantial evidence
2 need not be voluminous, and it may be shown inferentially by a lack of certain evidence. Id.

3 31. In addition to giving deference to the Commission's findings of fact, the Court must give
4 deference to the Commission's conclusions of law when they are closely tied to the Commission's view
5 of the facts. City Plan Dev., Inc. v. Labor Comm'r, 121 Nev. 419, 426 (2005). However, on pure
6 questions of law, such as the Commission's interpretation of the ethics statutes, the Court is empowered
7 to undertake an independent de novo review, and the Court is not required to defer to the Commission's
8 legal conclusions. Bacher v. State Eng'r, 122 Nev. ---, 146 P.3d 793, 798 (2006); Nev. Tax Comm'n v.
9 Nev. Cement Co., 117 Nev. 960, 964 (2001).

10 32. Under NRS Chapter 281A, the Commission is the agency expressly charged with the
11 statutory duty of administering and enforcing the ethics statutes. NRS 281A.440 & 281A.480; Comm'n
12 on Ethics v. JMA/Lucchesi, 110 Nev. 1, 5-6 (1994). As a result, the Commission is clothed with the
13 power to interpret the ethics statutes as a necessary precedent to its administrative action and "great
14 deference should be given to that interpretation if it is within the language of the statute." Nev. Tax
15 Comm'n, 117 Nev. at 968-69; JMA/Lucchesi, 110 Nev. at 5-6; Cable v. State ex rel. Employers Ins. Co.,
16 122 Nev. ---, 127 P.3d 528, 532 (2006). Thus, the Court will give great deference to the Commission's
17 interpretation of the ethics statutes and will not readily disturb that interpretation if it is within the
18 language of the statutes and is consistent with legislative intent. JMA/Lucchesi, 110 Nev. at 5-7; City of
19 Reno v. Reno Police Protective Ass'n, 118 Nev. 889, 900 (2002).

20 **Subsections 2 and 8 of NRS 281A.420 do not unconstitutionally restrict protected**
21 **speech in violation of the First Amendment.**

22 33. Councilman Carrigan contends that legislative voting is protected speech under the First
23 Amendment and that he had a constitutional right as an elected public officer to engage in such
24 protected speech when he voted on the Lazy 8 project. Because the Commission concluded that

1 subsections 2 and 8 of NRS 281A.420 prohibited Councilman Carrigan from voting on the Lazy 8
2 project, Councilman Carrigan argues that the statutory provisions are unconstitutional on their face and
3 as applied to him because they impermissibly restrict his protected speech in violation of the First
4 Amendment. In response, the Legislature raises several arguments in opposition to Councilman
5 Carrigan's constitutional challenge to the validity of the statutory provisions.

6 34. First, the Legislature contends that the First Amendment was not applicable under the
7 circumstances that existed when Councilman Carrigan voted on the Lazy 8 project. Specifically, the
8 Legislature argues that: (1) the City Council meeting regarding the Lazy 8 project was not a legislative
9 proceeding, but was an administrative proceeding at which the City Council and its members were
10 required to comply with the Due Process Clause; (2) under the Due Process Clause, Councilman
11 Carrigan was prohibited from voting on the Lazy 8 project because he had a substantial and continuing
12 political, professional and personal relationship with Vasquez which created an appearance or implied
13 probability of bias and which resulted in a disqualifying conflict of interest; and (3) because the Due
14 Process Clause prohibited Councilman Carrigan from voting on the Lazy 8 project, the First
15 Amendment was not applicable under the circumstances and, therefore, subsections 2 and 8 of NRS
16 281A.420 are not subject to review under the First Amendment based on the particular facts of this case.

17 35. Second, the Legislature contends that even if subsections 2 and 8 of NRS 281A.420 are
18 subject to review under the First Amendment in this case, the balancing test established by the United
19 States Supreme Court in Pickering v. Board of Education, 391 U.S. 563 (1968), is the proper standard of
20 review. The Legislature argues that under the Pickering balancing test, subsections 2 and 8 of NRS
21 281A.420 are constitutional on their face and as applied to Councilman Carrigan because the state's vital
22 interest in ethical government outweighs any interest Councilman Carrigan has to vote upon a matter in
23 which he has a disqualifying conflict of interest.

24 36. Finally, the Legislature contends that even if strict scrutiny is the proper standard of review

1 under the First Amendment, subsections 2 and 8 of NRS 281A.420 are constitutional on their face and
2 as applied to Councilman Carrigan because: (1) the state has a compelling interest in promoting ethical
3 government and guarding the public from biased decisionmakers; and (2) the statutory provisions
4 requiring disqualified public officers to abstain from voting constitute the least restrictive means
5 available to further the state's compelling interest.

6 37. Although the Legislature makes a cogent argument that the First Amendment was not
7 applicable under the circumstances, it is not necessary for the Court to resolve that issue in this case.
8 Instead, even assuming that the First Amendment was applicable under the circumstances, the Court
9 finds that under the Pickering balancing test, any interference with protected speech is warranted
10 because of the state's strong interest in either having ethical government or the appearance of ethical
11 government. Therefore, the Court holds that subsections 2 and 8 of NRS 281A.420 are constitutional on
12 their face and as applied to Councilman Carrigan.

13 38. Although public officers and employees do not surrender their First Amendment rights as a
14 result of their public service, it is well established that the free speech and associational rights of public
15 officers and employees are not absolute. U.S. Civ. Serv. Comm'n v. Nat'l Ass'n of Letter Carriers, 413
16 U.S. 548, 567 (1973). Because the free speech and associational rights of public officers and employees
17 are not absolute, states may enact reasonable regulations limiting the political activities of public
18 officers and employees without violating the First Amendment. Clements v. Fashing, 457 U.S. 957,
19 971-73 (1982); Broadrick v. Oklahoma, 413 U.S. 601, 606-07 (1973).

20 39. Several cases from the First Circuit have found that "[v]oting by members of municipal
21 boards, commissions, and authorities comes within the heartland of First Amendment doctrine, and the
22 status of public officials' votes as constitutionally protected speech [is] established beyond peradventure
23 of doubt." Stella v. Kelley, 63 F.3d 71, 75 (1st Cir. 1995); Mihos v. Swift, 358 F.3d 91, 107-09 (1st Cir.
24 2004); Miller v. Town of Hull, 878 F.2d 523, 532-33 (1st Cir. 1989). Even though the First Circuit

1 recognizes that voting by public officers is constitutionally protected speech, the First Circuit also
2 recognizes that “[t]his protection is far from absolute,” and that when a public officer claims his First
3 Amendment right to vote has been violated, the Pickering balancing test is the proper standard of review
4 to apply to the case. Mullin v. Town of Fairhaven, 284 F.3d 31, 37 (1st Cir. 2002); Stella, 63 F.3d at 74-
5 76; Mihos, 358 F.3d at 102-09. As thoroughly explained by the First Circuit in Mullin:

6 We have extended First Amendment protection to votes on “controversial public issues”
7 cast by “a member of a public agency or board.” Miller v. Town of Hull, 878 F.2d 523, 532
8 (1st Cir. 1989) (“There can be no more definite expression of opinion than by voting on a
9 controversial public issue.”); see also Stella v. Kelley, 63 F.3d 71, 75-76 (1st Cir. 1995).
10 This protection is far from absolute, however. In their capacity as public officials voting on
11 matters of public concern, plaintiffs retain First Amendment protection “so long as [their]
12 speech does not unduly impede the government’s interest . . . in the efficient performance of
13 the public service it delivers through” its appointed officials. O’Connor, 994 F.2d at 912
14 (citing cases). Accordingly, to determine the scope of First Amendment free speech
15 protections applicable to public officials, we have employed a three-part test extracted
16 largely from two Supreme Court opinions, Mt. Healthy City Sch. Dist. Bd. of Educ. v.
17 Doyle, 429 U.S. 274 (1977), and Pickering v. Bd. of Educ., 391 U.S. 563 (1968).

18 Mullin, 284 F.3d at 37.

19 40. Thus, the Court finds that the Pickering balancing test, not strict scrutiny, is the proper
20 standard of review for this case. Under the Pickering balancing test, the Court must weigh the interests
21 of public officers and employees in exercising their First Amendment rights against the state’s vital
22 interest in “promot[ing] efficiency and integrity in the discharge of official duties.” Connick v. Myers,
23 461 U.S. 138, 150-51 (1983) (quoting Ex parte Curtis, 106 U.S. 371, 373 (1882)); Rankin v. McPherson,
24 483 U.S. 378, 384 (1987). If a public officer or employee engages in protected speech that has the
potential to disrupt or undermine the efficiency or integrity of governmental functions, the state may
impose significant restraints on the speech that “would be plainly unconstitutional if applied to the
public at large.” United States v. Nat’l Treasury Employees Union, 513 U.S. 454, 465 (1995); Waters v.
Churchill, 511 U.S. 661, 671-75 (1994) (plurality opinion). Thus, under the Pickering balancing test, the
state is given greater latitude to restrict the speech of public officers and employees to promote

1 operational efficiency and effectiveness and to prevent the appearance of impropriety and corruption in
2 the performance of governmental functions. City of San Diego v. Roe, 543 U.S. 77, 80-85 (2004);
3 Garcetti v. Ceballos, 547 U.S. 410, 126 S. Ct. 1951, 1958-59 (2006).

4 41. On their face, subsections 2 and 8 of NRS 281A.420 prohibit a public officer from voting
5 upon a matter when he has a "commitment in a private capacity to the interests of others." The purpose
6 of the statutory provisions is to prevent a public officer from voting upon a matter when private interests
7 create an actual conflict of interest or the appearance of a conflict of interest. Under such circumstances,
8 a reasonable person would have a legitimate fear that the public officer's commitment to the private
9 interests of others could potentially disrupt or undermine the public officer's efficiency, effectiveness
10 and integrity in the discharge of his official duties. Thus, on their face, the statutory provisions serve the
11 vital state interest of securing the efficient, effective and ethical performance of governmental functions.
12 See Dunphy v. Sheehan, 92 Nev. 259, 262 (1976) ("The elimination and prevention of conflict of
13 interest is a proper state purpose.").

14 42. Because the statutory provisions serve such a vital state interest, the balancing of interests
15 under the Pickering test tilts heavily in favor of the state because the state's interests are at their zenith.
16 In contrast, a public officer's interest in voting upon a matter in which he has a disqualifying conflict of
17 interest is entitled to little or no protection under the First Amendment. Indeed, allowing a public officer
18 to vote under such circumstances would seriously erode the public's confidence in ethical government.
19 Therefore, because the state's interest in securing the efficient, effective and ethical performance of
20 governmental functions outweighs any interest that a public officer may have in voting upon a matter in
21 which he has a disqualifying conflict of interest, the Court finds that subsections 2 and 8 of NRS
22 281A.420 are facially constitutional under the Pickering balancing test.

23 43. The Court also finds that subsections 2 and 8 of NRS 281A.420 are constitutional as applied
24 to Councilman Carrigan. Given Vasquez's role as Councilman Carrigan's campaign manager, political

1 advisor, confidant and close personal friend, the record contains substantial evidence that Councilman
2 Carrigan and Vasquez had a substantial and continuing political, professional and personal relationship
3 when the Lazy 8 project came before the City Council for approval. That relationship was sufficient to
4 create an actual conflict of interest or the appearance of a conflict of interest, and a reasonable person
5 would have had a legitimate fear that the relationship could potentially disrupt or undermine
6 Councilman Carrigan's efficiency, effectiveness and integrity in the discharge of his official duties.
7 Under such circumstances, Councilman Carrigan had a disqualifying conflict of interest. Because the
8 First Amendment does not protect the right to vote in the face of a disqualifying conflict of interest, the
9 Commission acted constitutionally when it found that Councilman Carrigan was prohibited from voting
10 upon the Lazy 8 project.

11 44. Accordingly, the Court holds that under the Pickering balancing test, subsections 2 and 8 of
12 NRS 281A.420 are constitutional on their face and as applied to Councilman Carrigan. Therefore,
13 subsections 2 and 8 of NRS 281A.420 do not unconstitutionally restrict protected speech in violation of
14 the First Amendment.

