

STATE OF NEVADA
COMMISSION ON ETHICS
BEFORE THE NEVADA COMMISSION ON ETHICS

In The Matter Of

Case No.

WARREN HARDY II,
Senator, State of Nevada

_____ /

COMPLAINT
(NRS 281A.440.2)

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I. Introduction

This Complaint is filed pursuant to NRS 281A.440(2)(b) and NRS 281A.420 against Nevada State Senator Warren Hardy II. The Complaint documents numerous violations of Nevada's Code of Ethical Standards, dating from Senator Hardy's first term in office as a Senator and continuing through the 2007 legislative session.

Throughout his tenure in the Senate, Senator Hardy has maintained his salaried position as President of the Associated Builders & Contractors, Inc., Las Vegas Chapter ("ABC-LV"),¹ an association of non-union general and specialty construction contractors. ABC-LV represents these members by providing political lobbying services, workforce training, and "professional education opportunities." ABC-LV's government affairs program touts its success in "looking out for the interests of open shop contractors" through lobbying and political influence.

Even as he has headed ABC-LV, Senator Hardy has proposed, amended, voted upon, and otherwise advocated the passage or failure of bills directly affecting ABC-LV's contractor members. Senator Hardy has done so in many instances despite the special benefits that ABC-LV member contractors stood to gain from the legislation. Senator Hardy has violated NRS 281A.420(2) by acting on these bills despite his private commitments to ABC-LV's members.

Even when Senator Hardy has acted upon legislation that arguably affects all construction contractors equally, he has failed to disclose on the record that he is the President of ABC-LV or to provide sufficient information to the public concerning his private commitments to ABC-LV's contractor-members. Senator Hardy has violated NRS 281A.420(4) by failing to do so.

The most recent examples of Senator Hardy's violations of the law are his actions on Senate Bills 509 and 279 during the 2007 legislative session.

SB 509, as originally introduced, would have required state agencies to advertise for proposals before they could enter into lease-

¹ ABC-LV was previously known as Associated Builders & Contractors of Southern Nevada.

purchase or installment-purchase agreements to acquire certain existing buildings. The Assembly subsequently passed an amended version of SB 509, adding language requiring prevailing wages to be paid on public works construction projects for which a public body provides land at less than market value or other financial incentives.

Senator Hardy killed the amended SB 509 in the Senate Government Affairs Committee, moving that the Committee not concur with the Assembly's amended bill and providing the decisive vote against the amendment. Senator Hardy voted on the bill despite the particular interests of ABC-LV's members in limiting the application of prevailing wage requirements on public works projects and despite ABC-LV's active lobbying against the amendment. Senator Hardy made no disclosure on the record of his affiliation with ABC-LV at any of the Senate Committee hearings on the bill. Senator Hardy has gone so far as to use his defeat of SB 509's prevailing wage requirement *as a fundraising tool for ABC-LV*.

SB 279 prohibited the Nevada State Contractors Boards from disseminating information to the public concerning the number of construction defect complaints that had been lodged against particular contractors. SB 279 has a material impact upon ABC-LV's contractor-members, who have been the subject of Contractor Board complaints.

At no point during the debate over SB 279 did Senator Hardy disclose on the record that he is the President of ABC-LV. Senator Hardy took numerous actions on the bill – moving and voting for amendments, voting for final Senate passage, and voting to concur with certain Assembly amendments – all without making the disclosures required by the law.

Senator Hardy's actions on SB 509 and SB 279 are not anomalous. Senator Hardy has demonstrated an inability to conform his conduct to the requirements of the Nevada Code of Ethical Standards throughout his tenure in the Senate.

The violations of the law described in this Complaint are undeniable. They are of a regular and ongoing nature and may not be dismissed as mere isolated instances of bad judgment. “[T]he Commission is directed to hold public officers accountable when they fail to place public interest and public trust ahead of their private and/or pecuniary interests.” *Brian Scroggins*, Advisory Opinion No. 05-12. The

Commission should take prompt and decisive action to demonstrate that the public trust may not be violated with impunity.

The remainder of this Complaint is divided into four sections. Section II describes the Complainant. The following section provides factual and legal background to the charges. Section IV describes Senator Hardy's violations of NRS 281A.420(2) and (4) during his tenure in the Senate, beginning with the 2007 session and working back to the 2003 session. Section V sets forth the appropriate remedy. An Appendix contains a summary of Senator Hardy's ethics violations.

II. The Complainant

Richard B. Miller, a retired schoolteacher, is a resident in Senator Hardy's legislative district. He resides at 3014 Fort Stanwix Road in Henderson, in the Sun City Anthem Community.

Mr. Miller is one of the many thousands of Vegas Valley homeowners who suffered as a result of having defective Kitec plumbing fixtures installed in his home. Corrosion of the Kitec plumbing fixtures led to leaks, reduced water flow, and breaks. When residents of Sun City Anthem complained, Pulte Homes of Nevada, Sun City Anthem's developer, demanded a "right to repair" the plumbing and required that homeowners waive their rights to sue Pulte in return for any compensation. Although it took a year for the Kitec problem to be corrected in Mr. Miller's home, he received no compensation for the trouble and inconvenience that the defect caused.

Mr. Miller learned that Senator Hardy had supported the 2003 law (SB 241) that required homeowners who had suffered construction defects to provide contractors with a right of repair or forfeit their right to sue. Mr. Miller also learned that Senator Hardy had not disclosed his private role as ABC-LV President while SB 241 was before the Senate. Further investigation disclosed that Senator Hardy had voted on numerous other bills directly impacting the construction contractors he represents as President of ABC-LV without making the required ethics disclosures.

Mr. Miller brings this complaint as an aggrieved member of the public and as a constituent of Senator Hardy.

III. Background

A. Senator Hardy and ABC-LV

Senator Hardy was elected as State Senator for Clark County Senatorial District No. 12 in November 2002. He has served as a Senator through three regular and five special legislative sessions. Since 2003, Senator Hardy has served on the Senate Committees on Commerce and Labor and Government Affairs. Senator Hardy is the Chair of the Senate Committee on Government Affairs and the Vice-Chair of the Senate Committee on Commerce and Labor.

Senator Hardy has been President of ABC-LV since 2001. He remained in this position after being elected to the Senate in 2002. Senator Hardy has received income from his position as President of ABC-LV during the time in which he has been a Senator. Exhibit 1 [Financial Disclosure Forms, 2005-2007]. Senator Hardy's salary as ABC-LV President was reportedly \$210,000 in 2007. Exhibit 2 [*Las Vegas Sun* article].

ABC-LV is the Las Vegas Chapter of Associated Builders and Contractors, Inc. ("ABC"), a national association of 24,000 general and specialty contractors, construction industry insurers and law firms. ABC is a lobbying organization that describes itself as "the construction industry's voice with the legislative, executive and judicial branches of the federal government and with state and local governments, as well as with the news media." Exhibit 3 [ABC national website]. Nationally and through its local chapters, ABC promotes what it calls "the merit shop construction philosophy" which it says "encourages open competition and a free-enterprise approach that awards contracts based solely on merit, regardless of labor affiliation." *Id.*

ABC maintains two local chapters in Nevada: ABC-LV and Associated Builders & Contractors, Sierra Nevada Chapter ("ABC-Sierra NV").

According to its Mission Statement, ABC-LV "promotes and protects freedom of choice in the construction industry marketplace and the right of all contractors to conduct their businesses in an environment unencumbered by conditions that could restrict an owner's independence or impede a contract being awarded to the lowest reasonable qualified bidder." Exhibit 4 [website mission statement]. ABC-LV's contractor-members are non-union.

