

**10-568 NEVADA COMMISSION ON ETHICS V. CARRIGAN**

DECISION BELOW: 236 P.3d 616

LOWER COURT CASE NUMBER: 51920

**QUESTION PRESENTED:**

The Nevada Supreme Court held that the vote of an elected official is protected speech under the First Amendment and that the recusal provision of the Nevada Ethics in Government Law is subject to strict scrutiny. Under that standard of review, the court concluded that a portion of the recusal statute was overbroad and facially unconstitutional. The question presented is:

Whether the First Amendment subjects state restrictions on voting by elected officials to (i) strict scrutiny, as held by the Nevada Supreme Court and the Fifth Circuit, (ii) the balancing test of *Pickering v. Board of Education*, 391 U.S. 563 (1968), for government-employee speech, as held by the First, Second, and Ninth Circuits, or (iii) rational-basis review, as held by the Seventh and Eighth Circuits.

CERT. GRANTED 1/7/2011