15 **Subsections 2 and 8 of NRS 281A.420 are not unconstitutionally overbroad or vague in**
16 **violation of the First and Fourteenth Amendments.**

17 45. Overbreadth and vagueness are "logically related and similar doctrines." Kolender v.
18 Lawson, 461 U.S. 352, 358 n.8 (1983). A statute is unconstitutionally overbroad on its face if the statute
19 prohibits a substantial amount of speech protected by the First Amendment. Village of Hoffman Estates
20 v. Flipside, 455 U.S. 489, 494-97 (1982). A statute is unconstitutionally vague on its face if the statute:
21 (1) fails to provide people of ordinary intelligence with a reasonable opportunity to understand what
22 conduct it prohibits; or (2) authorizes or encourages arbitrary and discriminatory enforcement by the
23 officers charged with its administration. Id. at 497-99; Comm'n on Ethics v. Ballard, 120 Nev. 862, 868
24 (2004).

1 46. In determining whether a statute is unconstitutionally overbroad or vague, the United States
2 Supreme Court considers whether there are any procedures in place allowing persons with doubts about
3 the meaning of the statute to obtain clarification from the agency charged with its enforcement. U.S.
4 Civ. Serv. Comm'n v. Nat'l Ass'n of Letter Carriers, 413 U.S. 548, 580 (1973); Broadrick v. Oklahoma,
5 413 U.S. 601, 608 n.7 (1973); Arnett v. Kennedy, 416 U.S. 134, 160 (1974) (plurality opinion);
6 Hoffman Estates, 455 U.S. at 498; cf. Dunphy v. Sheehan, 92 Nev. 259, 264 (1976). The Supreme
7 Court typically will not find the statute to be unconstitutionally overbroad or vague if such persons "are
8 able to seek advisory opinions for clarification, and thereby 'remove any doubt there may be as to the
9 meaning of the law.'" McConnell v. FEC, 540 U.S. 93, 170 n.64 (2003) (citation omitted) (quoting
10 Letter Carriers, 413 U.S. at 580); Groener v. Or. Gov't Ethics Comm'n, 651 P.2d 736, 742-43 (Or. Ct.
11 App. 1982).

12 47. Under the Ethics Law, a public officer may request an advisory opinion from the
13 Commission regarding "the propriety of his own past, present or future conduct" and receive guidance
14 from the Commission on whether to withdraw or abstain from participating in a matter. NRS
15 281A.440(1) & 281A.460. Each request so made by a public officer and each advisory opinion rendered
16 by the Commission in response to such a request, and any motion, determination, evidence or hearing
17 record relating to such a request, are confidential unless the public officer who requested the advisory
18 opinion permits the disclosure of the confidential information or acts in contravention of the advisory
19 opinion. NRS 281A.440(5).

20 48. In this case, Councilman Carrigan failed to seek an advisory opinion from the Commission
21 even though he had ample time and opportunity to do so. The record shows that Vasquez became
22 Councilman Carrigan's campaign manager 6 months or more before the City Council meeting.
23 (ROA000023.) During that period, Councilman Carrigan had actual knowledge of Vasquez's
24 simultaneous service as a paid consultant for Red Hawk regarding the Lazy 8 project. (ROA000029, 42-

43.) Thus, Councilman Carrigan could have requested an advisory opinion from the Commission during this period, but he neglected to do so. Given that Councilman Carrigan failed to seek an advisory opinion and obtain clarification of the statute from the Commission when he had ample opportunity to do so, the Court rejects Councilman Carrigan's claim that the statute is unconstitutionally overbroad or vague. See Groener, 651 P.2d at 742-43 (rejecting a legislator's claim that an ethics statute was unconstitutionally vague where the legislator failed to request an advisory opinion from the state ethics commission regarding the propriety of his conduct).

49. In addition, after reviewing subsections 2 and 8 of NRS 281A.420 in light of the statute's intended scope and purpose, the Court finds that the statute is not unconstitutionally overbroad or vague in violation of the First and Fourteenth Amendments.

50. The United States Supreme Court has recognized that the overbreadth and vagueness doctrines are "strong medicine" which must be used "sparingly and only as a last resort." Broadrick, 413 U.S. at 613. In addition, a statute should not be invalidated on its face "when a limiting construction has been or could be placed on the challenged statute." Id. Likewise, a statute should not be invalidated on its face if its impact on the First Amendment is so speculative or slight that "[t]he First Amendment will not suffer if the constitutionality of [the statute] is litigated on a case-by-case basis." Clements v. Fashing, 457 U.S. 957, 971-72 n.6 (1982); Broadrick, 413 U.S. at 615-16.

51. Under the overbreadth doctrine, a statute is not overbroad merely because the statute, if construed in abstract or obtuse ways, has some speculative or unrealized potential to prohibit a marginal amount of protected speech. Broadrick, 413 U.S. at 615-17. Rather, for a court to invalidate a statute as overbroad, "the overbreadth of [the] statute must not only be real, but substantial as well, judged in relation to the statute's plainly legitimate sweep." Id. at 615. Therefore, to prevail on an overbreadth challenge, it is not enough for the petitioner to show that there is a possibility of some overbreadth. Instead, the petitioner "bears the burden of demonstrating, 'from the text of [the law] and from actual

fact,' that substantial overbreadth exists." Virginia v. Hicks, 539 U.S. 113, 122 (2003) (quoting N.Y. State Club Ass'n v. City of N.Y., 487 U.S. 1, 14 (1988)). If the scope of the statute, as construed consistently with its intended purpose, reaches mostly unprotected speech, the statute will be upheld even though it "may deter protected speech to some unknown extent." Broadrick, 413 U.S. at 615; City of Las Vegas v. Dist. Ct., 122 Nev. ---, 146 P.3d 240, 247 (2006).

52. When applying the overbreadth doctrine, a statute is subject to less exacting scrutiny when it regulates political activity in an even-handed and neutral manner and is not attempting to suppress any particular viewpoint. Broadrick, 413 U.S. at 615-16. In this case, subsections 2 and 8 of NRS 281A.420 regulate in an even-handed and neutral manner because they prohibit all disqualified public officers from voting on a matter, regardless of viewpoint and regardless of whether the public officer wants to vote "yes" or "no" on the matter. Thus, because the statute "is not a censorial statute, directed at particular groups or viewpoints," it is subject to less exacting scrutiny for overbreadth. Id. at 616.

53. Applying that scrutiny to subsections 2 and 8 of NRS 281A.420, the Court finds that the scope of the statute, when construed consistently with its intended purpose, reaches mostly unprotected speech. The purpose of the statute is to prevent public officers from voting upon matters when private interests create an actual conflict of interest or the appearance of a conflict of interest. It has been a universal and long-established rule under the common law that members of public bodies are prohibited from voting upon matters in which they have disqualifying conflicts of interest, and this traditional common-law rule "is founded on principles of natural justice and sound public policy." Bd. of Superv'rs v. Hall, 2 N.W. 291, 294 (Wis. 1879); Daly v. Ga. S. & Fla. R.R., 7 S.E. 146, 149 (Ga. 1888); Sec. Nat'l Bank v. Bagley, 210 N.W. 947, 951 (Iowa 1926); Woodward v. City of Wakefield, 210 N.W. 322, 323 (Mich. 1926); Commw. ex rel. Whitehouse v. Raudenbush, 94 A. 555, 555 (Pa. 1915); Pyatt v. Mayor & Council of Dunellen, 89 A.2d 1, 4-5 (N.J. 1952). When there has been a "universal and long-established" tradition under the common law of prohibiting certain conduct, this creates a "strong

1 presumption" that the prohibition is constitutional under the First Amendment. Republican Party of
2 Minn. v. White, 536 U.S. 765, 785 (2002). Thus, because public officers do not have a First
3 Amendment right to vote upon matters in which they have disqualifying conflicts of interest, subsections
4 2 and 8 of NRS 281A.420 prohibit only unprotected speech and are not unconstitutionally overbroad.

5 54. Furthermore, even assuming that subsections 2 and 8 of NRS 281A.420, if construed in
6 abstract or obtuse ways, have some speculative or unrealized potential to prohibit a marginal amount of
7 protected speech, that potential is not enough to make the statute *substantially* overbroad. As explained
8 by the Nevada Supreme Court, "[e]ven if a law at its margins proscribes protected expression, an
9 overbreadth challenge will fail if the 'remainder of the statute . . . covers a whole range of easily
10 identifiable and constitutionally proscribable . . . conduct.'" City of Las Vegas, 146 P.3d at 247
11 (quoting Osborne v. Ohio, 495 U.S. 103, 112 (1990)).

12 55. In this case, Councilman Carrigan's conduct falls squarely within the intended scope of the
13 statute and was not protected by the First Amendment. When the Legislature enacted the definition of
14 "commitment in a private capacity to the interests of others" in Senate Bill No. 478 (70th Sess. 1999), it
15 clearly had in mind situations where a public officer's substantial and continuing relationship with his
16 campaign manager would require abstention. In the legislative hearings on S.B. 478, Senator Dina Titus
17 and Scott Scherer, Legal Counsel to the Governor, had the following discussion regarding the definition:

18 Senator Titus questioned:

19 I just have a question of how this would fit with either the existing language or the new
20 language. One of the cases that had a lot of notoriety involved a commissioner and someone
21 who had worked on her campaign. Sometimes people who do campaigns then become
22 lobbyists. If you could not vote on any bill that was lobbied by someone who had
23 previously worked on your campaign, how would all of that fit in here. It is not really a
24 business relationship or a personal relationship, but I don't [do not] know what it is.

22 Mr. Scherer stated:

23 The way that would fit in . . . the new language that the Governor is suggesting is that it
24 would not necessarily be included because it would not be a continuing business
relationship. So the relationship would have to be substantial and continuing. Now, if this
was one where the same person ran your campaign time, after time, after time, and you had
a substantial and continuing relationship, yes, you probably ought to disclose and abstain in

1 cases involving that particular person.

2 Hearing on S.B. 478 before Senate Comm. on Gov't Affairs, 70th Leg., at 42 (Nev. Mar. 30, 1999)
3 (emphasis added).

4 56. In light of this legislative history, it would be detrimental to society to invalidate the statute
5 on its face when Councilman Carrigan's conduct falls squarely within the intended scope of the statute
6 and was not protected by the First Amendment. The statute also should not be invalidated on its face
7 because the statute's impact on the First Amendment is so speculative or slight that the First
8 Amendment will not suffer if the constitutionality of the statute is litigated on a case-by-case basis by
9 petitioners whose conduct does not fall so squarely within the confines of the statute.

10 57. Thus, the Court rejects Councilman Carrigan's overbreadth challenge because:
11 (1) subsections 2 and 8 of NRS 281A.420 are intended to prohibit only unprotected speech and, to the
12 extent that the statute reaches protected speech, if any at all, the statute's reach is marginal and therefore
13 is not *substantially* overbroad; and (2) Councilman Carrigan's conduct falls squarely within the intended
14 scope of the statute and was not protected by the First Amendment. Accordingly, the Court holds that
15 subsections 2 and 8 of NRS 281A.420 are not unconstitutionally overbroad in violation of the First
16 Amendment.

17 58. Under the vagueness doctrine, a statute does not have to be drafted with hypertechnical
18 precision to survive constitutional scrutiny because "[c]ondemned to the use of words, we can never
19 expect mathematical certainty from our language." Grayned v. City of Rockford, 408 U.S. 104, 110
20 (1972). Thus, it is constitutionally permissible for a statute to be drafted with flexibility and reasonable
21 breadth, rather than meticulous specificity. Id. As explained by the United States Supreme Court:

22 [T]here are limitations in the English language with respect to being both specific and
23 manageably brief, and it seems to us that although the prohibitions may not satisfy those
24 intent on finding fault at any cost, they are set out in terms that the ordinary person
exercising ordinary common sense can sufficiently understand and comply with, without
sacrifice to the public interest.

1 Letter Carriers, 413 U.S. at 578-79.

2 59. When applying the vagueness doctrine, a statute is subject to less exacting scrutiny for
3 vagueness if it imposes only civil sanctions, instead of criminal penalties, since the United States
4 Supreme Court has "expressed greater tolerance of enactments with civil rather than criminal penalties
5 because the consequences of imprecision are qualitatively less severe." Hoffman Estates, 455 U.S. at
6 498-99; Groener, 651 P.2d at 742 (holding that ethics statute which imposed only civil sanctions was
7 subject to less exacting scrutiny for vagueness).

8 60. In this case, the Commission may impose only civil sanctions for a violation of the Ethics
9 Law. NRS 281A.480. The Ethics Law does not contain any criminal penalties for a violation of its
10 provisions. Therefore, because a violation of subsections 2 and 8 of NRS 281A.420 does not result in
11 criminal penalties, the statute is subject to less exacting scrutiny for vagueness.

