



Supreme Court case weighs conflict of interest

Michael Carrigan, a member of the City Council in Sparks, Nev., says he was trying to make sure his vote on a proposed casino, one that his campaign manager helped develop, did not pose an ethics problem.

In 2006, Carrigan asked the city attorney for an opinion and was told he could vote on the project for his town just outside Reno, as long as he publicly disclosed his relationship with the project consultant, which Carrigan did. The Nevada Ethics Commission, which received complaints afterward, viewed the situation differently. It said Carrigan had a conflict of interest and should have abstained.

Carrigan, a retired naval aviator and former journalist, sued the commission for its reprimand, saying it violated his free speech rights. The Nevada Supreme Court sided with Carrigan in a decision that broadly interpreted the First Amendment coverage for the votes of public officials. "I took the case as far as I took it because, in my mind, I never did anything wrong," says Carrigan. "I wasn't in business with him."

Caren Jenkins, executive director of the Nevada Ethics Commission, counters, "Here was a friend, a buddy, a close confidant. If Mr. Carrigan ever thought it was in his best interest to vote against the project, would he have?"

Now, the local fight has become a major case at the U. S. Supreme Court and a test of restrictions on officials who might have a conflict of interest. The dispute to be heard on April 27 comes against a backdrop of controversy over when politicians and judges should take themselves out of a case.

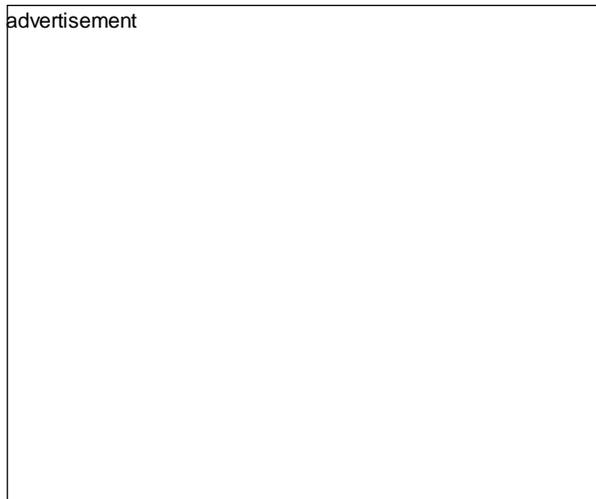
It's a recurring dilemma in the states and in Washington, including with Supreme Court justices, who sometimes face questions on their personal stake in cases. The question has come before the justices. In 2009, the court ruled by 5-4 that a West Virginia judge should have withdrawn from case because of a risk of bias. The court majority said judges must sit out a case when a risk of bias arises because a person with a significant stake in the case "had a significant and disproportionate influence" in getting the judge on the bench.

In the Nevada dispute, 14 other states and several media groups, including the Reporters Committee for Freedom of the Press, have sided with the ethics commission, saying rules such as Nevada's are important to ensure politicians don't vote based on personal interests. Among those siding with Carrigan is the Indiana-based James Madison Center for Free Speech, arguing that state restrictions, particularly after the 2009 ruling in the West Virginia case, have increasingly prevented officials from voting on important issues.

The case dates to when Carrigan, who was first elected to the council in 1999, was running for reelection. He also backed the Lazy 8 casino project proposed by Red Hawk Land Co. Carrigan's friend and campaign manager, Carlos Vasquez, worked as a consultant on the project.

The Nevada Ethics Commission said Carrigan should have come to its people, not only the city attorney, for an advisory opinion. Even with Carrigan's vote, the project was defeated in 2006; the council later said the development could go forward.)

In its reprimand, the commission cited ethics law that says public officials must not vote when their judgment could be affected by a commitment or relationship to someone in their household, a



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relative, business partner, or a person “substantially similar” to those specified. That last catch-all category is at the heart of the dispute.

The commission said Carrigan’s loyalties to his campaign manager would have affected his judgment. But the Nevada Supreme Court said the catch-all category the commission cited failed to “limit the statute’s potential reach (or) guide public officers as to what relationships require recusal.” The state court said the law thus chilled speech.

In its appeal, the commission says the state court’s interpretation of the First Amendment was too sweeping. “State and local legislators have no personal ‘free speech’ right to cast votes on particular matters, much less ones in which they have a personal interest,” the lawyer for the commission, John Elwood, of Washington, D.C., says in his brief.

Elwood says the Nevada court’s standard could throw in doubt “bedrock conflict-of-interest rules in virtually every state.”

Jenkins, the ethics commission director, adds that the state wanted the flexibility of a more open-ended category because, “the reality of people’s lives is that (relationships) don’t fit into neat categories.”

New York lawyer Joshua Rosenkranz , who will argue for Carrigan, emphasizes that public officials must know ahead of time what relationships could cause ethics trouble. He adds that even if Nevada law were clearer, it still could still impinge on the First Amendment because “a legislator’s vote is expressive in its own right.”

Carrigan says he never expected his protest to reach the nation’s highest court. “We went from playing sandlot baseball,” he says, “to the World Series.”

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