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Ethics, free speech at center of high court case on legislative votes

April 27, 2011 | By Bill Mears, CNN Supreme Court Producer

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Michael Carrigan was on the losing side of a public vote that put him at odds with a state ethics commission, but now the Nevada city councilman hopes to win on a larger stage at the U.S. Supreme Court.

The justices Wednesday cautiously debated an unusual free-speech case over the responsibility of public officials to step aside from issues where conflicts of interest may arise. Members of the high court themselves may be directly affected by the outcome, amid a period of increasing national debate over recusal in hot-button political matters.



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"Is the vote of a judge in a case like the vote of a legislator? Is that speech?" asked Justice Antonin Scalia. "Because judges are subject to ethical rules which prohibit their participating if there would be, quote, 'an appearance of impropriety.' If there's anything vaguer than that, I can't imagine what it might be. Can I get out of all that stuff?"

At issue is a whether a state or local legislator's vote is considered "free speech" that would shield them from a level of enforceable oversight from conflict-of-interest laws.

In the last argument of the current term, the high court was debating whether the state law in question was both overly vague and burdensome, when applied to the discretionary actions of a single legislator.

Carrigan was first elected to the city council in Sparks, Nevada Sparks -- just down the road from Reno -- in 1999. His close friend, Carlos Vasquez, had from the beginning served as a volunteer "campaign manager."

Vasquez later began working for a land company seeking to develop a casino project called the Lazy 8. Carrigan represented the ward where the facility would be built, and it became a top campaign issue during the 2006 elections.

The councilman asked the city attorney to see whether he could vote on the project, or if he would be barred by conflict-of-interest rules because of his relationship with Vasquez. Carrigan was told that as long as he publicly disclosed the friendship with the project consultant, he was cleared to vote. He did all those things, but the project was ultimately defeated 3-2. The Lazy 8 to this day remains undeveloped.

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