12 61. Councilman Carrigan contends that the Court should apply a higher level of scrutiny to the
13 provisions of the Ethics Law because the Commission may take actions under NRS 281A.480 which
14 could result in severe consequences for a public officer, including referring the matter to the Attorney
15 General or the appropriate District Attorney for a determination of whether a crime has been committed
16 and whether the public officer should be prosecuted under the *criminal laws* of this state. The Court
17 finds that because none of the actions which the Commission is authorized to take under NRS 281A.480
18 could result in a public officer being criminally prosecuted under the provisions of the *Ethics Law*, it
19 would be inappropriate for the Court to apply a higher level of scrutiny to the Ethics Law.

20 62. Under NRS 281A.480(4)(a), if the Commission finds that a public officer who is removable
21 from office by impeachment only has committed a willful violation of the Ethics Law, the Commission
22 is required to file a report with the appropriate person responsible for commencing impeachment
23 proceedings. It is well established, however, that impeachment proceedings are not criminal
24 proceedings and that a judgment entered in impeachment proceedings is not a criminal conviction. Nev.

1 Const. art. 7, § 2; see also 1 Joseph Story, Commentaries on the Constitution of the United States
2 §§ 781-86 (5th ed. 1905); Ferguson v. Maddox, 263 S.W. 888, 892 (Tex. 1924) ("The primary purpose
3 of an impeachment is to protect the state, not to punish the offender.").

4 63. Under NRS 281A.480(4)(b) & (4)(c), if the Commission finds that a public officer who is
5 removable from office pursuant to NRS 283.440 has committed one or more willful violations of the
6 Ethics Law, the Commission is authorized, and in some cases the Commission is required, to commence
7 removal proceedings in the appropriate court pursuant to NRS 283.440 for removal of the public officer.
8 It is well established, however, that removal proceedings conducted pursuant to NRS 283.440 are civil
9 proceedings and that a judgment of removal entered in those proceedings is not a criminal conviction.
10 Adler v. Sheriff, 92 Nev. 436, 439 (1976) ("The laws for removal of public officers are not criminal
11 statutes nor are the proceedings criminal proceedings.").

12 64. Under NRS 281A.480(6), a public employee who has committed a willful violation of the
13 Ethics Law is subject to disciplinary proceedings by his employer and must be referred for action in
14 accordance with the applicable provisions governing his employment. It is well established, however,
15 that disciplinary proceedings conducted against public employees are administrative proceedings, not
16 criminal proceedings. Navarro v. State ex rel. Dep't of Human Res., 98 Nev. 562, 563-65 (1982); State,
17 Dep't of Human Res. v. Fowler, 109 Nev. 782, 784-85 (1993).

18 65. Finally, NRS 281A.480(7) provides:

19 7. The provisions of this chapter do not abrogate or decrease the effect of the provisions
20 of the Nevada Revised Statutes which define crimes or prescribe punishments with respect
21 to the conduct of public officers or employees. If the Commission finds that a public officer
22 or employee has committed a willful violation of this chapter which it believes may also
constitute a criminal offense, the Commission shall refer the matter to the Attorney General
or the district attorney, as appropriate, for a determination of whether a crime has been
committed that warrants prosecution.

23 66. Even though the Commission is required to refer certain matters to the Attorney General or
24 the appropriate District Attorney for a determination of whether criminal prosecution is warranted by a

1 state or local prosecutor, such a criminal prosecution could not occur under the provisions of the Ethics
2 Law because the Ethics Law does not contain any criminal penalties for a violation of its provisions.
3 Rather, such a criminal prosecution could occur only under the criminal laws of this state.

4 67. Thus, because the Ethics Law does not contain any criminal penalties for a violation of its
5 provisions, the only direct consequence Councilman Carrigan faced for his violation of the Ethics Law
6 was the imposition of civil sanctions by the Commission. NRS 281A.480. And, in this case based on its
7 view of the facts, the Commission did not impose any civil sanctions against Councilman Carrigan at all.
8 (ROA000012-13.) Accordingly, given that the Commission may impose only civil sanctions for a
9 violation of subsections 2 and 8 of NRS 281A.420, the Court finds that the statute is subject to less
10 exacting scrutiny for vagueness.

11 68. Furthermore, when the government restricts the speech of its public officers and employees,
12 it may use broad and general language even if such language would create "a standard almost certainly
13 too vague when applied to the public at large." Waters v. Churchill, 511 U.S. 661, 673 (1994) (plurality
14 opinion). For example, a federal statute allowed the government to remove a federal employee "for such
15 cause as will promote the efficiency of the service." Arnett v. Kennedy, 416 U.S. 134, 158-62 (1974)
16 (plurality opinion). An employee who was discharged for making public statements critical of his
17 supervisors claimed that the statute was unconstitutionally overbroad and vague. Id. The United States
18 Supreme Court rejected the constitutional challenge, with the plurality opinion stating that "[b]ecause of
19 the infinite variety of factual situations in which public statements by Government employees might
20 reasonably justify dismissal for 'cause,' we conclude that the Act describes, as explicitly as is required,
21 the employee conduct which is ground for removal." Id. at 161. The plurality opinion also emphasized
22 "[t]he essential fairness of this broad and general removal standard, and the impracticability of greater
23 specificity," and explained that "it is not feasible or necessary for the Government to spell out in detail
24 all that conduct which will result in retaliation. The most conscientious of codes that define prohibited

1 conduct of employees includes 'catch-all' clauses prohibiting employee 'misconduct,' 'immorality,' or
2 'conduct unbecoming.'" Id. at 161 (quoting Meehan v. Macy, 392 F.2d 822, 835 (D.C. Cir. 1968)).

3 69. In a case challenging the constitutionality of the rule of judicial conduct which requires
4 judges to recuse themselves when their "impartiality might reasonably be questioned," a federal district
5 court held that the rule was not overbroad or vague. Family Trust Found. v. Wolnitzek, 345 F. Supp. 2d
6 672, 708-10 (E.D. Ky. 2004). The court found that while the rule is stated in broad and general terms,
7 the rule also contains four specific instances which require recusal: (1) personal bias or prejudice
8 concerning a party or attorney; (2) personal involvement in the controversy; (3) personal or economic
9 interest that could be affected by the controversy; and (4) involvement of a spouse or relative in the
10 controversy. The court held that the rule did not prohibit a substantial amount of protected speech in
11 relation to its many legitimate applications, and that "if the Court were to invalidate the recusal laws
12 based on overbreadth, then the state's ability to safeguard the impartiality or appearance of impartiality
13 of the judiciary would be greatly compromised." Id. at 709-10. The court also held that the rule was not
14 vague because it provided enough guidance for a judge to determine, "in most instances," the
15 circumstances when his "impartiality might reasonably be questioned" so as to require recusal. Id. at
16 710; see also Kan. Jud. Watch v. Stout, 440 F. Supp. 2d 1209, 1234-35 (D. Kan. 2006); N.D. Family
17 Alliance v. Bader, 361 F. Supp. 2d 1021, 1043-44 (D.N.D. 2005).

18 70. In a similar vein, the Nevada Supreme Court has held that broad and general terms, like
19 "unprofessional conduct," are not vague when used to define the ethical standards governing various
20 professions. Laman v. Nev. Real Estate Advisory Comm'n, 95 Nev. 50, 55-56 (1979); Meinhold v.
21 Clark County Sch. Dist., 89 Nev. 56, 63 (1973), *cert. denied*, 414 U.S. 943 (1973); Moore v. Bd. of
22 Trustees, 88 Nev. 207, 210-11 (1972), *cert. denied*, 409 U.S. 879 (1972). As explained by the court:

23 [T]he variety of forms which unprofessional conduct may take makes it infeasible to attempt
24 to specify in a statute or regulation all of the acts which come within the meaning of the
term. The fact that it is impossible to catalogue all of the types of professional misconduct
is the very reason for setting up the statutory standard in broad terms and delegating to the

1 board the function of evaluating the conduct in each case.

2 Moore, 88 Nev. at 211 (quoting In re Mintz, 378 P.2d 945, 948 (Or. 1963)).

3 71. In this case, the reasonable catch-all standard of "[a]ny other commitment or relationship
4 that is substantially similar to a commitment or relationship described in this subsection" is designed to
5 capture the infinite variety of factual situations in which private commitments and relationships will
6 cause a public officer to have a disqualifying conflict of interest. Considering that it would have been
7 infeasible for the Legislature to employ exhaustive detail to catalogue every type of disqualifying
8 conflict of interest in the language of the statute, it was appropriate for the Legislature to enact such a
9 reasonable catch-all standard and allow the Commission to apply that standard to specific conduct in
10 each case.

11 72. Furthermore, because the language of the catch-all provision is expressly tied to the four
12 types of private commitments and relationships already enumerated in the statute, the Legislature has
13 given the Commission and public officers four very specific and concrete examples to guide and
14 properly channel interpretation of the statute and prevent arbitrary and discriminatory enforcement by
15 the Commission.

16 73. Finally, the legislative hearings on S.B. 478 also provide guidance to the Commission and
17 public officers regarding the meaning of the catch-all provision. On March 30, 1999, Scott Scherer,
18 Legal Counsel to the Governor, explained the intent, purpose and scope of the catch-all provision:

19 [The new language in NRS 281A.420] would be, 'any substantially similar commitment or
20 relationship.' Because I can tell you what the Governor was trying to get at was actually
21 trying to make the language better by defining 'commitment in a private capacity to the
22 interests of other.' That, I think, is even more vague than the language we have in here,
23 which sets forth some categories. We also, though, on the other hand, did not want to
24 specifically limit it to just these categories. But what we were trying to get at relationships
that are so close that they are like family. That they are substantially similar to a business
partner. And so, I think if we took out the words 'or personal' in lines 16 and 17, and then
we said, 'any substantially similar commitment or relationship.' That would express the
view that we are trying to get at which is, it has got to be a relationship that is so close, it is
like family, it is like a member of your household, it is like a business partner.

1 Hearing on S.B. 478 before Senate Comm. on Gov't Affairs, 70th Leg., at 42-43 (Nev. Mar. 30, 1999).

2 74. On April 7, 1999, Mr. Scherer provided additional commentary regarding the intent, purpose
3 and scope of the catch-all provision:

4 Referencing an amendment in Exhibit I, Mr. Scherer drew attention to the issue of personal
5 relationships . . . He suggested the amendment . . . rewrite paragraph (e) to read, "any
6 commitment or relationships that is substantially similar to any one of the relationships set
7 forth in this paragraph." The intent of change, he stated, is to capture a relationship, not
8 listed in paragraphs (a), (b), (c), or (d), but is so close to the extent the individual considers
9 them family. He commented with this change the ethics commission would still have some
10 discretion to require a disclosure and an abstention in those kinds of cases. But, he pointed
11 out, it has to actually be shown that the relationship is substantially similar to one of the four
12 other relationships listed, including a member of one's family, member of one's household,
13 an employment relationship, or a business relationship. The commission, he restated, would
14 have to show the relationship is "as close as" or "substantially similar" . . . He reiterated this
15 would give the ethics commission some discretion for those egregious cases that may slip
16 through the cracks otherwise, while still giving some guidance to public officials who need
17 to know what their obligations are. He declared this language to be an improvement on
18 existing law and an appropriate balance between trying to provide guidance and trying to
19 allow the ethics commission discretion.

20 Chairman O'Connell concurred stating, "I do not think that that language could leave any
21 doubt in anybody's mind about the relationship. In my looking at it, I think you did a
22 terrific job with that, because it certainly does tell you exactly what kind of relationship you
23 would have with the person and it would make it much easier to determine that before
24 voting."

Mr. Scherer agreed the proposal was superior to the currently undefined, "commitment in a
private capacity to the interests of others." He stressed the importance of attempting to give
guidance without completely taking away the ethics commission's discretion.

