No. 10-568

In the Supreme Court of the United States

NEVADA COMMISSION ON ETHICS,
Petitioner,

v.

MICHAEL A. CARRIGAN,
Respondent.

On Writ of Certiorari to the Supreme Court of Nevada

BRIEF OF AMICUS CURIAE INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION, IN SUPPORT OF RESPONDENT

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INTEREST OF AMICUS CURIAE*

The International Municipal Lawyers Association (IMLA) is a nonprofit, professional organization of over 3,500 local government entities, including cities, counties, and special district entities, as represented by their chief legal officers, state municipal leagues, and individual attorneys. Since 1935, IMLA has served as a national, and now international, clearinghouse of legal information and cooperation on municipal legal matters. IMLA's mission is to advance the responsible development of municipal law through education and advocacy by providing the collective viewpoint of local governments around the country on legal issues before the United States Supreme Court, in the United States Courts of Appeals, and in state supreme and appellate courts. There are over 39,000 local government entities in the United States comprised of counties, municipalities, towns and townships.[1] Each of these local government entities have multiple public officials who are subject to some form of ethics or conflict of interest regulations. IMLA's members are intimately involved in advising local government officials

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* The parties' consent to amicus briefing is on file with the Clerk of this Court. In accordance with SUP. CT. R. 37.6, amici states that no counsel for either party has authored this brief in whole or in part, and no person other than amici, their members, or their counsel made a monetary contribution to the preparation or submission of the brief.

[1] *See* U.S. Census Bureau, Governments Division, 2007 Census of Governments, *Local Governments and Public School Systems by Type and State: 2007* (2009), *available at* http://www.census.gov/govs/cog/GovOrgTab03ss.html.

relative to the application of these conflict of interest statutes and ethics codes. Because of this unique expertise, IMLA submits this brief to assist the Court with an understanding of the challenges faced by local government attorneys and local government officials when faced with vague ethical statutes.

IMLA has an immediate interest in the outcome of the present case as vague statutory language such as that found in Nevada Revised Statutes § 281A.420 (2007)[2] presents obstacles to advising local government officials as to the proper course of action. When a law is unclear and there is little or no case law or legislative history to serve as guidance, a local government attorney is left to speculate as to the meaning of the provision.

STATEMENT OF THE CASE

IMLA adopts the statement of the case set forth in the Brief for Respondent.

SUMMARY OF ARGUMENT

Since the beginning of this nation, there has been a need for legislatures to enact recusal statutes. These statutes ensure that elected officials abstain from voting on matters in which their personal loyalties interfere with their oath of office and obligation to the citizens they represent. Recusal statutes do not only affect local elected officials, such as Councilman Carrigan here, the statutes also

[2] All citations to the Nevada Revised Statute are to the 2007 version, consistent with the opinions below and the Petitioner's Brief and the Respondent's Brief.

affect state legislators and citizens the elected officials represent. However, when recusal statutes are vague to the point that they pose a trap for the wary as well as the unwary, it frustrates the statute's purpose and no one benefits.

The parties have urged this Court to decide the case using a two step analysis: first, a determination as to whether the act of voting was, as the Nevada Supreme Court found, an act protected by the First Amendment; and, second, apply the correct standard to the activity. IMLA, through this brief, urges the Court to also be mindful of well established due process considerations that might inform its decision.

The analysis for this case should begin and end with Nevada Revised Statutes § 281A.420(8)(e). It is this statutory provision which violates all notions of due process. This provision is a catch-all that fails to adequately describe the contours of lawful and unlawful conduct; and, it also delegates unbridled authority to those applying the law.

The absence of adequate boundaries within this law is clearly demonstrated by the record. First, Councilman Carrigan requested a legal opinion from the city's attorney regarding whether he should abstain from voting on the Lazy 8 matter. The City Attorney advised, through a formal legal memo, that Councilman Carrigan need only disclose his relationship with Mr. Vasquez on the record but he need not abstain from voting. Second, Councilman Carrigan followed the advice of counsel and then voted "aye" on the Lazy 8 project. Lastly, after a

complaint to the Nevada Commission on Ethics, the Councilman was found to have violated Nevada Revised Statutes § 281A.420(8)(e) based upon the "sum total" of his relationship with Mr. Vasquez.