ABC-LV is essentially a lobbying organization. ABC-LV touts its influence with elected officials. Thus, it describes itself as “the premier construction association supporting freedom of economic opportunity through *political influence*, financial growth and effective personal and professional development . . . led by an involved membership.” (emphasis added) Exhibit 4 [website vision statement]. ABC-LV also advertises its active governmental affairs program, with a “team of lobbyist [*sic*] and staff [who] are looking out for your interests as an open shop contractor.” Exhibit 5 [website governmental affairs].

ABC and ABC-LV have publicly announced a number of legislative priorities. First and foremost, ABC and ABC-LV oppose laws requiring contractors to pay prevailing wages on public works construction projects, such as the federal Davis-Bacon Act (40 U.S.C. § 276a) and the Nevada prevailing wage law (NRS 338.020 *et seq.*). (See below). ABC and ABC-LV have also made attacking construction defect lawsuits a legislative goal. (See below). Finally, ABC and ABC-LV oppose public works bidding processes that they accuse of “favoring” union contractors over their own “open shop” contractor-members. (See below).

B. Statutory Framework

NRS 281A.420 contains two discrete ethical requirements of public officials.

First, NRS 281A.420(2) provides that “a public officer shall not vote upon or advocate the passage or failure of, but may otherwise participate in the consideration of, a matter with respect to which the independence of judgment of a reasonable person in his situation would be *materially affected* by: . . . (c) his commitment in a private capacity to the interests of others.” (emphasis added).

Second, NRS 281A.420(4) provides that “[a] public officer . . . shall not approve, disapprove, vote, abstain from voting or otherwise act upon any matter: . . . (b) Which would *reasonably* be affected by his commitment in a private capacity to the interests of others . . . without disclosing sufficient information concerning the . . . commitment . . . to inform the public of the potential effect of the action or abstention upon the . . . person to whom he has a commitment[.]” (emphasis added). Such disclosure must be made on the record “at the time the matter is

considered” (NRS 281A.420(4))² and is required regardless of whether the legislator believes the private commitment to be “common knowledge.” *In re Glenn*, Advisory Opinion No. 01-15.

The Commission has made clear that NRS 281A.420(2) and NRS 281A.420(4) set forth discrete ethical requirements. Thus, when there is a nexus between a legislator’s private commitments and the matter in question such that it might *reasonably* be thought that the private commitment would influence the legislator, the legislator must disclose on-the-record the nature of this nexus and explain why the nexus does not require abstention. NRS 281A.420(4); *In re Lynette Boggs-McDonald*, Advisory Opinion No. 03-34; *In re Bruce L. Woodbury*, Advisory Opinion No. 99-56.

Where the independence of the legislator would be *materially* affected by his private commitments, the legislator is required not merely to disclose such commitments, but to abstain from voting or advocating passage or failure of the matter. NRS 281A.420(2); *Bruce L. Woodbury*, Advisory Opinion No. 99-56.

As this Commission made clear in *Bruce L. Woodbury*, No. 99-56, the Legislature created the dual requirements now contained in NRS 281A.420 in order to place “[t]he burden . . . on the public officer or employee to disclose private commitments and the effect those private commitments can have on the decision-making process, and to make a proper determination regarding abstention where a reasonable person’s independence of judgment would be materially affected by those private commitments.”

The Commission has not hesitated to find violations of the law for violations far less egregious than those described in this Complaint. *See, e.g., In re Glenn*, Advisory Opinion 01-15 (chair of public hospital board of trustees violated predecessor to NRS 281A.420(4) by failing to disclose pecuniary interest in office buildings adjacent to hospital); *In re Michael Carrigan*, Advisory Opinion Nos. 06-61, 06-62, 06-66, 06-68 (councilman

² A Legislator may, after he has made an oral disclosure with regard to a particular matter, file a written disclosure with the Director of the Legislative Counsel Bureau. NRS 281A.420(6). The written disclosure must specify the particular matter to which it applies. NRS 281A.420(6). Once a Legislator files a written disclosure for a particular matter, they are not required to make further oral disclosures as the bill moves through the Legislature. NRS 281A.420(6).

violated predecessor to NRS 281A.420(2) by failing to abstain from vote brought to council by his former campaign manager).

IV. Ethics Violations

A. 2007 Legislative Session: SB 509 and SB 279

Senator Hardy's violations with regard to two bills, SB 509 and SB 279, are discussed in detail in this section.

1. SB 509

Introduction

Senator Hardy violated NRS281A.420(4) by voting in committee against Assembly amendments to SB 509 that would have expanded the Nevada law governing the payment of prevailing wages on public works projects.

ABC-LV's contractor-members generally pay less than prevailing wages on private construction projects and have made opposition to prevailing wage requirements on public construction projects a legislative priority. Senator Hardy's private commitment to such contractors clearly "materially affected" Senator Hardy's independence of judgment.

Background

SB 509 was introduced on March 26, 2007 by the Advisory Group to Conduct Interim Study on Lease-Purchase and Installment-Purchase Agreements by Public Entities, of which Senator Hardy is Chair.

According to the Legislative Counsel's Digest, as introduced, the bill would have required a state agency to advertise for proposals before it could enter into a lease-purchase or installment-purchase agreement for the purpose of acquiring an existing building located on property which was not owned by the State. Exhibit 6, p. 2 [SB 509, as introduced]. SB 509 also required that if a state agency desired to enter into a lease-purchase or installment-purchase agreement that required the construction of a building on state-owned property, the state agency would be required to contract with a design-build team for the design and construction of the building. SB 509 made other changes to existing law on the content of lease-purchase and installment-purchase agreements.

Senator Hardy introduced SB 509, along with companion bills SB 512, SB 515 and SB 520, at an April 2, 2007 meeting of the Senate Government Affairs Committee. Exhibit 7, pp. 21-25 [Senate Gov't Affairs Comm., minutes, April 2, 2007]. On April 9, 2007, the Government Affairs Committee again discussed SB 509. A technical amendment to the bill was introduced and passed by the Committee. Exhibit 8, p. 15 [Senate Gov't Affairs Comm., minutes, April 9, 2007]. Senator Hardy made no disclosure of his affiliation with ABC-LV at either the April 2 or April 9, 2007 committee hearing.

SB 509 was passed by the Senate on April 24, 2007, with Senator Hardy voting in favor.

In the Assembly Richard Daly, Business Manager of the Laborers Union, Local 169, introduced an amendment to the bill. Exhibit 9 [Assembly Gov't Affairs Comm., Exhibit C to May 1, 2007 hearing]. The proposal would have amended NRS 338.010, which defines "public works" projects on which prevailing wages must be paid. The amended NRS 338.010 would have defined as a public work (and thus required payment of prevailing wages) on any construction project for which the public body provides property at less than fair market value and any project for which the public agency provides financial incentives to the developer worth more than \$100,000. *Id.*

Mr. Daly and several other representatives of labor unions testified that the amendment was necessary to counteract a 2006 interpretation of the existing prevailing wage statute by the Nevada Supreme Court. In *Carson-Tahoe Hospital v. Building & Construction Trades Council of Northern Nevada*, 122 Nev. 218, 128 P.3d 1065 (2006), the Nevada Supreme Court interpreted Nevada's statutory definition of a public work contained in NRS 338.010. The Supreme Court held that only projects on which a public agency is a party to the construction contract may be considered to be "public works". *Id.*, 128 P.3d at 1067; *see also* Exh. 10, pp. 6-9 [Assembly Gov't Affairs Comm., minutes, May 1, 2007 hearing, testimony of Daly, Jack Jeffrey and Danny Thompson].