18 Hearing on S.B. 478 before Senate Comm. on Gov't Affairs, 70th Leg., at 32-33 (Nev. Apr. 7, 1999).

19 75. In the face of this legislative history, it is reasonable to expect a public officer of ordinary
20 intelligence to understand the types of private commitments and relationships that are "substantially
21 similar" to those he has with: (1) a member of his household; (2) a person who is related to him by
22 blood, adoption or marriage within the third degree of consanguinity or affinity; (3) a person who
23 employs him or a member of his household; or (4) a person with whom he has a substantial and
24 continuing business relationship. Through the exercise of ordinary common sense, a reasonable public

1 officer could readily deduce that the four types of private commitments and relationships that are
2 explicitly described in the statute all involve close, substantial and continuing relationships. It follows
3 by simple logic that the catch-all provision extends to "substantially similar" private commitments and
4 relationships which also constitute close, substantial and continuing relationships akin to those
5 commitments and relationships that are explicitly described in the statute. Because it is not
6 unreasonable to expect a public officer to know when he has a close, substantial and continuing
7 relationship with another person, most public officers should have little difficulty in conforming their
8 conduct to the dictates of the statute. To the extent that public officers and their attorneys are in need of
9 further guidance, they can request advisory opinions from the Commission pursuant to NRS
10 281A.440(1) and 281A.460.

11 76. Thus, the Court rejects Councilman Carrigan's vagueness challenge because:
12 (1) Councilman Carrigan failed to seek an advisory opinion and thereby obtain clarification of the
13 statute from the Commission when he had ample opportunity to do so; (2) the statute contains
14 sufficiently clear standards so that a reasonable public officer exercising ordinary common sense can
15 adequately understand the type of conduct that is prohibited by the statute; and (3) the statute contains
16 four very specific and concrete examples of prohibited conduct to guide and properly channel
17 interpretation of the statute and prevent arbitrary and discriminatory enforcement by the Commission.
18 Accordingly, the Court holds that subsections 2 and 8 of NRS 281A.420 are not unconstitutionally
19 vague in violation of the First and Fourteenth Amendments.

20 **The Commission did not commit an error of law in finding that the presumption in**
21 **subsection 2 of NRS 281A.420 does not apply in this case.**

22 77. Councilman Carrigan claims that the presumption contained in subsection 2 of NRS
23 281A.420 was ignored and was not rebutted by any evidence or testimony received by the Commission.
24 The Court disagrees.

1 78. The presumption contained in subsection 2 of NRS 281A.420 states:

2 It must be presumed that the independence of judgment of a reasonable person would not be
3 materially affected by his pecuniary interest or his commitment in a private capacity to the
4 interests of others where the resulting benefit or detriment accruing to him or to the other
5 persons whose interests to which the member is committed in a private capacity is not
6 greater than that accruing to any other member of the general business, profession,
7 occupation or group.

8 79. As illustrated by the following discussion on the record at the hearing, the Commission fully
9 considered the presumption and concluded that it simply did not apply to Councilman Carrigan based on
10 the facts:

11 COMMISSIONER HSU: . . . I think people put too much emphasis on this language
12 when I see people argue it when the resulting benefit or detriment accruing to him would not
13 be greater than any accruing to any other member in a general business. There is only one
14 lobbyist hired by Harvey Whittemore's group to do this, at least in terms of what I heard.
15 It's not like the entire business profession of lobbyists are being affected uniformly. That's
16 kind of what that language is there for.

17 So I just don't see how that applies. I mean, we have one person, Carlos Vasquez is who
18 is the spokesman or paid consultant for the Lazy 8 people, and he certainly gets the
19 professional benefit by having this approved, and of course, the vote was that it got denied,
20 the vote, but I just don't see how that language applies because it is not a broad application.

21 Again, . . . I just don't see how every—how the entire group of lobbyists is being affected
22 by the passage or failure of this vote. Thanks.

23 * * *

24 COMMISSIONER JENKINS: . . . We might consider that Councilman Carrigan is a
25 resident of his ward and the decision to participate in the vote and his bringing the motion
26 and voting for it would not bring him or the project—well, him any greater benefit than any
27 other resident of his ward. But you know, Vasquez just really throws a wrench in the whole
28 thing, doesn't he?

29 VICE CHAIRMAN HUTCHISON: If I can comment, Commissioner Jenkins . . .
30 [W]e're not talking about [Councilman Carrigan's] pecuniary interest, we're talking about
31 his commitment in a private capacity to the interests of others. So we're not talking about
32 his interest as a citizen, we're talking about the private capacity interest to Mr. Vasquez.

33 So I think that Commissioner Hsu's reasoning does, I think, apply . . . Mr. Vasquez was
34 in a different position than the general business, profession, occupation or group in terms of
35 the Lazy 8 and the passage of the matter that was before the Council on August 23rd.

1 So I do think that Commissioner Hsu's reasoning makes sense to me and that paragraph
2 does not necessarily save the day.

3 COMMISSIONER JENKINS: . . . I can't find any support for that paragraph, you're
4 right, about the benefit being more or less than anyone else in a group.

5 (ROA000066-67.)

6 80. Therefore, the Court holds that the Commission did not commit an error of law in finding
7 that the presumption in subsection 2 of NRS 281A.420 does not apply in Councilman Carrigan's case.

8 **The Commission's decision was supported by reliable, probative and substantial
9 evidence on the whole record and was not arbitrary or capricious or characterized by
10 an abuse of discretion.**

11 81. After review of the record, the Court finds that substantial evidence exists to support the
12 Commission's conclusion that Councilman Carrigan violated subsection 2 of NRS 281A.420 when he
13 voted on the Lazy 8 project.

14 82. "Substantial evidence" is defined as evidence which a reasonable mind might accept as
15 adequate to support a conclusion. City Plan Dev., Inc. v. Labor Comm'r, 121 Nev. 419, 426 (2005).

16 83. The intent of the Ethics Law is clear. When creating the Ethics Law, the Legislature
17 declared:

18 To enhance the people's faith in the integrity and impartiality of public officers and
19 employees, adequate guidelines are required to show the appropriate separation between the
20 roles of persons who are both public servants and private citizens.

21 NRS 281A.020(2)(b).

22 84. Accordingly, the disclosure and abstention law holds public officers accountable to the
23 public for complete disclosures of private commitments and for the proper exercise of their judgment to
24 abstain or not to abstain, by requiring them to make that judgment after evaluating their private
25 commitments and the effects of their decision on those private commitments. NRS 281A.420; see also
26 In re Woodbury, Nev. Comm'n on Ethics Op. No. 99-56, at 2 (Dec. 22, 1999).

27 85. Subsection 2 of NRS 281A.420 states in part:

1 [A] public officer shall not vote upon or advocate the passage or failure of . . . a matter
2 with respect to which the independence of judgment of a reasonable person in his
3 situation would be materially affected by . . . [h]is commitment in a private capacity to
4 the interests of others.

5 86. "Commitment in a private capacity to the interests of others" is defined in subsection 8 of
6 NRS 281A.420 as:

- 7 [A] commitment to a person:
- 8 (a) Who is a member of his household;
 - 9 (b) Who is related to him by blood, adoption or marriage within the third degree of
10 consanguinity or affinity;
 - 11 (c) Who employs him or a member of his household;
 - 12 (d) With whom he has a substantial and continuing business relationship; or
 - 13 (e) Any other commitment or relationship that is substantially similar to a commitment
14 or relationship described in this subsection.

15 87. The relationship and commitment shared by Councilman Carrigan and Vasquez is the type
16 that the Legislature intended to encompass when adopting the definition of "commitment in a private
17 capacity to the interest of others," specifically, paragraph (e) of subsection 8 of NRS 281A.420. This is
18 evidenced by the testimony given by Schott Scherer, General Counsel to Governor Guinn during the
19 1999 legislative session.

20 [I]t has to actually be shown that the relationship is substantially similar to one of the four
21 other relationships listed, including a member of one's family, member of one's household,
22 an employment relationship, or a business relationship. The commission, he restated, would
23 have to show the relationship is "as close as" or "substantially similar" to one listed in
24 section 15, subsection 7 of the bill. He reiterated this would give the ethics commission
some discretion for those egregious cases that may slip through the cracks otherwise, while
still giving some guidance to public officials who need to know what their obligations are.

Hearing on S.B. 478 before Senate Comm. on Gov't Affairs, 70th Leg., at 33 (Nev. Apr. 7, 1999).

21 88. In response to Senator Titus' question as to how campaign managers fit into the statute, Mr.
22 Scherer responded:

23 The way that would fit in . . . if this was one where the same person ran your campaign time,
24 after time, after time, and you had a substantial and continuing relationship, yes, you
probably ought to disclose and abstain in cases involving that particular person.

1 Hearing on S.B. 478 before Senate Comm. on Gov't Affairs, 70th Leg., at 42 (Nev. Mar. 30, 1999).

2 89. The Court agrees with the Commission that the sum total of the relationship shared by
3 Councilman Carrigan and Vasquez equates to a relationship such as those enumerated under NRS
4 281A.420(8)(a)-(d), including a close, personal friendship akin to family and a "substantial and
5 continuing business relationship."

6 90. First, in addition to being a close personal friend, Councilman Carrigan would confide in
7 Vasquez on matters where he would not his own family such as siblings. (ROA000035.)

8 91. Second, as Councilman Carrigan's volunteer campaign manager, Vasquez was instrumental
9 in getting him elected three times to the Council. (ROA000022, 47.)

10 92. Third, companies owned by Vasquez were paid by Councilman Carrigan's campaign for
11 providing printing, advertising and public relations services. These services were provided at cost, and
12 Vasquez and his companies did not make any profit from these services. (ROA000051.)

13 93. Finally, as campaign manager, Vasquez actively solicited campaign contributions for the
14 benefit of Councilman Carrigan. As part of that solicitation, Vasquez relied on his many community
15 and business contacts and he sent fund-raising letters to approximately 700 potential donors, including
16 persons who were principals either in Red Hawk or one of its affiliates, or who were otherwise directly
17 interested in the success of the Lazy 8 project. (ROA000044.)

18 94. The Commission found that "[a] reasonable person in Councilman Carrigan's
19 position . . . would undoubtedly have such strong loyalties to this close friend, confidant and campaign
20 manager as to materially affect the reasonable person's independence of judgment." (ROA000012).

21 95. In Woodbury, the Commission set out the steps that a public officer must take whenever a
22 matter that may affect his independence of judgment comes before the public body in which he sits.
23 Nev. Comm'n on Ethics Op. No. 99-56, at 2. Before abstention is required, a reasonable person's
24 independence of judgment "must be *materially* affected" by that private commitment. Id.

1 96. In the instant case, prior to voting on the Lazy 8 project, Councilman Carrigan sought advice
2 from the Sparks City Attorney, his legal counsel. (ROA000112-114.) Neither Councilman Carrigan nor
3 his legal counsel consulted the Commission or the Woodbury opinion for guidance prior to the vote on
4 the Lazy 8 project. In advising Councilman Carrigan, legal counsel relied on a 1998 Attorney General
5 Opinion (AGO 98-27). (ROA000112.)

6 97. AGO 98-27 advises that in "difficult or complex matters, the next step is to consider seeking
7 an advisory opinion from the Ethics Commission." (ROA000115.) This opinion also states that
8 abstention is required:

9 where it appears from objective evidence that as a result of the acquaintance or friendship, a
10 reasonable person in the public officer's situation would have no choice but to be beholden
11 to someone who has an actual interest in the matter . . . In such circumstances, the public
12 official's independence of judgment would be materially affected.

12 (ROA000121.)

13 98. The Court finds that substantial evidence exists to support the Commission's conclusion that
14 at the time of the vote on the Lazy 8 project, Councilman Carrigan had a private commitment to the
15 interest of Vasquez, such that the independence of judgment of a reasonable person in Councilman
16 Carrigan's situation would have been materially affected by that commitment. Therefore, Councilman
17 Carrigan had a disqualifying conflict of interest and was required to abstain pursuant to subsection 2 of
18 NRS 281A.420.

19 99. Because Councilman Carrigan was required to abstain under the statute, his vote on the Lazy
20 8 project was a violation of subsection 2 of NRS 281A.420.

21 100. Therefore, the Court holds that the Commission's final decision was supported by reliable,
22 probative and substantial evidence on the whole record and was not arbitrary or capricious or
23 characterized by an abuse of discretion.

1 **Councilman Carrigan's constitutional rights to due process were not violated by the**
2 **participation of Commissioners Hsu and Flangas in the Commission's hearing.**

3 101. Commissioners who serve on the Nevada Commission on Ethics are public officers subject
4 to the Ethics Law. As such, a Commissioner must disclose conflicts of interests and abstain on matters
5 where a reasonable person's independence of judgment would be materially affected by a commitment
6 in a private capacity or his pecuniary interests, pursuant to NRS 281A.420.

