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NEVADA COMMISSION ON JUDICIAL DISCIPLINE
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BEFORE THE NEVADA COMMISSION ON JUDICIAL DISCIPLINE

STATE OF NEVADA

In the Matter of THE HONORABLE CHARLES WELLER, District Court Judge, Second Judicial District Court, Family Division, County of Washoe, State of Nevada, Respondent	CASE NO. 2017-025-P

Motion to Dismiss on First Amendment Grounds

On February 1, 2017 Judge Weller attended a meeting of the Washoe County Domestic Violence Task Force ("Task Force"). During the meeting, Judge Weller said that women should be concerned about the threatened elimination of funding of the Violence Against Women Act (VAWA) and that the motivation of some who support defunding is to put women back in the place to which they had been relegated earlier. Ms. Chavis, an employee of the Committee to Aid Abused Women ("CAAW") asked where that place was. Judge Weller responded, "the kitchen and the bedroom."

Two complaints were filed with the Commission alleging that Judge Weller engaged in misconduct by speaking in favor of defunding VAWA and predicting that defunding would relegate women to the household. Victim Advocate, Jennifer Olsen, was present at the meeting. She reported the comments to her employer the Chief of Police for the City of Sparks, Brian Allen. Chief Allen subsequently contacted Chief Judge Flannigan regarding the statement made by Judge Weller and later sent a letter outlining his concerns to the Chief Judge.

On February 14, 2017, Judge Flanagan provided Judge Weller with a copy of the letter he received from Chief Allen of the Spark's Police Department. The letter, dated February 7, 2017, stated that Chief Allen was formally filing a complaint against Judge Weller with the Second Judicial District Court, and would be filing a complaint with the Commission on Judicial Discipline (NCJD) as well. On February 8, 2017, Chief Allen filed a Verified Statement of Complaint with the NCJD. A similar complaint was filed with the NCJD by the Committee to Aid Abused Women.

Judge Weller explained his comments as follows:

> At the time of the meeting, there had been recent newspaper stories predicting that federal funding for VAWA would be eliminated. I made my comment to express my opposition to the defunding of VAWA and my understanding that some who would defund VAWA were motivated by a desire to reverse the progress in women's rights that has occurred in recent decades. I did not say or mean that I believe the most appropriate place for women is in the home. My comment meant that I support VAWA funding and oppose its defunding. I meant that potential policy changes in Washington threaten to turn back the clock to a time when women's rights were unfairly limited. I meant that the attitude of some who oppose VAWA funding is an anti-women danger about which we should be alert.

Judge Weller reached out to Chief Allen. Chief Allen and Jennifer Olsen met with Judge Weller. Judge Weller explained that his comments were intended to characterize the motivation of some legislators favoring cuts of VAWA. Chief Allen and Ms. Olsen came away from the meeting satisfied that Judge Weller's comments were not a reflection of his views of women. Chief Allen formally withdrew his complaint to Judge Flannigan and sent a copy of the withdrawal to the NCJD.

Nonetheless, and in accordance with NRS 1.4663, the Commission's Executive Director authorized an independent investigation into the allegations of misconduct which concluded:

> There is little doubt Judge Weller made the statement reported in the complaint, however, there is no information to suggest that it was meant to be biased, prejudiced or derogatory in nature....Judge Weller's statement appeared to be a misstatement by him that resulted in a misunderstanding of his position and beliefs that precipitated the judicial complaint.
>
> The investigator concluded his report with the following statements:
>
> There is no information to suggest the comments made by Judge Weller on February 1st were intended to be offensive or biased in nature. Rather, it appears that the poorly delivered statements by the judge at the meeting were nothing more than his attempt to illustrate a perceived rationale for rumored cuts in VAWA funding by Congress. Judge Weller's expression of concern as to how the comments were perceived and his subsequent reaching out to taskforce members for the misunderstanding, tends to support his position they were unintentional.

At the next regularly scheduled meeting of the Task Force, Judge Weller apologized for the misunderstanding of his comments.

The NCJD filed a Formal Statement of Charges (FSC) against Judge Weller, on January 22, 2018. The FSC allege that by his acts and comments during the Task Force meeting and failing to clarify his comments during the meeting, Judge Weller violated Cannons 1 and 2 of the Code. The FSC further allege that in approaching Ms. Chavis and Ms. Utzig and asking them to explain and clarify his comments to others on his behalf and prevent the public dissemination of a misunderstanding thereof, Judge Weller violated Cannons 1 and 2 of the Code.