The amended SB 509 would have clarified that any construction project for which the public agency provides low-cost land or a financial incentive over \$100,000 is a "public work" on which prevailing wages must be paid, regardless of whether the public agency providing the subsidy is a party to the construction contract. Exh. 9.

SB 509 was taken up by the Assembly Government Affairs Committee on May 1 and May 17, 2007. Senator Hardy provided an overview of SB 509 and its companion bills to the Assembly Governmental Affairs Committee on May 1, 2007. Exh. 10, pp. 2-4.

In the Assembly, Senator Hardy argued against the prevailing wage amendment, stating that it was not necessary. Exh. 10, p. 9. He also stated his opposition to the prevailing wage law as currently applied in Nevada. Senator Hardy argued that as currently applied, prevailing wages are “sometimes double” those in the private sector and that the law had “gotten far afield” from its original intent.

At the very end of the hearing, immediately prior to recess, Senator Hardy made the following statement:

We had a lengthy discussion because lease-purchase is really a two-part procurement process. The first deals with goods and services, and we decided that it did not need to be further addressed. We did not ignore it, but rather decided it did not need adjustment.

I should also indicate that I am the President of the Associated Builders & Contractors of Las Vegas. This does not impact me any more than it does any one else.

Exh. 10, p. 14. Senator Hardy did not further explain what he meant by “this” not affecting him more than anyone else – whether he meant lease purchase arrangements, prevailing wages or some other aspect of the bill.

On May 17, 2007, the Assembly Government Affairs Committee adopted Amendment No. 853 to SB 509. Exh. 11 [Amendment No. 853]. The Amendment added two new sections to SB 509, as proposed by Mr. Daly on May 1, 2007. Amendment No. 853 added a Section 13 to the bill, which would have amended the definition of a “public work” project on which prevailing wages must be paid to include projects for which the public body provides property at less than fair market value or financial incentives worth more than \$100,000. *Id.*

On May 25, 2007, the Assembly passed SB 509, as amended by Amendment No. 853.

On May 28, 2007, the amended SB 509 returned to the Senate Government Affairs Committee. At that hearing, Senator Hardy stated that he wished to “hold” consideration of SB 509 because he needed to “clarify how far the amendment reaches.” Exh. 12, at p. 17 [Senate Gov’t Affairs Comm., minutes, May 28, 2007]. Senator Hardy made no disclosure on the record concerning his affiliation with ABC-LV or the impact that Amendment No. 853 would have on ABC-LV’s members.

On May 31, 2007, the amended SB 509 was again heard by the Senate Government Affairs Committee. Senator Hardy moved, without discussion, not to concur with the Assembly’s Amendment No. 853. The Committee voted 4-3 not to concur, with Senator Hardy’s vote breaking the tie . Exh. 13, p. 3 [Senate Gov’t Affairs Comm., minutes, May 31, 2007]. Senator Hardy made no disclosure of his affiliation with ABC-LV during the hearing or of ABC-LV members’ interest in limiting the scope of Nevada’s prevailing wage requirement.

At no point during the debate over SB 509 did Senator Hardy submit a written disclosure statement concerning the matter to the Director of the Legislative Counsel Bureau, as provided for in NRS 281A.420(6).

The opposition of ABC-LV and its members to SB 509’s prevailing wage amendment is indisputable. Indeed, Senator Hardy, in his private capacity as President of ABC-LV, *has used “ABC-LV’s defeat of SB 509” to fundraise for the Chapter.*

In a letter distributed to “open-shop” contractors, Senator Hardy sought contributions to ABC-LV. Exhibit 14. Attached to this letter was a document entitled “What Has the Associated Builders and Contractors of Las Vegas Done for You Lately?” The document states: “In the continual battle over the expansion of prevailing wage, *ABC was successful in defeating* a proposal by the labor unions to change the definition of public work to include almost all commercial construction projects, whether funded by tax dollars or not.” Exhibit 14, p. 2 (emphasis added).

In a legislative wrap-up for the 2007 session, ABC-Sierra Nevada, ABC-LV’s sister organization in Northern California, recounted the battle over SB 509 as follows:

SB 509 addressed lease-purchase of land from public entities, but it was amended in the last two weeks of session by the unions with a clause requiring prevailing wage [sic] be paid on any project where the land sold or leased by a public agency was at less than market value, including redevelopment projects. *ABC opposed the bill as amended . . .* The bill passed the Assembly, however, the Senate refused to agree with the amended language presented by the unions, leading to it [sic] eventual demise.

Exh. 15 [ABC-Sierra Nevada 2007 Legislative Wrap-Up] (emphasis added).

Statutory Violations

Senator Hardy violated both NRS 281A.420(2) and NRS 281A.420(4) by voting against concurrence with the amended SB 509, effectively killing the bill in committee. Senator Hardy's independence of judgment was clearly and materially affected his commitment in a private capacity to ABC-LV's contractor members.

a. Senator Hardy's private commitments materially affected his independence of judgment.

Senator Hardy violated NRS 281A.420(2) by voting on and advocating the failure of the Assembly's prevailing wage amendment to SB 509.

ABC-LV's contractor members derived a particular benefit from the amended SB 509's demise in committee. In other words, the benefits accruing to ABC-LV's contractor members were not the same as "that accruing to any other member of the general business, profession, occupation or group." NRS 281A.420(2).

i. ABC-LV contractors generally pay less than prevailing wages.

ABC-LV's contractor-members generally pay less than prevailing wages on construction work for which prevailing wages are not required by law. These contractors therefore stand to lose financially if the definition of "public work" is expanded and additional construction work is covered by the prevailing wage law. By contrast, contractors that are

covered by collective bargaining agreements generally pay at or above prevailing wages on all construction work, whether it is public work or not.

Personnel Administrative Services, Inc. (“PAS”), a Michigan company that specializes in construction-industry wage and benefit information, publishes an annual survey of average wages and benefits for “merit shop” contractors like ABC-LV’s contractor-members. Exhibit 16 [PAS, Inc. website]. PAS has conducted an annual survey on nonunion wages and benefits since 1983. The group uses the membership list of the ABC and the open shop committee of the Associated General Contractors as its survey base. Exhibit 17 [Affidavit of Allen Smith].

The 2007 PAS Survey of “merit shop” contractors includes information for contractors in Las Vegas. The Survey demonstrates that such contractors generally pay less than prevailing wages when they are not required to do so. Table 1, below, compares the Clark County prevailing wage rate with the average rate paid by “merit shop” contractors in Las Vegas for select craft occupations.³

³ The 2007 PAS Survey of “merit shop” contractors for Las Vegas is Attachment A to the Smith Affidavit. The 2007 Clark County prevailing wage rates are Attachment B to the Smith Affidavit.

TABLE 1
Wages and Benefits Comparison

Craft	2007 LV Nonunion Wages and Benefits	2007 Clark County Prevailing Wage
Carpenter	\$24.61	\$42.57
Cement Mason	\$26.43	\$40.73
Electrician	\$27.26	\$46.90
Ironworker [Structural]	\$24.39	\$49.49
Painter	\$22.79*	\$39.38
Pipefitter	\$36.49	\$49.07
Plumber	\$32.43	\$49.07
Truck Driver	\$20.15	\$38.48
Heavy Equipment Operator	\$23.55	\$50.17**

* Wages only

** Average all classifications

As is demonstrated by Table 1, ABC-LV contractors pay, on average, far less than the prevailing wage – sometimes more than \$25 per hour less. Assuming that ABC-LV contractors do not violate the prevailing wage requirement when performing public works construction, the substantial difference between the prevailing wage and the average wages paid by “merit shop” contractors reflects these contractors’ payment of wages far below the prevailing wage on non-public construction work.