7 102. Additionally, the Commission is a quasi-judicial body. As such, it looks to the Nevada
8 Code of Judicial Conduct for guidance on matters concerning conflicts of interest and disqualification.
9 NAC 281.214(3). Canon 3E of the Nevada Code of Judicial Conduct states in part:

10 (1) A judge shall disqualify himself or herself in a proceeding in which the judge's
11 impartiality might reasonably be questioned, including but not limited to instances where:

12 (a) the judge has a personal bias or prejudice concerning a party or a party's lawyer,
13 or personal knowledge of disputed evidentiary facts concerning the proceeding;

14 * * *

15 (d) the judge or the judge's spouse, or a person within the third degree of relationship
16 to either of them, or the spouse of such a person:

17 * * *

18 (ii) is acting as a lawyer in the proceeding;

19 (iii) is known by the judge to have a more than de minimis interest that could be
20 substantially affected by the proceeding;

21 * * *

22 103. Based on these standards, and the fact that Councilman Carrigan waived any objections to
23 the participation of Commissioners Hsu and Flangas, Councilman Carrigan's constitutional rights to due
24 process were not violated.

25 **Commissioner Hsu**

26 104. Councilman Carrigan argues that Commissioner Hsu was biased due to the apparent
27 representation of The Nugget³ by his law firm, Maupin Cox & LeGoy. However, there is no evidence
28 that Commissioner Hsu himself ever represented The Nugget or that he knew of his firm's

³ The Nugget is an opponent of the Lazy 8 project.

1 representation of The Nugget at the time of Councilman Carrigan's hearing. Additionally, The Nugget
2 was not a party to the matter heard by the Commission.

3 105. Further, although Commissioner Hsu did vote in favor of a finding in violation of
4 subsection 2 of NRS 281A.420, which was unanimous, he also argued against finding a violation of
5 subsection 4 of NRS 281A.420 and a divided majority agreed. (ROA000061, 68.)

6 106. Finally, Commissioner Hsu made a detailed disclosure based on his personal involvement
7 in a previous lawsuit brought on behalf of Vasquez's father against Vasquez, and his personal
8 knowledge of his law partner's subsequent representation of Vasquez's business interests.
9 (ROA000017.) After these disclosures, Commissioner Hsu made it clear that he would defer to any
10 motion made by Councilman Carrigan to disqualify him if Councilman Carrigan had any objection.
11 Councilman Carrigan's counsel expressly waived any objections. (ROA000017.)

12 **Commissioner Flangas**

13 107. Councilman Carrigan argues that Commissioner Flangas' familial relationship to Alex
14 Flangas, a purported attorney for The Nugget, and Alex's wife Amanda Flangas, who works for The
15 Nugget, required his disqualification.

16 108. NRS 281A.420 requires a public officer's disclosure on a matter which would reasonably
17 be affected by his commitment to a person who is related to him by blood, adoption or marriage "within
18 the third degree of consanguinity or affinity." Further, a public officer must abstain where a reasonable
19 person's independence of judgment would be materially affected by such a relationship.

20 109. During the hearing, Commissioner Flangas disclosed his familial relationship to Alex
21 Flangas. Specifically, Commissioner Flangas disclosed that he was raised by his first cousin once
22 removed (his father's first cousin), who is the grandfather to Alex Flangas. (ROA000055.) Thus, Alex
23 Flangas and his wife Amanda Flangas are not within the third degree of consanguinity or affinity to
24 Commissioner Flangas. Consequently, no disclosure or abstention by Commissioner Flangas was

1 required based on his familial relationship to Alex and Amanda Flangas because that relationship is not
2 within the third degree of consanguinity or affinity.

3 110. Furthermore, after Commissioner Flangas' disclosure, Councilman Carrigan's counsel
4 waived any objection to Commissioner Flangas' continued participation in the hearing. (ROA000055.)

5 111. Therefore, the Court finds that Councilman Carrigan has not established a due process
6 violation based on the participation of either Commissioner Hsu or Commissioner Flangas, especially in
7 light of Councilman Carrigan's express waiver of any objections. Accordingly, the Court holds that
8 Councilman Carrigan's constitutional rights to due process were not violated by the participation of
9 Commissioners Hsu and Flangas in the Commission's hearing.

10 **ORDER AND JUDGMENT**

11 112. Based on the foregoing, the Court holds that: (1) subsections 2 and 8 of NRS 281A.420 do
12 not unconstitutionally restrict protected speech in violation of the First Amendment; (2) subsections 2
13 and 8 of NRS 281A.420 are not unconstitutionally overbroad or vague in violation of the First and
14 Fourteenth Amendments; (3) the Commission did not commit an error of law in finding that the
15 presumption in subsection 2 of NRS 281A.420 does not apply in this case; (4) the Commission's
16 decision was supported by reliable, probative and substantial evidence on the whole record and was not
17 arbitrary or capricious or characterized by an abuse of discretion; and (5) Councilman Carrigan's
18 constitutional rights to due process were not violated by the participation of Commissioners Hsu and
19 Flangas in the Commission's hearing.

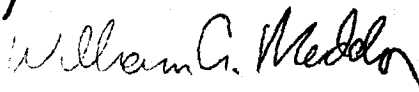
20 113. Therefore, the Court denies the Petition for Judicial Review and affirms the final decision
21 of the Commission pursuant to NRS 233B.135(3).

22 114. All parties shall bear their own costs and attorney's fees.

23 115. Pursuant to N.R.C.P. 58, the Court hereby designates the Respondent as the party required
24 to: (1) serve written notice of entry of the Court's order and judgment, together with a copy of the order

1 and judgment, upon each party who has appeared in this case and upon Amicus Curiae; and (2) file such
2 notice of entry with the Clerk of Court.

3
4 DATED: This 28th day of May, 2008.

5 

6
7 WILLIAM A. MADDOX
DISTRICT COURT JUDGE

8 Submitted by:

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Attorneys for Amicus Curiae Legislature of the State of Nevada

EXHIBIT “D”

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL A. CARRIGAN, FOURTH
WARD CITY COUNCIL MEMBER, OF
THE CITY OF SPARKS,
Petitioner,

vs.

THE FIRST JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR CARSON CITY, AND,
THE NEVADA COMMISSION ON
ETHICS,
Respondents.

No. 51850

FILED

JUN 19 2008

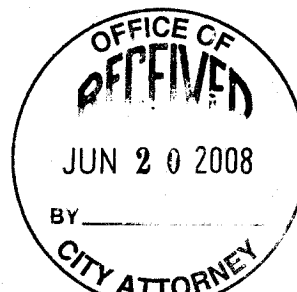
TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER DENYING PETITION
FOR WRIT OF MANDAMUS OR PROHIBITION

This original First Amendment petition for a writ of mandamus or prohibition challenges a district court order denying a petition for judicial review of a Nevada Ethics Commission decision.

A writ of mandamus is available to compel the performance of an act that the law requires, or to control a manifest abuse of discretion.¹

¹See NRS 34.160; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981).



EXHIBIT

D
08-15747

A writ of prohibition is available to arrest the extra-jurisdiction proceedings of a tribunal or board exercising judicial functions.² Although the decision to entertain a writ petition is addressed to our sole discretion,³ we generally adhere to the proposition that an extraordinary writ will issue only when the petitioner has no plain, speedy, and adequate legal remedy.⁴

We have consistently held that an appeal typically affords an adequate legal remedy, precluding writ relief.⁵ Thus, while this petition raises a potentially important issue with respect to the constitutionality of certain ethics in government statutes, we conclude that petitioner has an adequate legal remedy available in the form of an appeal from the district court's order denying judicial review.⁶ Further, although petitioner suggests that an appeal would not be speedy, we note that petitioner may seek to exempt the appeal from the settlement conference program and/or

²See NRS 34.320.

³Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991).


⁴Pan v. Dist. Ct., 120 Nev. 222, 224, 88 P.3d 840, 841 (2004); NRS 34.170; NRS 34.330.

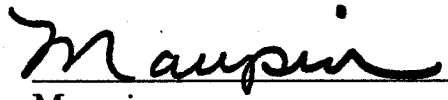
⁵Pan, 120 Nev. at 224, 88 P.3d at 841; see also D.R. Horton v. Dist. Ct., 123 Nev. ___, ___, 168 P.3d 731, 736 (2007) (explaining that, to determine whether a future appeal is sufficiently adequate and speedy, this court will consider the underlying proceedings' status, the types of issues raised in the writ petition, and the opportunity for meaningful appellate review of the issues presented).

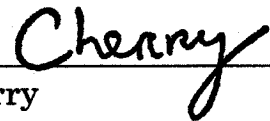
⁶See NRAP 3A(b)(1); NRS 233B.150.

move to have the appeal expedited.⁷ Accordingly, as petitioner has an adequate and speedy legal remedy precluding writ relief, we

ORDER the petition DENIED

, C.J.
Gibbons

, J.
Maupin

, J.
Cherry

cc: Hon. William A. Maddox, District Judge
Sparks City Attorney
Attorney General Catherine Cortez Masto/Carson City
Nevada Commission on Ethics
Carson City Clerk

⁷See NRAP 16(a).

EXHIBIT “E”

Case No. 07 CC 01245 1B

Dept. No. II

IN THE FIRST JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA
IN AND FOR CARSON CITY
HONORABLE WILLIAM A. MADDOX

-oOo-

MICHAEL A. CARRIGAN, TRANSCRIPT OF PROCEEDINGS
Plaintiff, PETITION FOR JUDICIAL REVIEW

vs.

NEVADA COMMISSION ON ETHICS, May 12th, 2008
et al., Carson City, Nevada
Defendant.

/

APPEARANCES:

FOR THE PETITIONER: SPARKS CITY ATTORNEY'S OFFICE
DOUGLAS R. THORNLEY
AND
CHESTER H. ADAMS
431 Prater Way
Sparks, Nevada 89432-0857

FOR THE LEGISLATIVE COUNCIL:
LEGISLATIVE COUNSEL BUREAU
KEVIN C. POWERS
401 S. Carson Street
Carson City, Nevada 89701

FOR COMMISSION ON ETHICS:
STATE OF NEVADA
By: ADRIANA G. FRALICK
3476 Executive Pointe Way, Ste. 10
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REPORTED BY: JACKIE ADAMS, NV CSR 278; CA CSR 7455; RPR
COMPUTER-ASSISTED TRANSCRIPTION BY: caseCATalyst4

**COPY
EXHIBIT**

E

1 Monday, May 12th, 2008, Carson City, Nevada

2 -oOo-

3
4 THE COURT: This is Case Number 07 OC 01245
5 1B, Michael Carrigan versus Commission on Ethics and
6 the state of Nevada. Can the parties identify
7 themselves and who they represent?

8 MR. THORNLEY: Good morning, Doug Thornley on
9 behalf of petitioner. To my right is Chad Adams, and
10 Michael Carrigan to his right.

11 MS. FRALICK: Adriana Fralick on behalf of
12 the Nevada Commission on Ethics.

13 MR. POWERS: Kevin Powers on behalf of the
14 Nevada Legislature.

15 THE COURT: This is your petition,
16 Mr. Thornley. You can all be seated.

17 MR. THORNLEY: Thank you very much, Your
18 Honor. We are here today to discuss a vote that was
19 taken by Sparks City councilman, Mike Carrigan, on
20 August 23rd, 2006.

21 That vote pertained to a land use decision,
22 and the applicant for that decision was Red Hawk Land
23 Company. On August twenty-third before the Sparks
24 City Council, Red Hawk was represented by Mr. Vazquez.

25 Mr. Carrigan and Mr. Vasquez had been friends

1 since 1991. Since 1999, Mr. Vasquez has served as
2 Councilman Carrigan's volunteer campaign manager on
3 his three runs for Sparks City Council.

4 Now in August of 2007, the Commission on
5 Ethics reviewed the vote taken by Councilman Carrigan
6 in August of 2006, and they found that Councilman
7 Carrigan had a commitment in a private capacity to the
8 interest of Mr. Vasquez.

9 Based on that decision, they found that
10 Mr. Carrigan should have abstained from voting on
11 August twenty-third, 2006.

12 If you don't mind, Your Honor, Councilman
13 Carrigan was charged with violating three statutes
14 encompassed in Nevada Ethics in Government Law.