While Judge Weller's comments were misunderstood and initially understood as offensive to certain Task Force attendees, his comments were political speech addressing issues of public importance and are cloaked with First Amendment protection.

Additionally, Judge Weller's subsequent discussion with Ms. Chavis and Ms. Utzig constitutes constitutionally protected free speech as well. Also, the Judge's discussions with Ms. Chavis and Ms. Utzig were appropriate under NCJC 10(D), (E), and Comment [3]. Resultantly, since Judge Weller's comments addressed political issues and matters of public importance and constitute free speech under the First Amendment of the United States Constitution, the Formal Statement of Charges should be dismissed.

Judge Weller's Comments Addressed Political Issues and Matters of Public Importance, and Constituted Protected Free Speech under the First Amendment.

The First Amendment provides that Congress "shall make no law ... abridging the freedom of speech." The Fourteenth Amendment makes that prohibition applicable to the States. Stromberg v. California, 283 U.S. 359, 368 (1931). The United States Supreme Court has held and "frequently reaffirmed that speech on political views and public issues occupies the `highest rung of the hierarchy of First Amendment values,' and is entitled to special protection." Connick v. Myers, 461 U.S. 138, 145 (1983) (quoting NAACP v. Claiborne Hardware Co., 458 U.S. 886, 913 (1982).

The First Amendment "was fashioned to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people." Roth v. United States, 354 U.S. 476, 484 (1957). "Whatever differences may exist about interpretations of the First Amendment, there is practically universal agreement that a major purpose of that Amendment was to protect the free discussion of governmental affairs." Mills v. Alabama, 384 U. S. 214, 218 (1966). Thus, the U.S. Supreme Court has stated that "speech concerning public affairs is more than self-expression; it is the essence of self-government." Garrison v. Louisiana, 379 U.S. 64, 74-75 (1964).

The Formal Statement of Charges alleges Judge Weller spoke in favor of the defunding of VAWA and predicted that defunding would relegate women to the household. The Report of Investigation determined Judge Weller spoke in opposition to the defunding of VAWA and described that some favoring defunding are motivated by a desire to relegate women to the household. For this motion, this difference is not relevant. The judge's comments were not a gratuitous statement on the role of women. The parties agree Judge Weller commented on the possible defunding of VAWA, a matter that was then in the news, and the implications of potential defunding on women. This is, unarguably, political speech.

It is in the context of controversy that the First Amendment plays its most important function. *See* Waters v. Churchill, 511 U.S. 661 (1994), quoting Cohen v. California, 403 U.S. 15, 24-25 (1971) ("The First Amendment demands a tolerance of 'verbal tumult, discord, and even

offensive utterance,' as 'necessary side effects of ... the process of open debate'"): Terminiello v. Chicago, 337 U.S. 1, 4 (1949) ("[A] function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger. Speech is often provocative and challenging.")

The Strict Scrutiny Standard Applies To Political Speech by Judges

"Government regulation of speech is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed" Reed v. Town of Gilbert, 576 U.S. ___, 135 S.Ct. 2218, 2227, 192 L.Ed.2d 236 (2015). "Content-based laws—those that target speech based on its communicative content—are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests." Id., 135 S.Ct. at 2226.

The seminal decision of the United States Supreme Court on judicial speech is Republican Party of Minnesota v. White, 536 U.S. 765 (2002). The court ruled unconstitutional the "announce clause" of Minnesota's Judicial Conduct Canon 5A, which required that a candidate for a judicial office, including an incumbent judge," shall not "announce his or her views on disputed legal or political issues." Incumbent judges who violated were subject to discipline. Recognizing the Canon to be a content-based restriction, the court determined that strict scrutiny applies. Under the strict-scrutiny test, the State had the burden to prove that the restriction was (1) narrowly tailored, to serve (2) a compelling state interest.

In order to show that the restriction was narrowly tailored, the State was required to demonstrate that it does not "unnecessarily circumscrib[e] protected expression." Id., quoting Brown v. Hartlage, 456 U.S. 45, 54, 102 S.Ct. 1523, 71 L.Ed.2d 732 (1982). The court identified the potential compelling interests Minnesota might have had in imposing the restriction: preserving both the actual and perceived impartiality of the state judiciary. Id. at 775–76, 122 S.Ct. 2528. The Court warned, however, that speaking of the need for an impartial judiciary in general terms would not do; instead, it was necessary to pinpoint the precise meaning of the term "impartial." Id. at 775, 122 S.Ct. 2528. The majority offered three definitions. Id. at 775–84, 122 S.Ct. 2528.