Union contractors generally pay the same wages on both public works projects (on which prevailing wages are required) and on non-public work (on which prevailing wages are not required), since union contracts are generally the basis for prevailing wage rate determinations.

Because ABC-LV contractors pay far less than the prevailing wage when they are not required to do so, they stand to lose financially if the amount of work on which prevailing wages are required is expanded.

The Assembly's amendment to SB 509 would have required prevailing wages on projects to which a public agency had contributed subsidized land or other financial incentives. This expansion in the definition of public work would have had a negative financial impact on ABC-LV's contractor-members.

Indeed, ABC-Sierra Nevada, ABC-LV's sister organization, publicly opposed this expansion in the definition of public work, and thus of the prevailing wage requirement, for precisely this reason. In its 2007 "Year in Review," the Chapter stated: "In the continual efforts to prevent the expansion of prevailing wage, ABC was successful in defeating a proposal by the organized trade associations to change the definition of public work to include almost all commercial construction projects, whether funded by tax dollars or not." Exhibit 18, at p. 2.

SB 509's expanded prevailing wage requirement would not have impacted all contractors equally. Rather, an expanded prevailing wage requirement would have impacted non-union, "open shop" contractors particularly, since they generally do not pay prevailing wages when not required to do so. ABC-LV's members benefitted directly and materially from Senator Hardy's legislative actions against the amended SB 509.

ii. ABC-LV is dedicated to lobbying against prevailing wage requirements.

Senator Hardy's independence of judgment in acting upon SB 509 was also materially affected by his particular relation to ABC-LV's contractor-members. Senator Hardy is the President of an organization whose essential mission is to lobby against laws requiring the payment of prevailing wages on public works construction, such as the federal Davis-Bacon Act (40 U.S.C. § 276a) and the Nevada prevailing wage law (NRS 338.020 *et seq.*).

Nationally, ABC has lobbied for the repeal of the federal Davis-Bacon Act, arguing that the law "inflates the cost of public construction projects." Exhibit 19 [ABC policy brief]. ABC opposes all state and federal laws which establish wages for workers on government funded construction projects, and the national ABC website lists such prevailing wage laws at the top of a list of "ABC priority issues." Exhibit 20 [ABC website excerpt]. The national ABC policy manual requires affiliates like ABC-LV to promote the repeal of "the Davis-Bacon Act and other wage fixing laws," although it allows a Chapter to promote what it calls "more

equitable administration” of the laws if that is not a politically viable option. Exhibit 21 [ABC policy manual].

ABC-LV has made its opposition to prevailing wage laws well-known. ABC-LV’s list of “Basic Principals” states “we favor elimination of government fixing of wages and prices as practices destructive of free enterprise.” Exhibit 22 [ABC-LV website excerpt]. ABC-LV has touted its lobbying for reforms to Nevada’s prevailing wage law that benefit non-union contractors, such as decreasing the Labor Commissioner’s reliance on collective bargaining agreements in determining prevailing wage rates. Exhibit 5 [ABC-LV Government Affairs statement]. Senator Hardy has contended that prevailing wage laws require local and state governments to pay more for workers than do companies in the private sector and has stated that Nevada’s prevailing wage law “just makes no sense.” Exhibit 23 [*Las Vegas Review Journal* article].

Indeed, Senator Hardy and ABC-LV have trumpeted “their” defeat of SB 509’s prevailing wage amendment in fundraising letters sent to contractor-members. Exhibit 14.

Opposing prevailing wage may fairly be called the ABC’s most important political issue. Certainly, Senator Hardy’s independence of judgment was materially affected by his commitment, as President of ABC-LV, to representing the Chapter’s contractors in opposing prevailing wage laws.

b. Senator Hardy did not properly disclose his private commitments to ABC-LV contractors.

Even if Senator Hardy had been entitled to vote on the amendment and passage of SB 509 (which he was not), he failed to make the public disclosures of his private interests required under the law and thus violated NRS 281A.420(4).

NRS 281A.420(4) prohibits a legislator from acting on any matter “that would reasonably be affected by his commitment in a private capacity to the interest of others” without making certain public disclosures. The presumption of independence of judgment for matters that affect all members of a general business or industry equally does not apply to the disclosure requirement of NRS 281A.420(4). See NRS 281A.420(2). Rather, “when there is a nexus between a legislator’s private commitments and the matter in question such that it might *reasonably* be thought that the private commitment would influence the

legislator, the legislator must disclose on-the-record the nature of this nexus and explain why the nexus does not require abstention. *In re Lynette Boggs-McDonald*, Advisory Opinion No. 03-34.

These public disclosures must provide “sufficient information concerning the . . . interest to inform the public of the potential effect of the action or abstention . . . upon his interest.” NRS 281A.420(4). The legislator must make the disclosure at the time the matter is considered and must be made publicly to other members of the legislative body or committee. NRS 281A.420(4). Unless the legislator files a written disclosure with the Legislative Counsel Bureau, he must make a similar disclosure each time he acts upon the matter. See NRS 281A.420(6).

Senator Hardy made no public disclosure of his private interests prior to voting against concurrence with the amended SB 509 in the Government Affairs Committee. In fact, Senator Hardy’s *only* public disclosure of his role as President of ABC-LV in conjunction with SB 509 occurred in the *Assembly* Government Affairs Committee, not in the legislative body in which Senator Hardy acted upon the amended bill.

Even the statement that Senator Hardy made in the Assembly Government Affairs Committee was inadequate. At the very end of the session, Senator Hardy simply stated: “I should also indicate that I am the President of the Associated Builders & Contractors of Las Vegas. This does not impact me any more than it does anyone else.” This statement hardly provides “sufficient information” to inform the public of the nexus between Senator Hardy’s position as President of ABC-LV and the prevailing wage requirement that had been added to SB 509. Nor did Senator Hardy explain why this nexus did not require him to abstain from acting on the matter.

Senator Hardy did not submit a written disclosure to the Legislative Counsel Bureau that would have excused his failure to make the public disclosures required by NRS 281A.420(4).

The *only* written disclosure that Senator Hardy submitted to the Legislative Counsel Bureau during the *entire* 2007 legislative session was one he submitted on February 14, 2007. Exhibit 24 [Senator Hardy, letter, February 14, 2007]. However, that written disclosure applied only to SB 13, which barred certain local ordinances on carrying placards on sidewalks and had nothing to do with prevailing wages.

Senator Hardy's February 14, 2007 written disclosure included a broad statement declaring that he is President of ABC-LV and that ABC-LV has contracted for the lobbying services of certain individuals. Senator Hardy stated: "I will be watchful for bills, resolutions and amendments affecting the construction industry. Having made this disclosure, pursuant to NRS 281.501, I will vote on such matters where the resulting benefit or detriment on our membership is not greater than that accruing to the members of any other such association." Exhibit 24.

Apparently, Senator Hardy believed that he could avoid the disclosure requirement of NRS 281A.420(4) simply by filing a broad, generic written disclosure at the beginning of the legislative session. However, this cavalier approach to Nevada's ethics laws does not comply with the law.

NRS 281A.420(6) is explicit that a legislator may only file a written disclosure *after* he has made the public disclosure required by NRS 281A.420(4). The written disclosure applies *only* to the matter on which the legislator has made such public disclosure. NRS 281A.420(6) ("The written statement must designate the matter to which the disclosure applies.").