Councilman Carrigan followed the advice of the city's attorney and was still found to have been in violation of the statute because of the "sum total" of his relationship with Mr. Vasquez. However, the words "sum total" appear nowhere in the statute. If (1) the Councilman's attorney cannot deduce the boundaries of the law as it applied in this particular situation and (2) the Nevada Commission on Ethics used a term found nowhere in the statute to support their finding that a violation had occurred, the rhetorical question is: Can anyone describe what conduct is prohibited by the statute? In this case, one plus two does not equal three; here, it is unclear what one plus two equals.

The uncertainty in this law cannot stand. This statute failed to put Councilman Carrigan (and the city's attorney) on notice of prohibited conduct and gave the Nevada Commission on Ethics authority to apply the law with unbridled authority – their "sum total" determination.

Additionally, Nevada's ethics statute is unlike any other states'. Although every state has a statute addressing conflicts of interest, no other state's recusal statute contains the inherently vague language found in Nevada's statute. Other states' statutes give representatives clear direction as to when a conflict of interest exists so as to not unnecessarily obstruct the republican form of

government by denying a representative his or her right to vote. Nevada's legislature cannot have it both ways. They cannot fail to define prohibited conduct and, at the same time, require recusal where potentially no conflict of interest exists – all at the expense of local government officials and the citizens they represent. Every state but Nevada has found a way to balance the competing interests at the forefront in this case: the need for clearly defined recusal statutes and the elected official's right to vote.

As legal advisors to local elected officials across this nation, IMLA respectfully requests this Court evaluate the statute under the well established due process principles set out below and find Nevada Revised Statutes § 281A.420(8)(e) void for vagueness.

ARGUMENT

A. The catch-all provision of Nevada Revised Statutes § 281A.420 is unconstitutionally vague.

The proper operation of democratic government requires that local government officials be independent, impartial and not use public office for personal gain. Therefore, conflict of interest regulations and recusal requirements for local government officials are unquestionably vital to the proper, efficient and honest operation of government such that the public can have confidence in the integrity of their government. As such, the proper role for clearly defined conflict of interest statutes in

American society is not questioned. However, when these statutes are enacted with such vague language that a local government official is unable to understand and comply with the requirements, the goal of an efficient and honest operation of government is not furthered.

The vagueness doctrine is based on the principle that a statute that either forbids or requires an act in terms so vague that "men of common intelligence" must necessarily guess at its meaning and apply it in differing manners violates due process. *See Connally v. Gen. Constr. Co.*, 269 U.S. 385, 391 (1926). Vagueness arguments are in no short supply in case law for good reason: vague laws can trap the innocent with the guilty by failing to provide fair warning of what conduct is prohibited. *See Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972). A vague regulation impermissibly delegates policy matters of the most basic nature to policemen, judges and juries for resolution on a subjective basis. *See id*. at 108-09.

The subject matter of the law under consideration dictates the light in which the vagueness argument is viewed. The amount of vagueness that is tolerated and the amount of fair notice and enforcement that is required hinges on the type of law being considered. *See Hoffman Estates v. Flipside, Hoffman Estates,* 455 U.S. 489, 498 (1982). "Where a statute's literal scope, unaided by a narrowing state court interpretation, is capable of reaching expression sheltered by the First Amendment, the doctrine demands a greater degree of specificity than in other contexts." *Smith v.*

Goguen, 415 U.S. 566, 573 (1974) (discussing the void for vagueness doctrine).

The "aye" vote cast by Councilman Carrigan on the Lazy 8 matter was determined by the Supreme Court for the State of Nevada to be speech protected under the First Amendment. *See Carrigan v. Comm'n on Ethics of Nev.*, 236 P.3d 616, 621 (Nev. 2010). As the Brief for Respondent points out "[t]he vote, moreover - like each of the foregoing votes - was the culmination of a lengthy political process . . . This Court has imbued every step along this path with the highest level of First Amendment protection." (Resp.'s Br. 24-25). Nevada's statute requires a local government official to abstain from this protected speech when a matter before him or her affects the local government official's "commitment in a private capacity to the interest of others." NEV. REV. STAT. § 281A.420(2)(c) (2007). In the case before the Court, the Nevada legislature failed to announce with specificity the boundaries of the law. This being said, the activity affected by the vague statute need not be protected speech, and this Court need not consider whether or not the activity in this case is protected under the First Amendment to find it unconstitutionally vague.