15 The first was that he secured an unwarranted
16 benefit from Mr. Vasquez under the former NRS 281.481,
17 sub two; that he had made an inadequate disclosure of
18 the relationship with Mr. Vasquez under the former
19 281.501, sub four; and that he should have abstained
20 from voting under the former 281.501, sub two.

21 Now each of these statutes requires a finding
22 that Mr. Carrigan has had a commitment in a private
23 capacity to the interests of Mr. Vasquez.

24 The commission found that, and then found
25 that Councilman Carrigan did not secure an unwarranted

1 benefit from Mr. Vasquez and did make an adequate
2 disclosure. Nonetheless, Councilman Carrigan they
3 found should have abstained from voting.

4 Our challenge today, Your Honor, really stems
5 from the definition of a commitment of private
6 capacity to the interest of others provided in the
7 ethics in government law.

8 As we discussed previously, the nature of the
9 relationship between Councilman Carrigan and
10 Mr. Vasquez, they're not a member of each other's
11 household, they're not related to each other by blood,
12 adoption or marriage, they don't employ each other or
13 a member of each other's household.

14 So our challenge really focuses on the last
15 two portions of this statute, with whom he has a
16 substantial and continuing business relationship.

17 The Nevada Legislature has never defined
18 business relationship in the context of the ethics in
19 government law. There's no case law providing
20 guidance on the definition of a business relationship,
21 and the Nevada Commission on Ethics has never
22 published an opinion that defines or provides guidance
23 as to what a business relationship is for the purpose
24 of the ethics in government law.

25 Further, even if a business relationship does

1 exist, none of these bodies have defined substantial
2 and continuing as it relates to a business
3 relationship.

4 In fact, they've never even provided a list
5 of standards under which a business relationship is
6 analyzed to determine whether or not it's substantial
7 and continuing. Is it an amount of money, is it a
8 period of time, is it a frequency of dealing? It's
9 unclear.

10 Finally, any other relationship that's
11 substantially similar to any of these relationships
12 that's been listed by the legislature; again, no
13 standards for the term substantially similar have ever
14 been provided by any of the bodies we've discussed.

15 And therefore, the boundaries of this
16 definition, Your Honor, are unclear. They don't put
17 the petitioner or any other public officer in the
18 state of Nevada on notice as to what exactly
19 constitutes a commitment in a private capacity to the
20 interest of others.

21 Therefore, these statutes that rely on this
22 definition are similarly vague. There's no notice as
23 to what the boundaries of lawful behavior are.
24 There's no opportunity for the councilman or any other
25 public officer to curtail their behavior or amend

1 their behavior so that they're following the law.

2 Because the boundaries of these laws are
3 unclear, are vague, the councilman is really left with
4 a Hobson's (phonetic) choice: Should he continue on
5 his way and vote on matters that are important to the
6 people who elected him without knowing the boundaries
7 of the law and face prosecution, fines, potential
8 removal from office, or should he simply abstain from
9 voting because he doesn't understand when he needs to,
10 and therefore, not vote on things that he has a
11 protected First Amendment right to vote on. I'd be
12 happy to answer any questions you might have on those
13 issues.

14 THE COURT: Go ahead.

15 MR. THORNLEY: Further, Your Honor, an
16 examination of the record indicates that even the
17 commissioners who tried Councilman Carrigan were
18 confused as to which portion of this definition
19 applied to this situation.

20 Commissioner Cashman (phonetic) believed that
21 Mr. Vasquez and Councilman Carrigan actually share a
22 substantial and continuing business relationship.

23 Commissioner Shue (phonetic) thought that
24 they didn't really have a business relationship,
25 Councilman Carrigan and Mr. Vasquez had a relationship

1 that was substantially similar to some type of
2 familial relationship, although it's unclear whether
3 he meant A or B.

4 And finally, Commissioner Jenkins, Your
5 Honor, believed that it wasn't exactly substantial and
6 continuing business relationship and it wasn't
7 substantially similar to a familial relationship, but
8 it was probably substantially similar to a business
9 relationship.

10 So if the commission, the body that's charged
11 with enforcing these laws, can't even decide which
12 portion of this definition applies to our situation,
13 how is the untrained councilman supposed to figure out
14 the boundaries of the law?

15 THE COURT: Go ahead.

16 MR. THORNLEY: You know, that's basically the
17 crux of our constitutional vagueness challenge, Your
18 Honor.

19 The other issues we'd like to address are
20 that the commission has argued that their decision is
21 supported by substantial evidence. We argue that it
22 is not.

23 They suggest that Councilman Carrigan has a
24 business relationship with Mr. Vasquez. As we've
25 discussed previously, Mr. Vasquez and Councilman

1 Carrigan share a volunteer political relationship and
2 a friendship.

3 Mr. Vasquez has never been paid for his
4 services as Councilman Carrigan's campaign manager.
5 Any money that Councilman Carrigan has raised and has
6 given to Mr. Vasquez has been a pass-through to pay
7 for the cost of advertising, for television media, for
8 any type of printing that might be required with a
9 campaign for Sparks City Council.

10 All their relationship amounts to is a
11 friendship which is not enumerated in this statute,
12 and a political volunteer relationship that not only
13 is not enumerated in this statute, but is protected by
14 the United States Constitution.

15 We'd argue that because this relationship is
16 protected, because it falls within none of these
17 definitions, the commission's decision cannot be
18 supported by substantial evidence.

19 Further, Your Honor, we'd point out that
20 there are a number of due process violations in the
21 proceeding where two commissioners in particular
22 failed to make either complete disclosures or
23 disclosures at all until asked to by Councilman
24 Carrigan, and that these due process violations are --
25 well, they're due process violations, Your Honor,

1 because these two commissioners are tied to a party
2 who has been suing the City since the land use
3 decision that stemmed this Complaint. This party is
4 unhappy with the decision made by the City, they've
5 been fighting it tooth and nail.

6 One lawsuit presently resides at the Supreme
7 Court, one lawsuit continues to reside in the Second
8 Judicial District in Washoe County, one commissioner
9 works for a law firm who represents the Sparks Nugget,
10 who is a party opposed to the decision made by the
11 City Council. One commissioner as best we can tell is
12 the uncle of a lawyer that works for the law firm that
13 represents the Sparks Nugget in this matter.

14 Because these commissioners failed to
15 disclose these relationships, one of them disclosed it
16 only after a motion by Councilman Carrigan after the
17 proceeding had technically closed, we were unable to
18 object; and therefore, we were prejudiced in the
19 proceeding before the commission.

20 At this time, Your Honor, we'd like to
21 reserve time to rebut any arguments made by the
22 legislature and the Commission on Ethics, but that's
23 our --

24 THE COURT: Go ahead.

25 MS. FRALICK: Your Honor, the commission is

1 prepared to argue against all of the issues raised in
2 Councilman Carrigan's briefs.

3 However, as Mr. Thornley stated, the issues
4 before the Court basically boil down to two issues;
5 and that is, number one, whether subsection two and
6 eight of NRS 281.501 are efficiently clear to allow a
7 reasonable public officer exercising ordinary common
8 sense to determine whether or not he falls within that
9 statute or whether or not his conduct is something
10 that's being prohibited by those statutes; and second,
11 whether Councilman Carrigan's relationship with
12 Mr. Vasquez was the type that was contemplated by NRS
13 281.501, subsection eight.

14 Mr. Powers will answer any questions that
15 Your Honor might have with regard to any of the
16 constitutional issues.

17 With regard to the relationship, Councilman
18 Carrigan, his relationship with Carlos Vazquez, that
19 the test here is not whether Councilman Carrigan would
20 have been substantially or materially affected by his
21 relationship.

22 The test is whether a reasonable person in
23 Commissioner Carrigan -- or Councilman Carrigan's
24 position would have been materially affected by his
25 relationship with Mr. Vasquez who was before him on a

1 matter that was hotly debated.

2 And a reasonable person would conclude that
3 Councilman Carrigan had no choice but to be beholden
4 to Mr. Vasquez. Mr. Vasquez was a close personal
5 friend, confidante, he was his political advisor for
6 three campaigns, he was also a close friend.

7 He provided all of the campaign work for
8 free. This was at cost. Councilman Carrigan paid to
9 the tune of forty-five, forty-six thousand dollars out
10 of his forty-nine-thousand-dollar war chest to
11 Mr. Vasquez.

12 And so it is the commission's position that a
13 reasonable person, which is the test, would have been
14 materially affected by that relationship.

15 And that is why the abstention law is there,
16 is so that if somebody is materially affected by that
17 relationship, they have to abstain, they have to show
18 the public that has elected them that they are
19 unbiased and that they would be able to make a
20 decision or a determination on the -- on behalf of the
21 public in an unbiased fashion.

22 The other issue is whether or not somebody
23 like Councilman Carrigan would have been able to look
24 at the statute and see whether or not his relationship
25 with Mr. Vasquez would have fallen under subsection

1 eight, which delineates the types of relationships
2 that -- where a conflict exists.

3 In this case, Councilman Carrigan had legal
4 counsel to go to to ask for an opinion whether or not
5 his relationship falls under that prohibited conduct.

6 Councilman Carrigan did get an opinion from
7 his counsel, and that opinion said that he could
8 disclose and he could go ahead and vote. And that is
9 why the commission found that his violation was not
10 willful and did not assess a civil penalty.

11 Also, there are prior published opinions of
12 the commission that are readily available to any
13 public officer on our website. We can fax, we can
14 even talk to them about prior published opinions, one
15 of them being the commission's Seminole opinion, the
16 Woodbury opinion that talks about the types of
17 relationships that fall into the commitment in a
18 private capacity to the interest of others. And under
19 those commitments, someone has to abstain.

20 Also, there is -- the commission provides
21 confidential advisory opinions to public officers if
22 they request them. Councilman Carrigan had ample time
23 to ask for an advisory opinion, a confidential one if
24 he didn't want it to be public, of the commission
25 where the commission could take his specific facts and

1 circumstances, apply them to the law and give them --
2 give him and his counsel an opinion with regard to
3 whether or not his relationship with Mr. Vasquez was
4 the type that was contemplated under the statute.

5 As I said, Your Honor, a reasonable person,
6 which is the test, would have looked at all of the
7 facts and circumstances surrounding the relationship
8 between Councilman Carrigan and Mr. Vasquez and would
9 have come to the conclusion that they would have no
10 choice but to be beholden to Mr. Vasquez, who was
11 Councilman Carrigan's close friend, confidante, his
12 advisor, political advisor, and also who provided all
13 of these free political services for three political
14 campaigns.

15 With that, I will give it to Mr. Powers. If
16 you have any questions, I'd be more than happy to
17 answer them for you, Your Honor.

18 THE COURT: Go ahead.

19 MR. POWERS: Thank you, Your Honor. Kevin
20 Powers again representing the legislature. We're
21 here, Your Honor, because Councilman Carrigan has
22 challenged the constitutionality of the ethics laws.

23 In their opening brief, they've made several
24 arguments saying these ethics laws are
25 unconstitutional under the First Amendment.

1 In their reply brief, they seem to be relying
2 strictly on vagueness. And their argument today seems
3 to be relying on vagueness. And in only one sentence
4 Mr. Thornley mentioned the First Amendment.

5 However, in order to make sure the record is
6 clear that this statute does not violate the First
7 Amendment, I will proceed with an argument in that
8 regard.

9 In this case, the first question, the
10 threshold issue is whether the First Amendment was
11 even applicable at the time that Councilman Carrigan
12 entered his vote with the Lazy A (phonetic) project.

13 A city council has two particular functions.
14 They perform legislative functions, they enact
15 ordinance, laws of general applicability.

16 A city council also performs administrative
17 functions. And that's when they deal with specific
18 items and specific applications from individuals who
19 are looking to get approval from the City Council.

20 This difference between legislative functions
21 and administrative functions is critical here, because
22 if the city council was performing an administrative
23 function, then they were subject to the procedural
24 requirements of the due process clause. And since
25 they were subject to the procedural requirements of

1 the due process clause, then the First Amendment would
2 have no application.

3 The case law is clear both in this state and
4 other jurisdictions. When a city council is
5 considering an application by an individual or a
6 company for a specific parcel of property, that is an
7 administrative function. They are approving a
8 specific application for a specific parcel of
9 property, they're not performing a legislative
10 function where they're approving a law that applies
11 across the city. Instead, they're approving for a
12 single parcel of property. That is clearly an
13 administrative function.

14 Then the case law goes on to make clear when
15 a city council is performing an administrative
16 function, then they're subject to the requirements of
17 the due process clause and they can't have any of the
18 council members being biased in any way, whether
19 actual or appearance of bias.