First, the term could mean a "lack of bias for or against either party to the proceeding." Id. at 775, 122 S.Ct. 2528. But if that is what impartiality meant, the majority reasoned, the restriction was not narrowly tailored:

> We think it plain that the announce clause is not narrowly tailored to serve impartiality (or the appearance of impartiality) in this sense. Indeed, the clause is barely tailored to serve that interest *at all*, inasmuch as it does not restrict speech for or against particular *parties*, but rather speech for or against particular *issues*. Id. at 776, 122 S.Ct. 2528 (emphasis in original).

Second, impartiality could mean a "lack of preconception in favor of or against a particular legal view." Id. at 777, 122 S.Ct. 2528. The Court held, however, that preserving such impartiality was not a compelling state interest because "[p]roof that a Justice's mind at the time he joined the Court was a complete tabula rasa in the area of constitutional adjudication would be evidence of lack of qualification, not lack of bias." Id. at 778, 122 S.Ct. 2528.

Finally, "[a] third possible meaning of 'impartiality' ... might be described as open-mindedness." Id. "This sort of impartiality seeks to guarantee each litigant, not an equal chance to win the legal points in the case, but at least some chance of doing so." Id. While recognizing that the state's desire to ensure the open-mindedness of its judges might be compelling, the Court did not find that Minnesota's restriction was tailored to address this concern because it was "so woefully under inclusive." Id. at 780, 122 S.Ct. 2528. Indeed, "statements in election campaigns are ... an infinitesimal portion of the public commitments to legal positions that judges (or judges-to-be) undertake," for example, in legal opinions, public lectures, law review articles, and books. Id. at 779, 122 S.Ct. 2528. Because the restriction did not address such other public commitments, the Court concluded that the purpose behind the restriction was "not open mindedness in the judiciary, but the undermining of judicial elections." Id. at 782, 122 S.Ct. 2528.

In Williams-Yulee v. Florida Bar, 135 S. Ct. 1656 (2015), the Supreme Court again applied strict-scrutiny to imposed restrictions on the conduct of judicial candidates. While upholding a limitation of a judicial candidate's right to personally solicit campaign contributions, the court "emphasized that 'it is the rare case' in which a State demonstrates that a speech restriction is narrowly tailored to serve a compelling interest." Id. at 1665-1666 (quoting Burson v. Freeman, 504 U.S. 191, 211(1992). In finding that the Florida canon presented such a rare case, the court found

that Florida's interest in "safeguarding public confidence in the fairness and integrity of the nation's elected judges" was a compelling one. Id. At 1666 (quoting Caperton v. A.T. Massey Cola Co., 556 U.S. 868, 889 (2009). "Simply put," the court concluded, "Florida and most other states have concluded that the public may lack confidence in a judge's ability to administer justice without fear or favor if he comes to office by asking for favors." Id. The court found that Florida's restriction was narrowly tailored because it left "judicial candidates free to discuss any issue with any person at any time...They [just] cannot say, 'Please give me money.'" Id. At 1670.

White and Williams-Yulee dealt with the speech of judicial candidates and did not specifically address the First-Amendment standard applicable to political speech by sitting judges. However, the strict scrutiny standard is not displaced merely because a judge is sitting and not campaigning. The First Amendment principles supporting this position encompass both the right of a judge to convey information, and the right of the public to receive it. "It is well established that the Constitution protects the right to receive information and ideas." Stanley v. Georgia, 394 U.S. 557, 564 (1969). The First Amendment "freedom embraces the right to distribute literature ... and necessarily protects the right to receive it." Martin v. City of Struthers, Ohio, 319 U.S. 141, 143 (1943). Lower court decisions applying the strict scrutiny standard to speech by sitting judges have emphasized the right of the judge to speak and the right of the public to listen.