B. The catch-all provision of Nevada Revised Statutes § 281A.420 is unconstitutionally vague as it leaves an individual without knowledge of the nature of the activity that is prohibited.

Vague ethical statutes are contrary to due process because they fail to fairly put local

government officials on notice as to the prohibited conduct and/or relationships and leave both local government officials and local government attorneys guessing at their application. The vast majority of local government officials are not career professional politicians with professional advisors and staffs. Instead, they are citizen public servants serving for nominal pay out of an obligation to seek the common good for their community. Often, they serve as a city council member while simultaneously working a full-time job.

Unquestionably, local government is closest to the people. Local governments routinely address matters of great importance to the daily lives of its citizens; it is also the most accountable to its people. Local government officials serve at home and have daily contact with their constituents. For example, local government officials are held accountable to citizens when shopping in local stores or dropping children off at neighborhood schools. These local government officials were elected by their friends, neighbors and members of their church. Many represent smaller cities with no in-house city attorney and limited available resources with which to constantly engage legal counsel for determinations relative to the application of vague statutes. Therefore, it is only fair that legislators provide clearly defined ethical statutes to guide these dedicated public servants.

In the case before the Court, the Nevada Legislature formulated a statute in Nevada Revised Statutes § 281A.420 for the recusal of public officers in situations where a conflict of interest might exist.

The statute sets forth four instances where a local government official is considered to have a "commitment in a private capacity to the interests of others" which will trigger the need for the local government official to abstain from voting. Essentially, the local government official cannot vote on matters which involve:

a. a member of the local government official's household;

b. a person related to the local government official by blood, adoption or marriage within the third degree of consanguinity or affinity;

c. someone who employs the local government official or a member of the local government official's household; or

d. someone with whom the local government official has a substantial and continuing business relationship.

The relationships identified in (a), (b) and (c) refer to individuals in the local government official's life. Subsection (d) uses the words "substantial and continuing" to describe a business relationship but gives no further guidance as to how substantial a substantial relationship need be before abstention is required. The Nevada Legislature then placed a catch-all provision to catch any "substantially"

similar relationship to one of the four standards: "any other commitment or relationship that is substantially similar to a commitment or relationship described in this subsection." NEV. REV. STAT. § 281A.420(8)(e) (2007). The inherent vagueness of the catch-all provision becomes even more apparent when attempting to identify a "relationship that is substantially similar" to a "substantial and continuing business relationship" described in subsection (d).

The Nevada Supreme Court correctly found that the catch-all language failed to "adequately limit the statute's potential reach and does not inform or guide public officers as to what relationships require recusal." *Carrigan*, 236 P.3d at 623. A basic principle of due process is that a statute is void for vagueness if its prohibitions are not clearly defined. *See Grayned*, 408 U.S. at 108 (discussing the void for vagueness doctrine). Due process ensures that a statute creating an offense be "sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties." *Connally*, 269 U.S. at 391. In this case, a first time violation could be subject to a civil penalty of up to $5,000. NEV. REV. STAT. § 281A.480 (2007). This is more than twice what many local government officials receive annually for their service to their community. *See* ARLINGTON, TEX., CODE OF ORDINANCES, CHARTER CHAPTER, art. IV, § 6 (2005) (providing for a salary of $250 per month for the mayor and $200 per month for council members).

What better illustration of the statute's inherent vagueness than disagreement among the members of the Nevada Commission on Ethics as to which relationship was violated. Commission members could not agree as to whether the relationship between Councilman Carrigan and Mr. Vasquez was substantially similar to a familial relationship or a business relationship. Nev. Comm'n on Ethics, Excerpts of Transcript, Aug. 29, 2007 Hearing, Joint App. p. 243-67. Instead the Commission found that:

> 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."