20 And that's the case here. The question is
21 whether Councilman Carrigan had an appearance of bias
22 when he voted on the Lazy A project.

23 If he did, the due process clause is
24 applicable and he needed to remove himself from that
25 setting. And if the due process law is applicable,

1 then the First Amendment law did not apply.

2 As we say in our Amicus brief, there are
3 several cases that make clear that campaign
4 contributions don't create a conflict of interest;
5 however, when a councilman has a relationship that's
6 more significant than a campaign contributor, then
7 there's a potential for a conflict of interest.

8 When the person appearing before the City
9 Council, in this case, Mr. Vasquez, a lobbyist for the
10 applicant, appeared before the City Council, he was
11 not only a lobbyist for Red Hawk; at the same time,
12 during a contentious ongoing election, Mr. Vasquez was
13 also the campaign manager for Councilman Carrigan.

14 This created the sort of improper
15 relationship that would create an implied probability
16 of bias and require recusal under the due process
17 clause. Because of that relationship and the
18 applicability of due process clause, the First
19 Amendment did not apply.

20 Even assuming that the First Amendment
21 applied in this context, we believe the Pickering
22 balancing test is the proper standard of review.

23 Under the Pickering balance test, the Court
24 must balance the interests of the government in having
25 efficient, effective, and ethical officers against the

1 interests of the officer to exercise their right to
2 vote.

3 When you balance those interests in this
4 case, it's clear in the Pickering balancing test that
5 the statute on its face and applied to Councilman
6 Carrigan is constitutional.

7 Because of the relationship between
8 Mr. Vasquez and Councilman Carrigan, again, there was
9 an implied probability of bias, so his First Amendment
10 right was at its lowest point.

11 Conversely, the state's right to have ethical
12 government was at its zenith, because it's trying to
13 protect the interests of the public in a fair tribunal
14 with fair decision-makers and unbiased decision-makers
15 is what the goal of the ethics statute are trying to
16 achieve.

17 So when you're balancing those two goals
18 under the Pickering balancing test, it's clear that,
19 in this case, the interests of the state and ethical
20 government clearly outweighs the interests of
21 Councilman Carrigan to vote on a matter which he had a
22 disqualifying conflict of interest.

23 In their opening brief, they also raise the
24 issue these ethics laws were subject to strict
25 scrutiny under the First Amendment. Again, we believe

1 that the test is the Pickering balancing test, that's
2 the proper standard of review.

3 However, even assuming that the higher
4 threshold of strict scrutiny applies, we still believe
5 that the case law is clear that these statutes are
6 constitutional.

7 Under strict scrutiny, the state has to have
8 a compelling interest, and that compelling interest
9 has to be narrowly tailored so that it is the least
10 restrictive means available.

11 Both the U.S. Supreme Court and many federal
12 circuit courts have dealt with rules of
13 disqualification in the judicial context. Judges are
14 trying -- are required to recuse themselves when they
15 have a reasonable belief that there would be
16 appearance of impartiality -- I'm sorry, of bias.

17 Under that standard where judges have to
18 recuse themselves due to an appearance of bias, all
19 the federal courts that have dealt with that issue
20 have found that those statutes are narrowly tailored
21 to the state's compelling interest in protecting the
22 public from that appearance of bias.

23 And that recusal is the least restrictive
24 means available; indeed, it's the only means
25 available. If there's an appearance of bias, the only

1 way for the public to have a fair and impartial
2 decision-maker is for recusal to occur.

3 So the courts have upheld the judicial rules
4 that require recusal and disqualification. This
5 statute, the ethics law has the same basis as those
6 judicial rules of disqualification. And therefore,
7 just like the rules of judicial disqualification,
8 these ethics laws are also constitutional under the
9 strict scrutiny standard.

10 So it is the position of the legislature that
11 regardless of the standard to be applied, whether the
12 Pickering balance test or strict scrutiny, that these
13 statutes are constitutional under the First Amendment.

14 Turning now to I think what is the true crux
15 of this case and the one constitutional argument that
16 the Court should focus on is the vagueness challenge
17 raised by the petitioners.

18 And as the Court considers its vagueness
19 challenge, I think two important points have to be
20 made. First, the Supreme Court -- the United States
21 Supreme Court's made clear that when a law is
22 challenged for vagueness and the law only has civil
23 penalties, then there's a less strict standard that
24 the court will apply; there's a less exacting scrutiny
25 that the court applies in this case.

1 Under the ethics laws, the commission can
2 only impose civil penalties, they cannot impose
3 criminal penalties. Therefore, the less exacting
4 standard of scrutiny under the vagueness test would
5 apply here.

6 In addition, the courts have also made clear
7 that if there are any procedures in place allowing
8 persons with doubts about the meaning of a statute to
9 obtain a clarification from the agency charged with
10 its enforcement, then again, there's a less exactness
11 scrutiny that the court should apply for vagueness.

12 In other words, if a person's able to seek an
13 advisory opinion from the body charged with enforcing
14 the law, then the duty is on that person to seek that
15 advisory opinion to clarify any doubts they may have
16 about the law.

17 So in the context where advisory opinions are
18 available, it would be very rare for the United States
19 Supreme Court to strike that law as unconstitutionally
20 vague under the First Amendment or the Fourteenth
21 Amendment.

22 I also wasn't to stress here, because we
23 believe the First Amendment has no application and
24 that there's no protected speech at issue here, that
25 the vagueness challenge strictly falls under the

1 Fourteenth Amendment.

2 And again, under the Fourteenth Amendment
3 vagueness challenge, the level of scrutiny the court
4 applies is much lower than if there is a protected
5 conduct implicated by the statute. In this case,
6 there wasn't protected conduct, because at the time of
7 the vote, the First Amendment did not apply.

8 One of the reasons we believe that this law
9 is not unconstitutionally vague is that as it's set up
10 on the petitioner's exhibit there is that there are
11 four very specific and concrete examples that tie into
12 paragraph E.

13 The key here is the meaning of paragraph E,
14 any other commitment or relationship that is
15 substantially similar to a commitment or relationship
16 described in this subsection.

17 Obviously E ties into the four very specific
18 and concrete examples in paragraphs A through D. All
19 of those an ordinary public officer exercising
20 ordinary reasonable common sense can understand what
21 relationships are prohibited by A through D.

22 E says anything that's substantially similar
23 to those relationships. Well, a councilman and any
24 other public officer should be able to exercise
25 ordinary common sense and understand the types of

1 relationships that will be substantially similar to
2 those.

3 And I would offer the term substantially
4 similar, Your Honor, if you look at typical dictionary
5 definitions of both of those terms, substantial is
6 defined by dictionary definitions as being of
7 considerable importance, value, degree, amount, or
8 extent.

9 And similar is defined as having
10 characteristics in common strictly comparable, alike
11 in substance or essentials. And some of the synonyms
12 for those terms are analogous, parallel.

13 So this is not just any relationship, it's a
14 very significant relationship, one of considerable
15 importance that is like in characteristics to those
16 four relationships already identified; relationships
17 that are strictly comparable, alike in substance and
18 essentials.

19 A person exercising ordinary common sense
20 would be able to interpret that and understand what
21 relationships were prohibited. And then again, if
22 that person had any doubts, any questions, the
23 statutes make it clear they can seek a confidential
24 advisory opinion from the commission.

25 In this case, Mr. Vasquez became the campaign

1 manager for Councilman Carrigan eight months before
2 the City Council vote. This Lazy A project -- and
3 this was testified to by Councilman Carrigan and Mr.
4 Vasquez, this Lazy A project was the sole primary,
5 predominant issue in this campaign.

6 So for months before this vote, this was a
7 highly hotly contested issue. And Mr. Carrigan knew
8 that Mr. Vasquez was his campaign manager.

9 He had plenty of opportunity to seek that
10 advisory opinion from the commission and he failed to
11 do so. The statute should not be stricken down on its
12 face for a public officer's to failure to take the
13 opportunity provided to him under the law.

14 We also like to point to the legislative
15 history that added this definition in subsection
16 eight. The legislative history is rife with instances
17 where the legislature described exactly what it was
18 trying to achieve.

19 And in an exchange between Senator Titus and
20 Mr. Sheerer (phonetic), who was counsel for the
21 governor, it was made clear in several opportunities
22 what the intent of the statute was.

23 Mr. Sheerer says what we were trying to get
24 at with these relationships are that they're so close,
25 they're like family or they are substantially similar

1 to a business partner. It has to be a relationship
2 that is so close, it is like family, it is like a
3 member of your household, it is like a business
4 partner.

5 And clearly the legislature was trying to
6 achieve with sub -- paragraph E is giving the proper
7 amount of discretion to the commission to capture the
8 infinite variety of situations that would create a
9 conflict of interest, but at the same time channeling
10 that discretion by giving four very specific and
11 concrete examples.

12 And again, if there is any doubt, any public
13 officer can seek the opinion of the ethics commission
14 before they enter their vote.

15 So it's clear from the legislative history,
16 from the text of the words, the dictionary
17 definitions, the structure of the section, that this
18 is not an unconstitutional vague statute.

19 Adding to the fact that there's no criminal
20 penalties, that the public officer can seek an
21 advisory opinion, the petitioner's claims just do not
22 meet the threshold for finding the statute
23 unconstitutionally vague on its face.

24 And the last thing I'd like to offer, Your
25 Honor, if the court would declare the statute

1 unconstitutionally vague on its face, that would apply
2 across the board to every public officer in this
3 state.

4 And that would thereby undermine the
5 legislature's intent to have ethical government and to
6 protect of the rights of the people to have unbiased
7 decision-makers and fair tribunals.

8 And I do not believe that the petitioner has
9 made the argument and made his case that this statute
10 is unconstitutional and vague either on its face or as
11 applied. Thank you, Your Honor.

12 THE COURT: Mr. Thornley?

13 MR. THORNLEY: Your Honor, both the
14 Commission on Ethics and the Nevada Legislature have
15 pointed to the idea that Petitioner Carrigan could
16 have obtained an advisory opinion from the commission
17 before voting.

18 Now the statutes do provide for an advisory
19 opinion. But as a practical matter, an advisory
20 opinion not only underscores the vagueness of this
21 statute, the need for an advisory opinion really just
22 demonstrates that people of ordinary intelligence
23 cannot discern the boundaries of this law. But as a
24 practical matter --

25 THE COURT: Let me ask you this question: If

1 he was concerned enough to get an opinion from his
2 counsel, why didn't he get an opinion from the ethics
3 commission? He obviously saw that there was a problem
4 here. Why didn't he get a --

5 MR. THORNLEY: I believe -- and I may be
6 speaking for the petitioner, but I believe that he
7 thought that his counsel was adequate; that we are
8 also trained and that we can interpret the laws.

9 Furthermore, an advisory opinion from the
10 Commission on Ethics doesn't necessarily insulate
11 Petitioner Carrigan from a complaint or from a hearing
12 before the Commission on Ethics. The only thing it
13 insulates Petitioner Carrigan from is a willful
14 violation of the ethics laws.

15 As a practical matter, an advisory opinion is
16 nothing more than hey, this is what we think. It
17 doesn't insulate him from going down to Carson City to
18 appear before the Commission on Ethics.

19 All it does is prevents them from fining him
20 if they subsequently say maybe we were wrong and we're
21 going to find you in violation of this statute.

22 Further, Your Honor, it's not like Petitioner
23 Carrigan could have just called the Commission on
24 Ethics and asked for an advisory opinion.

25 Commissioner -- or Councilman Carrigan would

1 have needed to appear in Carson City, there would have
2 been a hearing, there would have been a full-blown
3 investigation; all of these things take time.

4 And while yes, Councilman Carrigan did ask
5 for an opinion from his city attorney, it doesn't mean
6 there's time to get an opinion from the Commission on
7 Ethics.

8 We publish our agendas three days before the
9 meeting, and three days isn't enough time to have an
10 investigation and a hearing and all the other things
11 that go into obtaining an advisory opinion from the
12 Commission on Ethics.

13 Further, Your Honor, the legislature has
14 indicated that the legislative history in this case
15 provides some guidance. Again, the need for
16 legislative history simply underscores the vagueness
17 and the problems with the clarity of this definition.