Legislators may not attempt to preemptively inoculate themselves against the State's ethics laws by filing a generic "disclosure" at the beginning of the legislative session. Allowing them to do so would utterly defeat the purpose of NRS 281A.420(4), which is to provide the public with sufficient information so that they can decide whether a legislator is acting ethically *with regard to particular matters that come before him*.

Senator Hardy was required to recuse himself from acting upon the amended SB 509, since Senator Hardy's independence of judgment was materially affected by his capacity as President of ABC-LV and by ABC-LV's opposition to prevailing wage requirements on public works projects.

Even if Senator Hardy could have lawfully acted upon the amended SB 509, he failed to disclose the potential effect of his voting against the bill on ABC-LV's contractor-members or ABC-LV's active lobbying on the bill.

It is difficult to think of a clearer violation of the State's ethics law than a legislator voting to kill a bill in committee that would have caused particular financial detriment to the businesses that his private lobbying

organization represents. That Senator Hardy believed that he could act on SB 509 without disclosing the interests of ABC-LV contractors in the bill simply added insult to injury.

2. SB 279

Introduction

Senator Hardy violated NRS 281A.420(4) by failing to disclose the interest of ABC-LV's contractor-members in SB 279, which prohibited the State Contractors' Board from publicly disseminating information about complaints filed against construction contractors. Senator Hardy lobbied vigorously in committee against permitting the State Contractors Board to do so and blocked motions to pass the bill without such a prohibition.

At no point during the debate over SB 279 did Senator Hardy make any disclosure of his role as President of ABC-LV or of the impact that SB 279 could have on ABC-LV's members. Senator Hardy took numerous actions on the bill – moving and voting for amendments, voting for final Senate passage, and voting to concur with certain Assembly amendments – all without making the disclosures required by NRS 281A.420.

Senator Hardy may have also violated NRS 281A.420(4) by voting on SB 279.

Background

SB 279 was part of an omnibus package of bills making changes to the organization and practice of the State Contractors' Board. The bill was introduced by the State Contractors' Board in September 2006. As originally drafted, the bill would have provided express authority for the Board to collect and disseminate to the public data regarding complaints lodged against construction contractors. Exhibit 25 [SB 279, as introduced].

The bill was heard for the first time in the Senate Commerce and Labor Committee on March 20, 2007. Margi Grein, the Executive Officer for the State Contractors' Board, explained the need for bill:

This bill is a result of challenges that the State Contractors' Board (SCB) has faced regarding dissemination of complaint information to the public. *Nevada Revised Statute 624.327* was amended in 2003 concerning complaint information provided to the public. We do not provide any complaint information, only statistical data to the public so they are able to make informed decisions prior to hiring a contractor. We have been legally challenged for doing that and that is why we are asking for clarification that we can continue with our current practice.

Exhibit 26, p. 7 [Senate Commerce & Labor Comm., minutes, March 20, 2007].

Senator Hardy voiced objection to this codification of the Board's practice of disseminating statistical information about the number of complaints filed against contractors. Exhibit 26, p. 10-11.

SB 279 was heard in the Senate Commerce and Labor Committee again on March 21, 2007. Senator Hardy again attacked the provisions of the bill expressly authorizing the Board to disseminate statistical information about contractor complaints. Senator Hardy complained that releasing information about defect complaints to the public might harm contractors. Exhibit 27 [Senate Commerce & Labor Comm., minutes, March 21, 2007].

The Contractors' Board's Executive Officer responded, explaining the need for disclosure of such information:

When there is insufficient justification to maintain the confidentiality of the information, the balance must be struck in favor of public and open government. I believe the public's right to know this information before they hire a contractor exceeds the licensee's right for confidentiality. We state the outcome of the investigative findings. We also put on a disclaimer stating that is not the only information they should check. We encourage the consumer to check license information, references, the Better Business Bureau and other entities. We feel this service is needed for public protection.

Exhibit 27, p. 5.

On April 6, 2007, the Senate Commerce and Labor Committee again heard SB 279. Senator Hardy moved to amend the bill to provide that information about complaints against contractors could be “maintained” by the Board, but could not be disseminated to the public. Exhibit 28, p. 4 [Senate Commerce & Labor Comm., minutes, April 6, 2007]. The motion was carried and the Senate subsequently voted to adopt the amendment. Exhibit 29 [Senate Amendment 196].

The amended SB 279 was passed by the Assembly on May 23, 2007 with the Senate’s amendment barring the Board from disseminating information about contractor complaints. The Assembly made several changes to other provisions of the bill, which were concurred in by the Senate Commerce and Labor Committee on May 25, 2007, with Senator Hardy voting to concur.

Under the final bill, the Contractors’ Board is barred from disclosing to the public information about complaints filed against contractors. The Board may continue to disclose information to the public about complaints on which the Board has instituted disciplinary actions. Exhibit 30 [SB 279, as enrolled, Section 11.5.] However, the Board is not required to institute disciplinary action on a complaint for two years after the complaint is filed, so information about even serious complaints against a contractor will not be publicly available during this time. Also, the Board is barred from disseminating information about complaints that end in settlement (but not disciplinary action), even if the complaints had merit. *Id.*

At no point during the debate over SB 279 did Senator Hardy disclose publicly or in writing his position as President of ABC-LV or the interest of ABC-LV’s contractor-members in the subject matter of SB 279.

ABC-LV’s sister organization, ABC-Sierra Nevada, was clear in its opposition to the release of information on contractor complaints. ABC-Sierra Nevada wrote of SB 279 that “the primary ‘contentious’ issue was when to release information about filed complaints. This bill was revised several times and ABC is satisfied with final passage of the bill that was signed into law. The language essentially states that a complaint is kept confidential until the Board initiates disciplinary action.” Exhibit 15.

Statutory Violations

Senator Hardy violated NRS 281A.420(4) by failing to publicly disclose his affiliation with ABC-LV and ABC-LV contractor-members' obvious interest in the subject matter of SB 279.

SB 279's original authorization of the disclosure of statistics on contractor complaints has a clear nexus to ABC-LV's organizational mission. Contractors would clearly rather keep complaints against them confidential. For this reason, a variety of contractor organizations lobbied against SB 279. Exhibit 31, p. 2 [Assembly Labor & Commerce Comm., minutes, May 2, 2007 (statement of Steve Holloway of Las Vegas Associated General Contractors: "There are nine associations in favor of this amendment" barring dissemination of contractor complaint information.")].

ABC-LV, however, has articulated a particular interest in opposing the dissemination of information about contractor complaints. ABC and ABC-LV have opposed public works bidding processes that they accuse of "favoring" union contractors over their own "open shop" contractor-members. Thus, ABC-LV has opposed "bidder pre-qualification" laws for public works jobs that require the contracting agency to take into account the bidder's record of safety and employment law violations. ABC-LV contends that such laws will lead to the unfair disqualification of "open-shop" contractors. Exhibit 5 [ABC-LV government affairs].

ABC-LV has opposed bidder pre-qualification laws based upon a belief that ABC contractors' competitors would file bogus safety complaints to disqualify them from public works. ABC-LV's website proclaims that under bidder prequalification laws "government entities would have been required to disqualify any contractor with 'an alleged' safety or labor violation. While we are certainly concerned about safety issues and compliance with labor laws can you imagine the opportunity for abuse such a law would present?" Exhibit 5.