Cannon 3 of the NCJC states: "A judge shall conduct the judge's personal and extrajudicial activities to minimize risk of conflict with the obligations of judicial office." Rule 3.1 prescribes "extrajudicial activities in general," and Comment 1 provides that: "Judges are encouraged to participate in appropriate extrajudicial activities. Judges are uniquely qualified to engage in extrajudicial activities that concern the law, the legal system, and the administration of justice, such as by speaking, writing, teaching, or participating in scholarly research projects."

Issues concerning the law are matters of public importance which are cloaked in First Amendment Protections. Thus, the NCJC encourages judges to participate in community outreach engagements and speak on matters of public importance. The First Amendment demands a tolerance of verbal tumult, discord and even offensive utterance. *See* Cohen v. California, 403 U.S. 15, 24-25 (1971). NCJC, Canon 4, Rule 4.1, Cmt 13 provides that a judicial candidate's,

"announcements of personal views on legal, political, or other issues...are not prohibited." Judge Weller's comments fall squarely within these principles.

There are several cases from other jurisdictions which evidence the protection of judicial free speech regarding political issues.

Parker v. Judicial Inquiry Commission, ___ F.Supp 3d ___ (N. D. Al., March 2, 2018) involved a complaint filed by the Southern Poverty Law Center against a judge who suggested during a radio broadcast that the Alabama Supreme Court should defy and refuse to give effect to a U.S Supreme Court decision that struck down as unconstitutional state laws that banned same-sex marriages. The court drew a distinction between cases involving "issues" speech, like White, and cases that never arise outside of electioneering, like Williams-Yulee (soliciting campaign funds). Because the case before the court involved "issues" speech, the court followed the reasoning of White and determined that Alabama's Judicial Ethics Canon 3A(6) was "barely tailored to serve [the interest of impartiality] at all, inasmuch as it did not restrict speech for or against particular *parties*, but rather speech for or against particular *issues*. The court enjoined the enforcement of the Canon to the extent that it proscribed the judge's public comments.

In Scott v. Flowers, 910 F.2d 201, 211–13 (5th Cir. 1990), the court held that the First Amendment was violated when the Texas Commission on Judicial Conduct reprimanded a sitting judge for writing an open letter to the public critical of the administration of the county judicial system. In finding that the censure of Judge Scott violated the First Amendment, the court stated that it had "no difficulty in concluding that Scott's open letter, and the comments he made in connection with it, address matters of legitimate public concern." Id. at 211. The court emphasized the interest of the public in receiving information about the operation of the system of justice from a judge with expertise in those operations. Id.

Further, the Fifth Circuit addressed whether "Scott's right to speak is outweighed by the state's asserted interest in promoting the efficiency and impartiality of its judicial system." Id. On this point, the court held that the state's interest in regulating the speech of Judge Scott was weaker than a state's interests in regulating the speech of other "typical" government employees. Id. ("[T]he state's interest in suppressing Scott's criticisms is much weaker than in the typical public

employee situation, as Scott was not, in the traditional sense of that term, a public employee."). Judge Scott, the Fifth Circuit held, was not like a teacher, an assistant district attorney, or a firefighter. Id. He was, rather, "an elected official, chosen directly by the voters of his justice precinct, and, at least in ordinary circumstances, removable only by them." Id. The court recognized that states do have an interest in regulating the speech of judges that is unique to the role of judges in society. Id. at 212. These specialized state interests, however, do not extend to controlling comments by judges on political issues. Id.

The Fifth Circuit concluded that Texas had failed to meet what the court described as the state's "very difficult burden" of demonstrating "that its concededly legitimate interest in protecting the efficiency and impartiality of the state judicial system outweighs Scott's first amendment rights." Id. The court rejected the state's general incantation of these interests, pointedly observing that Texas had failed, either in its briefs or during oral argument, to explain exactly how Judge Scott's public criticisms would impede those goals. Id. at 213.

In Jenevein v. Willing, 493 F.3d 551 (5th Cir. 2007), a Texas trial judge, was disciplined by the Texas Commission on Judicial Conduct for statements made at a press conference. The Fifth Circuit held that Texas had compelling government interests in preserving the integrity and impartiality of the judiciary. The court went on to hold, however, that to the extent the censure of the judge was based on the content of his speech at the press conference, the state's actions were not narrowly tailored to effectuate those state interests.