Nev. Comm'n on Ethics Opinions 06-61, 06-62, 06-66 and 06-68 (2007), Joint App. p. 96-112.

However, the statute does not provide the option for a "sum total" determination. The Nevada legislature separated each of the four relationships by use of the disjunctive "or". Canons of construction indicate that terms connected in the disjunctive be given separate meanings. *See Garcia v. United States*, 469 U.S. 70, 73 (1984). Therefore, each relationship stands on its own. The statute clearly did not put Councilman Carrigan on notice that he would be held subject to a "sum total" relationship

created out of whole cloth by the Commission with no support from the statute.

Nor does the rule of *ejusdem generis* relieve the statute of its inherent vagueness. *Ejusdem generis* is a rule of statutory construction which literally means "of the same kind or class." BLACK'S LAW DICTIONARY 556 (8th ed. 2004). This rule is used to aid in ascertaining the correct meaning of words when there is uncertainty by limiting general terms which follow specific ones to matters similar to those specified. *See Gooch v. United States*, 297 U.S. 124, 128 (1936). Thus, "where general words follow an enumeration of specific items, the general words are read as applying only to other items akin to those specifically enumerated." *Harrison v. PPG Indus.*, 446 U.S. 578, 588 (1980). However, the rule does not apply to restrict the operation of a general statement where the specific things enumerated have no common characteristic. 73 AM. JUR. 2D *Statutes* § 136 (2010). For example, in the phrase "all horses, mules, cattle, sheep, hogs, and other live animals," the general language of "and other live animals" will be held to include only four legged animals similar to those listed; birds would not be included. *Reiche v. Smythe*, 80 U.S. 162, 165 (1872). It follows that the specific phrases set forth in the Nevada statute should be within the same kind or class if the doctrine is to apply and give meaning to the general phrase. Therefore, if the specific, different relationships set forth in subsections a-d signify subjects, persons or things greatly different from one another, *ejusdem generis* will not apply.

In this instance, two relationships are familial while the later two relationships are business/employment related. Applying *ejusdem generis* to Nevada's statute, it is unclear what single kind or class is being referred to. Some might argue that the class is limited to "close, significant and continuing relationships." However, that class is much more expansive than the four relationships described. For example, would such a class include the local government official's neighbor, doctor, barber, dentist, minister, grocer, etc.? If the doctrine of *ejusdem generis* does not apply, then the general catch-all provision with its inherent vagueness must stand on its own.

At times, the availability of an advisory opinion has provided grounds for overcoming a void for vagueness argument. *See United States Civil Serv. Comm'n v. Nat'l Ass'n of Letter Carriers*, 413 U.S. 548, 580 (1973) ("It is also important in this respect that the Commission has established a procedure by which an employee in doubt about the validity of a proposed course of conduct may seek and obtain advice from the Commission and thereby remove any doubt there may be as to the meaning of the law.") In the case at hand, the availability of an advisory opinion offers little to no assistance in removing doubt as to the meaning of the law. Local government attorneys are routinely confronted with questions from local government officials concerning the application of ethics statutes. It is true that there is a mechanism in the Nevada statute in which the local government official can obtain an Ethics Commission opinion for instances in which application of the ethics statute are uncertain.

However, the Nevada Commission on Ethics has 45 days to render such an opinion. NEV. REV. STAT. § 281A.440 (2007). In the local government context, a local government official rarely, if ever, knows 45 days in advance what items will be on a city council agenda in order to timely make such a request. There may only be three days from the time an item is placed on the governing body's agenda and the local government official becomes aware that the item will be considered and the time of the meeting. *See* TEX. GOV'T CODE ANN. § 551.043 (Vernon 2009) (requiring the agenda for a meeting of the governing body be posted 72 hours before the meeting is scheduled to begin). Many city charters require the elected city council members to vote on all matters that come before the city council unless there is a conflict of interest. Citizens expect their local government officials to represent their interests by voting on the issues that matter to them. However, as a practical matter, should this law be upheld, local government attorneys will be more likely to advise local government officials to abstain from voting on a matter. If the Nevada Commission on Ethics later determines that the relationship does *not* present a "commitment in the private capacity to the interest of others," the local government official and his or her constituents will have already been irrevocably harmed because the official will have missed his or her opportunity to vote on the matter.