ABC's opposition to the contractor complaint portions of SB 279 was based upon a belief that ABC contractor-members would be disqualified from public works projects based upon complaints about construction defects. Senator Hardy articulated this fear on behalf of ABC contractors at the March 21, 2007 Senate Labor and Commerce Committee hearing, stating: "If these types of things are statutory, they can be used as a weapon against contractors. . . . If somebody decides

they want to go after a certain contractor, they just start filing complaints against them.” Exhibit 27, p. 5.

At a minimum, Senator Hardy was required to disclose his position as President of ABC-LV and ABC-LV contractor-members interest in not having information about complaints against them disseminated to the public. Senator Hardy was required to publicly explain why his private commitment to ABC-LV contractors did not require that he recuse himself from consideration of the bill. Senator Hardy did not do so and thus violated NRS 281A.420(4).

Senator Hardy may also have violated NRS 281A.420(2) in voting to amend SB 279 to prohibit the disclosure of statistics on contractor complaints. If ABC-LV contractors were more likely to be the subject of construction defect complaints than other groups of contractors (for example, unionized contractors), then the benefit to ABC-LV contractors from the amendment of SB 279 was greater than that accruing to other contractors. If that is the case, Senator Hardy’s independence of judgment can be assumed to have been “materially affected” by his commitments to ABC-LV contractors.

It is clear that at least some ABC-LV contractor-members have been the subject of defect complaints.⁴ After SB 279, however, information about complaints that are pending, were settled or dismissed is no longer available to the public. It is therefore impossible for the public to determine whether more such complaints were filed against ABC-LV contractors than non-ABC contractors and whether ABC-LV contractors therefore faced a detriment from passage of the original SB 279 that was greater than that faced by other contractors.

The Nevada Ethics Commission should request information from the State Contractors’ Board on the number of construction defect complaints filed against ABC-LV members in the years preceding Senator Hardy’s vote on SB 279 as part of its investigation of this Complaint.

Senator Hardy violated NRS 281A.420(2) by failing to disclose ABC-LV members’ interest in limiting public access to construction defect complaints and by failing to provide sufficient information on why his

⁴ For example, ABC-LV member Sprinkler Tek, Inc. received an administrative citation and was fined in February 2006 based upon complaints filed against it. Exhibit 32.

abstention from the bill was not warranted. Senator Hardy may have violated NRS 281A.420(2) by acting upon SB 279.

B. Other Bills During the 2007 Session

Senator Hardy's violations of the ethics law in acting upon SB 509 and SB 279 were not anomalous. Senator Hardy failed to make the disclosures required by law on other construction industry bills introduced during the 2007 Legislative Session.

1. AB 56

AB 56 increased the penalties assessed against a contractor who enters into a contract with an unlicensed contractor or with a contractor acting beyond the scope of that contractor's license. Exhibit 33 [AB 56, as introduced].

Under the bill passed by the Assembly, contractors who violated this prohibition would have faced administrative fines and *mandatory* license suspension for the second and third offense. Exhibit 33, Section 1(b).

The bill was amended in Senator Hardy's Senate Commerce and Labor Committee to make license suspension *optional* for the second and third offenses. Exhibit 34 [Senate Amendment 736, Section 1(b)]. The Committee also amended the bill to require evidence that the contractor "knowingly" contracted with an unlicensed contractor or a contractor acting outside the scope of its license. Exhibit 34, Section 2(3).

Senator Hardy voted in favor of these amendments and in favor of the amended bill. He made no disclosure on the record of his role as President of ABC-LV or of ABC-LV's contractor-members' obvious interest in limiting the penalties that could be assessed against them if they violated state contracting law.

2. AB 110

AB 110 repealed the expiration of an existing exemption from state property taxes for apprenticeship programs. Exhibit 35 [AB 110, as enrolled]. Senator Hardy was a joint sponsor of AB 110 and voted for its final passage in the Senate.

ABC-LV sponsors a four-year apprenticeship program in the electrical craft that is registered by the State. Exhibit 36 [ABC-LV website excerpt], Exhibit 37 [list of state-registered apprenticeship programs]. The program qualifies for the property tax exemption that was extended under AB 110.

Senator Hardy does not appear to have disclosed on the record or in writing his private role as President of ABC-LV or the fact that ABC-LV stood to gain directly and materially from AB 110's extension of the property tax exemption for ABC-LV's apprenticeship program. Senator Hardy did not provide the public with an explanation for why these interests did not require his recusal from acting upon AB 110. By failing to do so, Senator Hardy violated NRS 281A.420(2).

3. SB 201

SB 201 authorized public agencies to enter into contracts with a "construction manager at risk" (CMAR) for the preconstruction design and construction of a public work project. Exhibit 38 [SB 201, as introduced].

Under the construction manager at risk method for constructing a public work, a public body enters into a contract for a negotiated price with a CMAR to provide pre-construction services for the public work, including design support, construction estimating, value and system analysis and scheduling. After the public body has obtained the final design for the public work, the public body and the CMAR are required to attempt to negotiate a contract for the CMAR to construct the public work. If they are successful, then the CMAR selects the contractors and subcontractors who will perform the work. Exhibit 38 [Legislative Digest].

As introduced by the Senate Government Affairs Committee, SB 201 would not have required the CMAR to hire contractors and subcontractors based upon competitive bidding. Rather, competitive bidding for the work would only have been required if the work to be performed by the contractor constituted less than 5% of the total work to be performed. Exhibit 38, Section 12.

At a March 12, 2007 hearing of the Senate Government Affairs Committee, however, representatives of unions and unionized contractors spoke against SB 201's exclusion of contractors and subcontractors hired by CMARs from the competitive bidding process

that normally govern public works projects. Exhibit 39, pp. 15-16, 19-20 [Senate Gov't Affairs Comm., minutes, March 12, 2007 (testimony of Richard L. Peel, James E. Sala)]. The competitive bidding process that normally governs public works projects is contained in NRS 338.1373 through NRS 148.

The Senate Government Affairs Committee subsequently amended SB 201's provisions regarding the process for selecting subcontractors. Exhibit 40 [Amendment No. 306, Section 12]. However, this amendment, which Senator Hardy supported and voted for, did not require CMARs to follow the statutory procedures for competitive bidding set forth in NRS 338.1373 through NRS 148. Rather, the amended SB 201 vaguely stated that the CMAR was required to follow "the process for competitive bidding" in selecting contractors and subcontractors, but did not reference the statutory requirements for competitive bidding. Exhibit 40, Section 12.

The Assembly Government Affairs Committee voted to further amend SB 201 to state explicitly that the CMAR must comply with the competitive bidding process set forth in NRS chapter 338 in selecting contractors and subcontractors. Exhibit 41 [Amendment 796, Section 12].

Senator Hardy opposed this amendment, stating that "it seems like micromanagement" and that the Assembly had "adopted a best practices manual with this bill." Exhibit 42, p. 12 [Senate Gov't Affairs Comm., minutes, May 28, 2007]. Senator Hardy moved and voted for the Committee not to concur in the Assembly's amendments.

Ultimately, however, a Joint Conference Committee adopted the Assembly's requirement that CMARs comply with the specific competitive bidding procedures set forth in NRS chapter 338.

SB 201 has a direct and material effect on ABC-LV's contractor-members, many of whom compete for public work, both as general contractors and as subcontractors. As introduced by Senator Hardy's Senate Government Affairs Committee, SB 201 would not have required competitive bidding for the selection of many public works subcontractors. When unionized contractors and unions pressed the Committee to amend SB 201 to require competitive bidding, Senator Hardy voted for a watered-down amendment that would not have required CMARs to follow the statutory requirements for competitive

bidding. After the Assembly corrected this problem and amended SB 201 to require compliance with NRS chapter 338's competitive bidding procedures, Senator Hardy spoke out against the amendments as "micromanagement" and moved and voted not to concur.