18 Further, if Your Honor is inclined to examine
19 the briefs and read the entire portion of the
20 legislative history that the legislature and the
21 commission have cited, you'll find that Dina Titus,
22 state Senator Dina Titus had similar problems that
23 Councilman Carrigan is having.

24 She asked does this apply to campaign
25 managers, what situations does this apply in.

1 Precisely the same reasons we're here today.

2 And while yes, the general counsel for the
3 governor told Senator Titus what he believed, even at
4 the time the legislature was passing this law, there
5 were questions as to whether or not it applied to
6 campaign managers, what situations do these apply in.

7 The legislature has indicated that this Court
8 should apply a less strict standard because only civil
9 penalties can be imposed by the Commission on Ethics.
10 That's misleading, Your Honor.

11 The statute, the former 281 sub -- it's 551
12 clearly indicates that the Commission on Ethics can
13 refer public officers that come before the commission
14 to the appropriate district attorney or to the
15 Attorney General for criminal prosecution.

16 The legislature discussed whether or not
17 substantially similar, and provided many definitions
18 for that phrase, is enough for four clearly enumerated
19 other portions of the statute.

20 The problem, Your Honor, is that there's a
21 vague statute with the substantially similar. And in
22 this case, we're applying it to another vague statute
23 when we talk about a substantial and continuing
24 business relationship.

25 There's no definition, there's no guidance,

1 and there's no way for an ordinary public officer to
2 discern the boundaries of this definition, and
3 therefore the boundaries of the laws applied in ethics
4 in government law.

5 The legislature has indicated that they don't
6 believe the First Amendment is applicable to this
7 case. Your Honor, the land use decision that the city
8 of Sparks was handling on August twenty-third, 2006,
9 was a planned development handbook.

10 A plan development handbook supercedes any
11 zoning ordinance in the city of Sparks. It
12 effectively becomes the zoning ordinance for that
13 particular parcel or that area.

14 In this case, Councilman Carrigan, the rest
15 of the City Council were engaged in the legislative
16 function when they approved -- or in that case,
17 actually they disapproved and it was subsequently
18 approved, a new ordinance, what amounts to a new
19 ordinance that controls the zoning in that area.

20 Because it's a legislative function, Your
21 Honor, legislative voting in the absence of a
22 disqualifying conflict of interest is protected speech
23 under the First Amendment.

24 The only way we get to a disqualifying
25 conflict of interest is to apply either of these vague

1 standards set forth in the definition of a commitment
2 in a private capacity.

3 The due process rights that the legislature
4 complained about aren't the legislature's to raise.
5 Those are rights that are reserved to the citizens
6 that may be affected by this decision or citizens that
7 may be otherwise concerned.

8 It's a well established principal that a
9 party that is not concerned with a particular
10 proceeding cannot raise constitutional rights of
11 parties that are otherwise affected.

12 Judicial context that was discussed by the
13 legislature doesn't apply to Councilman Carrigan.
14 Councilman Carrigan is a public official, and
15 therefore, the ethics laws of the state of Nevada
16 under Chapter 281 and now 281 A are the standards that
17 apply to Councilman Carrigan.

18 Therefore, an implied probability of bias,
19 while it may be the standard that applies to judges,
20 is not the standard that applies to Councilman
21 Carrigan.

22 The standard that applies to Councilman
23 Carrigan is the standard that's enumerated in 281.581,
24 sub two, and 281.581 -- 501, sub four. And under
25 those statutes, we need to find a commitment in a

1 private capacity. And to find a commitment in a
2 private capacity, you have to apply these vague
3 standards.

4 Both the commission and the legislature have
5 argued that a reasonable person would do this and a
6 reasonable person would do that. Your Honor, a
7 reasonable person might have a different definition of
8 business relationship than myself.

9 THE COURT: A reasonable person probably
10 wouldn't seek public office. That's the way I'm
11 starting to feel. That's why I'm not running again.

12 MR. THORNLEY: If there is a business
13 relationship, Your Honor, reasonable people can
14 disagree as to what makes a business relationship
15 substantial and continuing.

16 A substantial and continuing business
17 relationship to myself is probably different than a
18 substantial and continuing business relationship to
19 Harvey Whitmore (phonetic). What makes a commitment
20 substantially similar to any of these others? Your
21 Honor, reasonable people can disagree as to what
22 substantially similar is.

23 Again, certain things are important to some
24 people, certain things are important to other people.
25 When you apply an already vague standard to another

1 vague standard, the definition becomes even more
2 unclear.

3 We're not simply -- the decision of the
4 Commission on Ethics doesn't simply implicate
5 Petitioner Carrigan's rights. It implicates the
6 rights of Mr. Vasquez, his rights to association, it
7 implicates the rights to everybody that voted in the
8 city of Sparks in the last election.

9 The decision of the commission, Your Honor,
10 really obfuscates one of the finest American
11 traditions in representative government. If
12 Councilman Carrigan can't vote on things because he
13 knows someone or because somebody volunteered for his
14 campaign, then people are going to stop volunteering
15 for campaigns, or people are going to start
16 volunteering for campaigns for candidates that they
17 don't like so that they can push them out when it
18 comes time for a vote that's important to them.

19 I think we've really underscored how vague
20 these statutes, the statutes that the commission
21 specifically applied when finding that Councilman
22 Carrigan should have abstained.

23 And I think we've underscored why they're
24 damaging and why they can't be allowed to stand. And
25 if they can't be allowed to stand, certainly the

1 decision of the commission can't be allowed to stand.

2 THE COURT: Are you still going?

3 MR. THORNLEY: No, sir, I'm not. You may ask
4 questions.

5 THE COURT: You can sit down. I'll start out
6 by saying this is not something I'm unfamiliar with
7 from the standpoint that I have to make decisions like
8 this daily myself in light of the fact that I'm a
9 District Court judge in a district that I've lived in
10 all my life.

11 And I think what the ethics laws seek to do
12 is to preclude -- well, and I'll start out by saying
13 you're right; that a lot of times, public officials --
14 and this is why I said any reasonable person wouldn't
15 run for public office, and judges same way; we're
16 under an obligation to act because that's what we are
17 employed to do; but on the other hand, we're -- we
18 shouldn't act if there's actual conflict or the
19 appearance of conflict.

20 And, you know, we've got all these statutes
21 that seek to describe what actual conflict or the
22 appearance of conflict are. Sometimes I can't help
23 thinking why do we even have election in that regard.

24 And I think sometimes this move to get all
25 these ethics laws is just another example of our

1 impatience with our election process.

2 When I say that, it seems to me like if that
3 in fact -- and this is a close call; no doubt about
4 it, it's a close call. In a case like that, it seems
5 to me like the voters of Sparks ought to be able to
6 decide whether or not Mr. Carrigan had a conflict.
7 And I suppose if he did and they didn't care, then
8 they get the government that they vote for.

9 But the problem I have in terms of the
10 petition for judicial review in this case is that you
11 start out with the proposition that -- and you've
12 asserted that the commission -- commission's decision
13 was arbitrary and capricious, and I don't agree with
14 that.

15 They made factual findings, and there is
16 substantial evidence in the record to support those
17 findings. And I could go through them, but they're
18 set out at length in the briefs in this case and in
19 the opinion itself.

20 And in that regard, the fact that a couple of
21 the commissioners disagreed for the -- on the basis
22 doesn't mean it's vague, because people have different
23 opinions about different things. They were quite
24 certain in finding that there was at least the
25 appearance of a conflict.

1 And as long as there is substantial evidence
2 in the record to support their findings of fact, I
3 have to uphold that. Whether I would have made the
4 same -- drawn the same conclusions from the facts or
5 not is a different question. I don't get to
6 superimpose how I would have found the facts based on
7 the evidence on these proceedings and reverse them.

8 So I find that the commission didn't abuse
9 its discretion, it had substantial evidence in the
10 record to support its findings of fact. So -- and I'm
11 going through the issues that you raised in your
12 brief, Mr. Thornley, is whether the Commission on
13 Ethics improperly interpreted implied NRS 281.501,
14 subsection two.

15 And you say that they ignored the statutory
16 presumption despite receiving no evidence that
17 sufficiently rebutted the presumption. I think they
18 addressed the presumption, found that it didn't apply.
19 That's a finding of fact I think that then concludes
20 in the law.

21 But again, there was substantial evidence to
22 support that finding, so they didn't ignore NRS
23 281.501, subsection two; they just found that it
24 didn't apply. They didn't abuse their discretion,
25 because there's substantial evidence in the record to

1 support their findings of fact. Once you start with
2 that premise and the facts that they found, it -- in
3 my opinion, the rest of it follows.

4 And in this case, I have to give deference to
5 them in their interpretation of the laws that they
6 apply. And the reason for that is, is that judges
7 hear -- I hear cases on environmental protection
8 agency acts, tax questions from Washoe County, water
9 questions from Fallon, power company questions from
10 Clark County, questions all the time on what the
11 employment security laws mean, questions all the time
12 on what the state industrial insurance law means.

13 And the Court appropriately says well, those
14 guys -- these people deal with this defined area of
15 law all the time, so courts who are more generalist
16 should necessarily give deference to these individual
17 administrative agencies and their interpretation of
18 the law.

19 In this case, if this case involves the First
20 Amendment, I think that Pickering case applies. And
21 that case is Pickering V Board of Education, three
22 ninety-one U.S. five sixty-three. It's a 1968 United
23 States Supreme Court case.

24 And in balancing, I think that any
25 interference with free speech is warranted because of

1 the state's strong interest in either having ethical
2 government or the appearance of ethical government.

3 I don't think this statute -- again, and it's
4 interesting I've used this phrase before in decisions
5 that I've written in regards to vagueness and
6 over-breadth out of Granger V City of Rockford, which
7 is 408 U.S. 104, 1972 Supreme Court case: We are
8 condemned to the use of words, we can never expect
9 mathematical certainty from our language.

10 In this case, that is a general statement;
11 any -- subsection -- well, it's NRS 281.501 eight E:
12 Any other commitment or relationship that is
13 substantially similar to a commitment or relationship
14 described in this subsection.

15 And then your reference to what a substantial
16 business relationship is, I can tell you that's a lot
17 more certain than several criminal statutes that I can
18 point you to. And it isn't mathematically certain
19 from our language, but it's enough to put a reasonable
20 person on notice of what conduct is prohibited.

21 So I don't think that this -- if the First
22 Amendment does apply, I don't think that this violates
23 the First Amendment prohibition against unreasonably
24 restricted speech. And I also don't think the statute
25 is vague or overbroad.

1 The final issue is whether Carrigan was
2 deprived of substantial due process at the hearing.
3 That is sort of a post-hearing issue that's getting
4 raised before me.

5 And at least from reading the briefs, there
6 was no contest at the hearing about Shue (phonetic)
7 and the other commissioner proceedings, so I don't
8 find there's a violation there.

9 Two things that -- or a thing for sure that
10 makes me go a lot in the direction that I'm going is
11 that Mr. Carrigan could have sought an advisory
12 opinion from the Ethics Commission.

13 And I -- you routinely see really stupid
14 questions being asked, in my opinion, of the Judicial
15 Ethics Commission. And they come out almost
16 instantaneously.

17 So based on my experience -- and for that
18 matter, I think a lot of the questions that are asked
19 of just the Ethics Commission, you see opinions on
20 that all the time.

21 So it's not an inordinately difficult process
22 to engage in. And it just seems to me that the wise
23 course of conduct in this case would have been to do
24 that.

25 So based on all of that -- and I want to add

1 one other thing. I don't think, and I certainly don't
2 think the Ethics Commission thought -- you know,
3 sometimes you say well, the Ethics Commission made a
4 finding against the councilman in this case, and then
5 everybody says oh, he's unethical.

6 I think Mr. Carrigan had a very difficult
7 decision to make. Again, he's got as much of a
8 responsibility to act on behalf of the people that
9 voted for him there in Sparks as he does in looking at
10 sometimes complicated ethics rules and deciding not to
11 act.

12 But what you're looking at is the
13 appearance -- either an actual conflict or the
14 appearance of a conflict. And I don't think in
15 searching his mind -- again, there's this subjective
16 part of this whole thing.

17 In searching his mind -- and I find myself in
18 this position all the time; I find myself thinking
19 well, I don't have a conflict here, I don't feel
20 strongly one way or the other and my decision isn't
21 going to be based on -- on some relationship I have
22 with somebody or anything else.

23 And then my partner next door reminds me but
24 there's appearance of conflict. And sometimes it's --
25 because you're the person who's thinking about it, you