> Like the Supreme Court in Republican Party of Minnesota, we hold that the Commission's application of this cannon to Judge Jenevein is not narrowly tailored to its interests in preserving the public's faith in the judiciary and litigants' rights to a fair hearing. Indeed, in a sense the censure order works against these goals. For although Judge Jenevein's speech concerned a then-pending matter in another court, it was also a matter of judicial administration, not the merits of a pending or future case. He was speaking against allegations of judicial corruption and allegations of infidelity against his wife made for tactical advantage in litigation, concluding with a call to arms, urging his fellow attorneys and judges to stand up against unethical conduct. The Commission's stated interests are not advanced by shutting down completely such speech. To the point, the narrow tailoring of strict scrutiny is not met by deploying an elusive and overly-broad interest in avoiding the "appearance of impropriety." Id. at 560.

The Nevada Supreme Court has cited Jenevein for the position that a judge's extrajudicial statements are subject to First Amendment protection and that strict scrutiny must be applied to determine whether a judge's comments constitute protected speech under the First Amendment. See Halverson v. Nev. Comm'n on Judicial Discipline (In re Halverson), 373 P.3d 925, fn 1 (Nev., 2011). Further, the court has stated,

> We conclude as a matter of law that the allegations of misconduct stemming from Judge Whitehead's comments at a continuing legal education seminar do not state grounds for discipline...Judges must be accorded the right to free speech so long as their exercise of that right does not entail conduct violative of the Canons of the Nevada Code of Judicial Conduct. Whitehead v. Nevada Commission on Judicial Discipline, 111 Nev. 70, 157-158, 893 P.2d 866, 920-921, ft. nt. 56. (1995).

Judge Weller's comments did not entail conduct that violates the NCJC.

The State's Interest Does Not Outweigh Judge Weller's First Amendment Rights.

Nevada has a compelling interest in avoiding impropriety and the appearance of impropriety in the judiciary. However, as in White, Judge Weller's comments did not involve specific parties, classes of parties or issues before the court. His political speech addressing policies and actions of the federal government did not implicate issues that could potentially arise in his courtroom. His comments related to political issues of then current public debate. Application of the NCJC to Judge Weller's comments cannot effectuate any of the state interests embodied therein, such as avoiding impropriety or the appearance of impropriety.

Likewise, Judge Weller's comments do not suggest a lack of independence. The NCJC defines "Independence" to mean "a judge's freedom from influence or controls other than those established by law." "Independent" is defined as "[n]ot subject to the control or influence of another." Black's Law Dictionary 774 (7th ed.1999). Nothing suggests that Judge Weller's comments indicate that he is subject to the influence or control of others.

Application of the rules set forth under Cannon 2 to Judge Weller's comments is even more problematic as there is no relationship at all between his comments and the goals promoted by those rules. NCJC, Cannon 2, Rule 2.2 addresses "Impartiality and Fairness" and states: "A judge shall uphold and apply the law and shall perform all duties of judicial office fairly and impartially." His

comments did not express any views pertaining to any party or proceeding. When the judge made the statements, he was not interpreting or applying law in a proceeding affecting adverse parties. NCJC, Cannon 2, Rules 2.3 and 2.8 relate to proceedings before the court and the performance of official judicial duties. Application of these rules to the comments of Judge Weller cannot be narrowly tailored to the promotion of the state interests embodied therein.

When weighing Judge Weller's First Amendment rights against the State's competing interests, it must be remembered that Judge Weller was not hired by the state to fill an administrative position. Rather, Judge Weller is an elected official. The voters of Washoe County hired him. As previously discussed, in Scott v. Flowers the 5th Circuit Court of Appeals held that the state's interest in suppressing the speech of an elected judge is much weaker than in the typical public employee situation. Scott, 910 F.2d at 211-12. Here, the State's interest is slight at best.

None of the cannons or rules of judicial conduct alleged to have been violated by Judge Weller are narrowly tailored to the speech at issue, which addresses viewpoints concerning policies of the federal government. The State's interests in this case are the general policies embodied in the specific rules alleged and nothing more.

> It is difficult to comprehend how truthful remarks or statements of opinion by a judge about a matter of public significance unrelated to a matter before him, or likely to come before him, and which is not otherwise specifically prohibited can ever create the appearance of impropriety. Matter of Hey, 452 S.E.2d 24, 192 W.Va. 221 (W.Va., 1994).

Judge Weller's Conversation With Ms. Chavis and Ms. Utzi About A Misunderstanding of His Comments Cannot Subject Him To Discipline.