In the case before the Court, Councilman Carrigan acted as any reasonable city council member would act. Before he cast his vote on the Lazy 8 matter he consulted and obtained an opinion from his city attorney. Councilman Carrigan

followed the advice of his city attorney to a tee and disclosed, on the record, his relationship with Mr. Vasquez prior to the vote. The Nevada Commission on Ethics confirmed that Councilman Carrigan believed that he had fulfilled his duty under the Nevada statute and never intended to circumvent the law. *See* Nev. Comm'n on Ethics Opinions 06-61, 06-62, 06-66 and 06-68 (2007), Joint App. p. 96-112.

This Court has invalidated a state bar rule under the void for vagueness doctrine with facts very similar to the facts of Councilman Carrigan's case. In *Gentile v. State Bar of Nev.,* 501 U.S. 1030 (1991), an attorney attempted to comply with a vague state bar rule and this Court found that, indeed, a "conscious effort" at compliance was made. It was not until months later that the attorney was disciplined for the conduct in question. *See id.* at 1051. There, Mr. Gentile, as is the case here with Councilman Carrigan, had reason to suppose that his particular conduct was not in violation of the law at issue. *See id.* at 1044. Further, neither Mr. Gentile nor Councilman Carrigan committed plainly prohibited conduct. *See Holder v. Humanitarian Law Project,* 130 S. Ct. 2705 (2010) (noting that Mr. Gentile "had reason to suppose that his particular statements . . . would not violate the rule, yet he was disciplined nonetheless."). These are not cases in which the alleged violator raises a vagueness argument in an effort to avoid discipline. These are cases of a reviewing body acting as a Monday morning quarterback. Here, Nevada local government officials are placed in the precarious position of either abstaining from the protected speech of voting or being subject to a $5,000 sanction

under a statute that clearly fails to provide fair warning as to what relationships are included. *See* NEV. REV. STAT. § 281A.480(1)(a) (2007).

C. The catch-all provision of Nevada Revised Statutes § 281A.420 is unconstitutionally vague as it delegates unbridled authority to those who apply the law.

As detailed above, the due process doctrine of vagueness incorporates notions of fair notice or warning. The doctrine also requires legislatures to set reasonably clear guidelines for law enforcement officials and triers of fact in order to prevent arbitrary and discriminatory enforcement. *See Goguen*, 415 U.S. at 573; *e.g. Grayned,* 408 U.S. at 108. Due process demands substantial specificity in the language of a statute when such statute is capable of encroaching upon rights protected by the First Amendment. *See Goguen,* 415 U.S. at 573. This Court has "recognize[d] that in a noncommercial context behavior as a general rule is not mapped out in advance on the basis of statutory language. In such cases, perhaps the most meaningful aspect of the vagueness doctrine is not actual notice, but the other principal element of the doctrine – the requirement that a legislature establish minimal guidelines to govern law enforcement. It is in this regard that the statutory language under scrutiny has its most notable deficiencies." *Id.* at 574. Nevada's Code of Ethical Standards fails to provide specificity as to which relationships and commitments give rise to a conflict

of interest and which do not so as to prevent arbitrary and discriminatory enforcement of the law.

Nevada Revised Statutes § 281A.420 requires that a local government official abstain from voting when such matter would be "materially affected by … his commitment in a private capacity to the interest of others." Nevada Revised Statutes § 281A.420(8) provides a definition of "commitment in the private capacity to the interest of others" that lends itself to not just one or two but an indefinite number of possible interpretations. Specifically, Nevada Revised Statutes § 281A.420(8)(e) provides that any other commitment or relationship that is "substantially similar" to four enumerated commitments and relationships affects the local government official's commitment in a private capacity to the interest of others. What relationship would be considered substantially similar to the relationship one has with his aunt, uncle, niece, nephew, great-grandparent or great-grandchild or his wife's family members with the same titles? These are the relationships to the third degree of consanguinity or affinity and the relationships with which one is to compare all other relationships. *See* NEV. REV. STAT. § 281A.420(8)(b) (2007). Depending upon your own personal experiences, this may include a close friend or it may include a stranger on the street with whom you only share a passing conversation.