Senator Hardy made no disclosure on the record of his private role as President of ABC-LV or of the interest of ABC-LV contractor-members in restricting the regulation of the CMAR contractor and subcontractor bidding process.⁵

C. 2005 Legislative Session

Senator Hardy's failure to make the disclosures required by NRS 281A.420 is not limited to the 2007 legislative session. The following summary of construction industry legislation from previous legislative sessions on which Senator Hardy failed to make required disclosures demonstrates that his recent conduct cannot be dismissed as isolated or anomalous.

Short descriptions of Senator Hardy's actions with regard to bills introduced during the 2005 and 2003 legislative sessions are provided here. Additional documentary information will be provided to the Commission upon request.

The following is not an exhaustive list of construction industry bills on which Senator Hardy acted without making ethics disclosures; it is intended to be illustrative.

1. AB 210

As introduced, AB 210 would have required construction contractors and subcontractors on public works projects to keep statistics on the race, ethnicity and gender of their workforces and to file this report with the public body. AB 210 would have required the public body to void any contract with the contractor if the contractor failed to submit such a report.

⁵ Indeed, Senator Hardy's only disclosure on the record related to SB 201 was his March 12, 2007 "disclosure" that he once was an intern to Rose E. McKinney-James of the Clark County School District. Exhibit 39, p. 14 [Senate Gov't Affairs Committee, minutes, March 12, 2007 ("In the interest of full disclosure, I used to be Ms. McKinney-James's intern with the City of Las Vegas.")].

In the Senate Government Affairs Committee, Senator Hardy voted to replace the mandatory reporting requirements of the Assembly's version of AB 210 with a non-binding "resolution" that simply stated that "[w]omen and members of certain minority groups should be encouraged to obtain the skills and experience necessary to work in the construction industry through employment, apprenticeship programs and training related to the construction industry."

When the Assembly asked Senator Hardy and the Senate Government Affairs Committee to recede from this wholesale revision of AB 210, Senator Hardy voted not to recede.

Senator Hardy did not disclose on the record or in writing his association with AB-LV or that ABC-LV contractors, who perform public work, were directly interested in the legislation. In his 2007 fundraising letter, Senator Hardy, acting as President of ABC-LV, stated that "ABC defeated a proposal to make contractors submit monthly diversification reports on the makeup of their workforce." Exhibit 14, p. 2. Yet Senator Hardy did not disclose when AB 110 was before the Senate that ABC-LV was lobbying against the bill.

2. SB 434

SB 434 revised the contracting laws relating to the construction of residential pools, eliminating the requirement that certain contractors who perform work on residential pools and spas must meet performance and payment bonding requirements before performing the work. SB 434 also excepted contractors who had been licensed for at least 5 years from an existing requirement that they provide a cash deposit for the protection of consumers.

Senator Hardy did not disclose either his role as President of ABC-LV and ABC-LV contractor-members interest in SB 434 or that he had previously acted as a lobbyist on behalf of the swimming pool industry against the statutory provisions that SB 434 weakened.

3. SB 467

SB 467 was an omnibus bill revising numerous aspects of the bidding process on public works construction projects. *The bill was*

*introduced in the Senate Government Affairs Committee by ABC-LV.*⁶ Indeed, when the bill was introduced in the Senate Government Affairs Committee, Senator Hardy admitted that he worked directly on the bill in his capacity as President of ABC-LV. Yet, Senator Hardy did not recuse himself from acting upon the bill when it came before his committee.

As introduced, SB 467 would have exempted public works projects costing less than \$250,000 (rather than \$100,000) from prevailing wage requirements. The bill also created an exception from the competitive bidding requirements of NRS chapter 338 for certain categories of public work.

Despite the fact that SB 467 was *introduced in the Senate by ABC-LV* and had a direct and material impact on ABC-LV's member-contractors, Senator Hardy acted on the bill, voting on its amendment and voting for final passage in the Senate. A clearer violation of NRS 281A.420(2) is hard to imagine.

Senator Hardy's "disclosure" in the Senate Government Affairs Committee also fell short of that required by NRS 281A.420(4). On April 11, 2005, when the bill was introduced, Senator Hardy simply stated: "Please note for the record that in my capacity as president of ABC of southern Nevada, I did work with Mr. Olivas [of the Commission to Study Government Purchasing] on this issue in the interim." Senator Hardy did not provide "sufficient information" for why he was not required to recuse himself from consideration of a bill that he worked on in a private capacity and was introduced by the contractor association of which he is President. Senator Hardy submitted no written disclosure for SB 467.

D. 2003 Legislative Session

1. AB 295

AB 295 proposed to require local governments to "pre-qualify" contractors and subcontractors for public works projects using certain mandatory criteria. These criteria included whether the contractor had been convicted of employment discrimination in the previous two years and whether complaints against the contractor had been filed with the State Contractors Board or any other federal or state agency.

⁶ The bill was co-sponsored by Associated General Contractors of Southern Nevada.

Senator Hardy advocated in the Senate Government Affairs Committee for language that would make bidder pre-qualification entirely optional on the part of local governments. This amended language was ultimately adopted by the Senate, with Senator Hardy voting in favor both in Committee and on the floor.

ABC-LV has long opposed such bidder pre-qualification requirements, arguing that they will be used to “discriminate” against its open-shop members and in favor of unionized contractors.

ABC-LV actively lobbied against the bidder pre-qualification provisions in AB 295. Thus, ABC-LV’s website states: “During the last session of the legislature a bill was introduced that would have required state and local governments to adopt pre-qualification criteria that would have almost certainly led to the unfair disqualification of many contractors.” ABC-LV boasts: “In the face of such legislation once again ABC lead the charge to defeat the legislation...and defeat it we did!” Exhibit 5.

At no point during the legislative process did Senator Hardy disclose his private role as President of ABC-LV, ABC-LV’s role in lobbying against bidder pre-qualification, or ABC-LV contractor-members’ interest in avoiding bidder pre-qualification requirements.

2. AB 432

AB 432 reduced the penalties for contractors and subcontractors who fail to submit “certified payroll records” documenting their payment of prevailing wages to construction employees on public works projects. Certified payroll records are the primary means by which the Nevada Labor Commissioner and private individuals can be assured that public works contractors are paying prevailing wages.

Senator Hardy voted in favor of the bill in the Senate Government Affairs Committee and for final passage in the Senate without making any disclosure of his private role as President of ABC-LV or of ABC-LV contractor-members’ interest in reducing the fines that they face if they fail to submit certified payroll records.

3. SB 114

SB 114 proposed to revise the method for calculating prevailing wages on public works projects. Senator Hardy introduced the bill in the Senate Government Affairs Committee.

SB 114 would have made two fundamental changes to the method by which the Labor Commissioner determines the prevailing wage rate for a locality.

First, while existing law required that the Labor Commissioner determine the rate prevailing “on construction similar to the proposed construction,” (NAC 338.010(1)), Senator Hardy’s bill would have required the Labor Commissioner to base the prevailing wage rate on the wages paid to all employees of a similar classification in the county, regardless of whether they worked on construction similar to the public works in question.