By explaining his comments and attempting to prevent public dissemination of a misunderstanding of his comments, Judge Weller did not cause his previous comments to lose their constitutionally protected status. Indeed, the judge's effort was consistent with his obligation under NCJC, Cannon 1, Rule 1.2 which requires that "[a] judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary and shall avoid impropriety and the appearance of impropriety." As soon as Judge Weller learned that his comments had been misunderstood he promptly contacted everyone that he knew to be affected with an explanation and apology for uttering words permitting that misunderstanding. Judge

Weller's efforts to explain his comments, and to avoid public dissemination of a misunderstanding of those comments were necessary to promote public confidence in the judiciary and to avoid the appearance of impropriety.

A judge's duty to avoid being swayed by the fear of criticism does not require him to remain silent when the criticism is based upon a misunderstanding. NCJC, Cannon 2, Rule 2.10(D) states that a judge may comment on any proceeding in which the judge is a litigant in a personal capacity. Because Judge Weller knew that a complaint had been filed against him based on a misinterpretation of his comments, he had the right to comment to Ms. Chavis and Ms. Utzig concerning the allegations against him.

Moreover, the Nevada Revised Code of Judicial Conduct encourages judges to use third parties to respond to allegations concerning their conduct. Cannon 2, Rule 2.10(E) allows a judge to "respond directly or through a third party to allegations in the media or elsewhere concerning the judge's conduct in a matter." Rule 2.10, Cmt. 3 provides, "Depending on the circumstances, the judge should consider whether it may be preferable for a third party, rather than the judge, to respond or issue statements in connection with allegations concerning the judge's conduct in a matter." Canon 4, Rule 4.1, Cmt. 9 states "a judicial candidate is permitted to respond directly to false, misleading, or unfair allegations made against him or her during a campaign, although it is preferable for someone else to respond if the allegations relate to a pending case."

Where the judge himself is the target of misconduct allegations, and his professional reputation and possibly his career are at stake, fairness to him and promotion of the search for truth in the public marketplace require that he have the right to respond and defend himself in the public debate as well as in formal proceedings. Matter of Hey, 452 S.E.2d 24, 32 (W.Va., 1994). That is especially so where judges are elected officials. Id. A judge depends on public opinion to remain in his job, and the public needs balanced information about its judges to make informed decisions at the polls. Id. The formal proceedings of the NJDC do not, by themselves, provide an accused judge with a sufficient forum to influence public perceptions, nor do they provide the end-all for the public's need to know about a judge's conduct. Id.

Judge Weller's initial comments uttered during the Task Force meeting addressed matters of public concern and enjoy First Amendment protections. The NCJD alleges that efforts to explain a misunderstanding and to prevent further publication of a misstatement of the Judge's true beliefs are a violation of NRJC. This position is misguided. Comments relating to speech that is protected by the First Amendment must necessarily involve matters of public concern. Additional comments addressing this same speech and the issues embodied therein must also relate to matters of public concern and enjoy the same protections afforded to the initial statements.

CONCLUSION

Based on the foregoing, the Formal Statement of Charges should be dismissed.

DATED this 23 day of July, 2018.

JOHN L. ARRASCADA, ESQ.

DAVE R. HOUSTON, ESQ.

VERIFICATION

STATE OF NEVADA)
:
COUNTY OF WASHOE)

I, CHUCK WELLER, under penalty of perjury, deposes and says that I am the Petitioner in the above-entitled action; that I have read the foregoing Motion to Dismiss on First Amendment Grounds and know the contents thereof; that the same is true of my own knowledge, except as to those matters therein contained stated upon information and belief, and as to those matters. I believe them to be true.

Chuck Weller

CHUCK WELLER

SUBSCRIBED AND SWORN to before
me this 24 day of ~~June~~ July 2018.

[signature]

NOTARY PUBLIC in and for said
COUNTY AND STATE

CARINNE GLINES
NOTARY PUBLIC
WASHOE COUNTY
STATE OF NEVADA
My Commission Expires: 4-21-19
Certificate No: 15-1217-2

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of ARRASCADA & ARAMINI, LTD., and that on the 24 day of July, 2018, I caused to be served via electronic mail and first class mail a true and correct copy of the foregoing motion Motion to Dismiss on First Amendment Grounds with postage fully prepaid thereon, by depositing the same with the U.S. Postal Service to the following:

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