Similar to the vague oath that was required of public employees in *Baggett v. Bullitt*, 377 U.S. 360, 385 (1964), the range of relationships that might be deemed "substantially similar" to the enumerated

list is very wide. The office of city council is rarely a full-time job and local government officials are more likely to have relationships with those in the community who bring matters before the governing body. They attend church together, their children are in the same schools, they attend the same social gatherings, and work for the same local businesses. In short, local government officials *live* in the community they represent and their relationships with those who bring matters before the governing body run the gamut.

Just as the oath in *Baggett* could have been interpreted so broadly as to prevent criticism of a state flag's color scheme, the Nevada statute could be interpreted so broadly as to prevent a government official from ever voting on any matter. *See id.* Such a subjective standard leaves the statute susceptible to arbitrary and discriminatory enforcement. This is no more apparent than the transcript from the Nevada Commission on Ethics hearing on this matter. Although the Commission found that Councilman Carrigan had violated the ethics statute by failing to abstain from voting on the Lazy 8 matter, the members disagreed as to which of the enumerated commitments or relationships the relationship between Councilman Carrigan and Mr. Vasquez was "substantially similar." Nev. Comm'n on Ethics, Excerpts of Transcript, Aug. 29, 2007 Hearing, Joint App. p. 243-67.

This is not the first time this state has encountered the vagueness in their ethics statute. In an opinion from the Nevada Attorney General it was noted that "[i]t is apparent from the increasing

number of questions concerning these statutes that the Nevada Legislature will in all likelihood be asked to consider reviewing and refining the current laws so public officials will better understand and be able to comply with these rules." Opinion of the Nevada Attorney General 98-27 (1998), Joint App. p. 94. No such refining was done to Nevada Revised Statutes § 281A.420 prior to Councilman Carrigan's vote in October of 2006.

In addition, an earlier version of Nevada's ethics statute was overturned by a state court as unconstitutionally vague. *Gates v. Nev. Comm'n on Ethics*, No. A393960, slip op. at 2 (Clark Cnty. Nev. Dist. Ct. Sept. 9, 1999) (Resp.'s App.). After examining the relationships at issue the court noted that "[i]f the Legislature wishes to include these relationships in the future, it is the body that will have to specify such relationships more clearly in the statutory language." *Id.* at 15a. The Ethics Commission has taken the position that the current catch-all provision was a codification of this opinion. Nev. Comm'n on Ethics, Excerpts of Transcript, Aug. 29, 2007 Hearing, Joint App., p. 249-50. It is difficult to reason that "any other commitment or relationship that is substantially similar . . ." is a clear specification of such relationships; rather it appears that the Nevada legislature has replaced a vague statute with an even vaguer one.

There are certain areas of conduct where legislatures cannot establish precise standards and an on-the-spot assessment by those applying the law is necessary, such as controlling the range of disorderly conduct. *Goguen*, 415 U.S. at 581-82

citing Colten v. Ky., 407 U.S. 104 (1972). However, there is no reason for the legislature to give unbridled authority to those regulating the ethical behavior of local government officers and, in the same sentence, fail to properly outline the boundaries of the law for those who are responsible for following the law.

D. The catch-all provision of Nevada Revised Statutes § 281A.420 is unique among the nation's ethics statutes.

Nevada Revised Statutes § 281A.420 is truly unique among ethics statutes in the country. IMLA is not aware of any other state statute containing a vague catch-all provision like the one found in the Nevada statute. A determination that this statute fails due to vagueness would not require blanket revision of the nation's ethics laws. State legislatures have come up with a number of ways to balance the need for ethics laws that clearly define conflicts of interest with the elected official's right to vote without resorting to vague catch-all provisions.