Second, under existing law, if there was no single wage rate paid on a majority of work hours for the classification, the Labor Commissioner based the prevailing wage on the wage rate paid to workers performing work on at least 40 percent of the total work hours. (NAC 338.010(1)(b)). Under SB 114, however, if there was no common wage rate paid to a majority of workers in the classification, the Labor Commissioner would have been required to average the wage rate paid to all workers in the classification, without looking to the wage rate paid at the 40 percent threshold.

Both of the revisions to the prevailing wage law contained in SB 114 could be expected to lower the applicable prevailing wage rate.

ABC-LV has trumpeted its lobbying for revisions to the method for determining prevailing wages. As its website states: “40% of an identical wage is now required to be considered prevailing. This is up from the 30% requirement in place for many years and ABC is now working to increase this to a more logical 50%.” See Exhibit 5.

Senator Hardy made no disclosure of his role as President of ABC-LV, of ABC-LV’s lobbying for the changes to the definition of prevailing wages contained in SB 114, or of ABC-LV contractor-members’ interest in seeing a reduction in the prevailing wage rate for public works projects.

4. SB 241

SB 241 made substantial revisions to State law on construction defects.

As introduced in the Senate Government Affairs Committee and as passed by the Senate, SB 241 would have changed the definition of “construction defect” to include only those defects that actually caused

damage or injury. In other words, homeowners would have had to wait until they or their family member actually suffered injury before filing a civil complaint against a contractor. Senator Hardy voted for this change in the definition of “construction defect” both in Committee and on the Senate floor.

SB 241 also contained extensive provisions limiting the right of homeowners to bring construction defect lawsuits against contractors without first giving the contractors notice and the right to repair. While the law prior to SB 241 *allowed* the homeowner and the contractor to enter into an agreement for repair, SB 241 *required* the homeowner to permit the offending contractor to repair the defective work and provided that any lawsuit brought without giving the contractor a right to repair the work must be dismissed.

ABC-LV lobbied actively for the changes in construction defect law contained in SB 241. As its website touts: “With construction defect litigation threatening to shut down the construction industry in Southern Nevada ABC has taken the lead in organizing a construction industry coalition to aggressively address the issue.” The website continues: “ABC's Government Affairs Chairman is leading the coalition which is committed to providing a statutory definition of construction defect as well as providing the contractors with the right to repair.” See Exhibit 5.

Senator Hardy did not disclose his private role as President of ABC-LV, ABC-LV's role in lobbying for the reforms contained in SB 241, or the ways in which ABC-LV's contractor-members stood to gain from the revisions to construction defect law contained in the bill.

5. SB 437

SB 437 revised the law governing the ability of non-licensed builders to construct swimming pools when they are the owner of the property on which the swimming pool is built.

When the bill was introduced in the Senate Commerce and Labor Committee, Senator Hardy was careful to recuse himself from voting on the bill, since he had been a paid lobbyist for the swimming pool industry in the previous legislative session. As Senator Hardy stated: “I have to make a disclosure and will not be voting on this bill, but I need to speak to this bill. Last session I was a paid lobbyist representing the swimming pool industry on a comprehensive bill relating to pool builders.”

However, inexplicably, Senator Hardy voted for the bill when it came to the Senate floor. Senator Hardy did not explain why he was required to recuse himself from action on the bill when it was before Committee, but was permitted to act upon the bill when it went before the full Senate.

V. Remedy

Senator Hardy's violations of Nevada ethics law have been repeated, willful, and profound. The Commission should make clear that legislators may not avoid the obligations of NRS chapter 281A with impunity.

Pursuant to NRS 281A.480(1), the Commission should assess civil penalties in the amount of \$40,000 against Senator Hardy for his multiple violations of NRS 281A.420 during the 2007 legislative session.

The Commission should publish a written decision making clear that legislators may not avoid the obligations of NRS 281A.420 by simply filing a generic written "disclosure" at the beginning of the legislative term, as Senator Hardy sought to do.

Finally, pursuant to NRS 281A.480(4)(a), the Commission should file a report on Senator Hardy's violations of state ethics law with the Speaker of the State Assembly, the body responsible for commencing impeachment proceedings.

DATE: March 5, 2008

Respectfully submitted,

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APPENDIX
SUMMARY OF SENATOR HARDY'S ETHICS VIOLATIONS

Bill	Summary	Actions Taken	Disclosure	Violations
2007				
SB 509	Revised law governing lease-purchase agreements; Assembly amended to expand definition of "public works"	Voted in Senate Government Affairs Committee against Assembly amendment	None in Senate Committee; insufficient disclosure in Assembly; no written disclosure	NRS 281A.420(2) NRS 281.420(4)
SB 279	Omnibus legislation on State Contractors' Board; amended to prevent Board from disseminating information about construction defect complaints	Voted in Senate Commerce & Labor Committee for amendment; voted on Senate floor for amended bill	None	NRS 281A.420(2), possible violation of NRS 281.420(4)
AB 56	Increased penalties against contractors who enter into contracts with unlicensed contractors; amended in Senate to weaken penalty provisions	Voted in Senate Commerce & Labor Committee to weaken penalties; voted on Senate floor for amended bill	None	NRS 281A.420(2)
AB 110	Repealed expiration of property tax exemption for state-registered apprenticeship programs	Introduced bill, voted in Senate Commerce & Labor Committee to pass, voted in favor on Senate floor	None	NRS 281A.420(2) NRS 281.420(4)

SB 201	Authorized “construction manager at risk” method of public contracting; original bill exempted certain contractors from competitive bidding procedures	Voted on bill in Senate Commerce & Labor Committee, voted in favor on Senate floor	None	NRS 281A.420(2)
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2005

AB 210	Originally required contractors to keep detailed records on the race, ethnicity and gender of workers; amended in Senate to become a non-binding “resolution” supporting women and minorities in construction	Voted to amend bill in Senate Commerce & Labor Committee; voted to pass amended bill on Senate floor; voted not to recede from amendment in Committee	None	NRS 281A.420(2)
SB 434	Eliminated requirement that swimming pool contractors meeting certain bonding can cash deposit requirements	Voted in favor of bill in Senate Commerce & Labor Committee; voted in favor on Senate floor	None	NRS 281A.420(2)
SB 467	Omnibus bill revising numerous aspects of bidding process on public works projects; drafted and introduced by ABC-LV in Senate	Voted in favor of bill in Senate Government Affairs Committee; voted in favor on Senate Floor	None	NRS 281A.420(2) NRS 281.420(4)

2003

AB 295	Required local agencies to “pre-qualify” contractors on public works projects	Opposed pre-qualification in Senate Government Affairs Committee; voted for amendment making pre-qualification optional; voted in favor of amended bill on Senate floor	None	NRS 281.420(4)
AB 432	Reduced penalties for contractors who fail to submit certified payroll records on public works projects	Voted in favor of bill in Senate Government Affairs Committee; voted in favor on Senate floor	None	NRS 281.420(4)
SB 114	Revised the method for calculating prevailing wages on public works projects	Introduced bill, voted in favor of bill in Senate Government Affairs Committee; voted in favor on Senate floor	None	NRS 281A.420(2) NRS 281.420(4)
SB 241	Made substantial revisions to state law on construction defects; mandated that homeowners provide contractors with a right to repair	Voted in favor of bill in Senate Commerce & Labor Committee; voted in favor on Senate floor	None	NRS 281.420(4)

SB 437	Revised law governing non-licensed builders to construct swimming pools	Recused himself in Senate Commerce & Labor Committee; voted in favor on Senate Floor	Disclosed that had represented swimming pool industry as lobbyist and recused himself in Committee, but voted for final passage without disclosure	NRS 281A.420(2) NRS 281.420(4)
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