NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

NEVADA COMMISSION ON ETHICS *v.* CARRIGAN

CERTIORARI TO THE SUPREME COURT OF NEVADA

No. 10–568. Argued April 27, 2011—Decided June 13, 2011

Nevada's Ethics in Government Law requires public officials to recuse themselves from voting on, or advocating the passage or failure of, "a matter with respect to which the independence of judgment of a reasonable person in his situation would be materially affected by," *inter alia*, "[h]is commitment in a private capacity to the interests of others," Nev. Rev. Stat. §281A.420(2) (2007), which includes a "commitment to a [specified] person," *e.g.,* a member of the officer's household or the officer's relative, §281A.420(8)(a)–(d), and "[a]ny other commitment or relationship that is substantially similar" to one enumerated in paragraphs (a)–(d), §281A.420(8)(e).

Petitioner (Commission) administers and enforces Nevada's law. The Commission investigated respondent Carrigan, an elected local official who voted to approve a hotel/casino project proposed by a company that used Carrigan's long-time friend and campaign manager as a paid consultant. The Commission concluded that Carrigan had a disqualifying conflict of interest under §281A.420(8)(e)'s catchall provision, and censured him for failing to abstain from voting on the project. Carrigan sought judicial review, arguing that the Nevada law violated the First Amendment. The State District Court denied the petition, but the Nevada Supreme Court reversed, holding that voting is protected speech and that §281A.420(8)(e)'s catchall definition is unconstitutionally overbroad.

Held: The Nevada Ethics in Government Law is not unconstitutionally overbroad. Pp. 3–11.

(a) That law prohibits a legislator who has a conflict both from voting on a proposal and from advocating its passage or failure. If it was constitutional to exclude Carrigan from voting, then his exclusion from advocating during a legislative session was not unconstitutional, for it was a reasonable time, place, and manner limitation.

See *Clark* v. *Community for Creative Non-Violence*, 468 U. S. 288, 293. Pp. 3–4.

(b) "[A] 'universal and long-established' tradition of prohibiting certain conduct creates 'a strong presumption' that the prohibition is constitutional.'" *Republican Party of Minn.* v. *White*, 536 U. S. 765, 785. Here, dispositive evidence is provided by "early congressional enactments," which offer " 'contemporaneous and weighty evidence of the Constitution's meaning,' " *Printz* v. *United States*, 521 U. S. 898, 905. Within 15 years of the founding, both the House and the Senate adopted recusal rules. Federal conflict-of-interest rules applicable to judges also date back to the founding. The notion that Nevada's recusal rules violate legislators' First Amendment rights is also inconsistent with long-standing traditions in the States, most of which have some type of recusal law. Pp. 4–8.

(c) Restrictions on legislators' voting are not restrictions on legislators' protected speech. A legislator's vote is the commitment of his apportioned share of the legislature's power to the passage or defeat of a particular proposal. He casts his vote "as trustee for his constituents, not as a prerogative of personal power." *Raines* v. *Byrd*, 521 U. S. 811, 821. Moreover, voting is not a symbolic action, and the fact that it is the product of a deeply held or highly unpopular personal belief does not transform it into First Amendment speech. Even if the mere vote itself could express depth of belief (which it cannot), this Court has rejected the notion that the First Amendment confers a right to use governmental mechanics to convey a message. See, *e.g., Timmons* v. *Twin Cities Area New Party*, 520 U. S. 351. *Doe* v. *Reed*, 561 U. S. ___, distinguished. Pp. 8–10.

(d) The additional arguments raised in Carrigan's brief were not decided below or raised in his brief in opposition and are thus considered waived. P. 11.

126 Nev. 28, 236 P. 3d 616, reversed and remanded.

SCALIA, J., delivered the opinion of the Court, in which ROBERTS, C. J., and KENNEDY, THOMAS, GINSBURG, BREYER, SOTOMAYOR, and KAGAN, JJ., joined. KENNEDY, J., filed a concurring opinion. ALITO, J., filed an opinion concurring in part and concurring in the judgment.