Like Nevada, Delaware's statute considers a conflict of interest to exist when an elected official's independence of judgment is impaired. DEL. CODE ANN. tit. 29, § 5805(1) (2010). The statute states that the "[i]ndependence of judgment" is impaired when the enactment or defeat of a measure would result in a financial benefit or detriment to accrue to the elected official or his family, or the member (or his or her family member) has a financial interest in the measure. DEL. CODE ANN. tit. 29, § 5805(2) (2010). The statute clearly defines financial interest.

DEL. CODE ANN. tit. 29, § 5804(5) (2010). Although aimed at addressing the same impairment of judgment as Nevada, Delaware's statutory language is more direct and leaves little room for interpretation. The significant difference between Delaware's and Nevada's recusal statute is that Delaware's statute does not contain the onerous catch-all provision.

Numerous states precisely define the relationships that present a conflict of interest and require abstention. The abstention requirements found in the Texas statute serve as an example of clarity. Texas prohibits elected officials from voting on a matter when the elected official has a substantial interest in the business entity. TEX. LOC. GOV'T CODE ANN. § 171.004 (Vernon 2009). The Texas statute defines "substantial interest in a business entity" very narrowly, including details such as percentages of ownership and specific monetary amount. TEX. LOC. GOV'T CODE ANN. § 171.002 (Vernon 2009). Connecticut's statute is also very detailed concerning the elected officials' abstention from voting. An elected official with an interest that is in substantial conflict with the proper discharge of his duties is prohibited from taking any official action on the matter. CONN. GEN. STAT. § 7-148(h) (2010). A substantial conflict is tied to a direct monetary effect on the public official, his family, or his business. *Id*. To address any unclear terms, there is an extensive definition section, which defines terms such as "business with which he is associated," "gift" and "necessary expenses." CONN. GEN. STAT. § 1-79 (2010). Likewise, Ohio's public officials are forbidden from voting in very specific

scenarios: when an elected official knows he or she (or a family member) is an employee, business associate, or contracted person to the legislative agent advocating for the legislation. OHIO REV. CODE ANN. § 102.031(B) (Anderson 2010). Although the Ohio statute provides that violations are subject to criminal penalties, the statute clearly puts individuals on notice of prohibited activity. Arizona's law is also very specific, distinguishing a "substantial interest" from a "remote interest" and it is only when an elected official has a substantial interest in a decision that he or she is prohibited from voting. ARIZ. REV. STAT. ANN. §§ 38-502; 38-503 (2010).

Several states have enacted ethics statutes that are intended to provide guidance for elected officials with no civil or criminal penalties. *See* ARK. CODE ANN. § 21-8-304(a) (2009); ME. REV. STAT. ANN. tit. 1, § 1014 (2010); MINN. STAT. § 10A.07 (2011). Illinois's statute is one such example; while less precise in distinguishing which relationships present a conflict of interest, the statute serves as an ethical guideline only and elected officials are not subject to civil or criminal penalty for failing to abstain. 5 ILL. COMP. STAT. 420/3-202; 420/3-206 (2010). Similarly, Colorado's statute specifically states that in no case will the failure to disclose a conflict of interest constitute a breach of the public trust of legislative office. COLO. REV. STAT. § 24-18-107(4) (2010).

A lesser number of states appear to allow the elected official or governmental body to determine when recusal is necessary. Nebraska's statute provides that recusal due to a conflict of interest is

optional; in fact, an elected official may document why he believes there is no potential conflict and why he chose to vote. NEB. REV. STAT. § 49-1499 (2010). South Dakota allows elected officials to either disclose their interest or abstain from voting when they have a direct pecuniary interest in a matter before the governing body. S.D. CODIFIED LAWS § 6-1-17 (2010). Alternatively, the governing body can require abstention when at least two-thirds of the body decides that the member has an identifiable conflict of interest. *Id.*

Overall, these statutes appear to effectively balance the need for ethics laws that clearly define conflicts of interest with the elected official's right to vote. The Nevada statute's catch-all provision is unique. The statute contains an unworkable provision that breeds confusion. Requiring the Nevada legislature to clearly define the boundaries of lawful and unlawful conduct benefits everyone but especially elected officials, like Councilman Carrigan, who would abstain from voting when the situation demands it.

CONCLUSION

This Court should affirm the Nevada Supreme Court's judgment.

Respectfully submitted,

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