

## MEMORANDUM IN SUPPORT OF COMPLAINT AGAINST HOUSE SPEAKER SHEKARCHI

**POTENTIAL VIOLATION:** House Speaker Khalil Joseph Shekarchi violated R.I.G.L. §§ 36-14-5(a) and 36-14-5(d) by his involvement with and support for legislation (2017-H6172A) which amended the Right Farm to Act.<sup>1</sup> This legislation would have overridden zoning of those municipalities that prohibited farms from hosting weddings for a fee by requiring them to allow farms of 15 acres or more to hold up to ten weddings per year. This legislation, if enacted, would have uniquely financially benefited Gerald Zarrella Sr, a legal client of Shekarchi, a land use attorney. At the time this legislation was being considered by the General Assembly, including when it passed the R.I. House of Representatives on June 27, 2017, Zarrella had a case on appeal before the R.I. Supreme Court over Zarrella's ability to host weddings on his 32-acre farm.

**FACTUAL BACKGROUND:** In 2017, Shekarchi was R.I. House Majority Leader, one of the most powerful positions in the General Assembly. On April 28, 2017, legislation (2017-H6172) was introduced to prevent municipalities from prohibiting farms from hosting weddings for a fee. On June 27, 2017, an amended version of this legislation (2017-H6172A) was approved by the House Municipal Government Committee and was sent to the House Floor.<sup>2</sup> This amendment to the Right Farm to Act (2017-H6172A) would have required municipalities to allow up to ten weddings each year on farms of 15 acres or more.<sup>3</sup> Later that day, on June 27, 2017, Shekarchi advocated for and then voted in favor of 2017-H6172A, which passed the R.I. House of Representatives by a vote of 46-23.<sup>4</sup> Opponents of the bill stated that "the speaker and majority leader are pushing this bill ... to help rich friends" and during the floor debate in the House, one representative stated that the legislation "benefits two people in the state of Rhode Island" while another representative discussed how the legislation is for one to three entities who are being denied the ability to engage in an activity by local officials.<sup>5</sup> The General Assembly's legislative session lasted until September 19, 2017. However, the R.I. Senate did not pass the amendment to the Right Farm to Act, 2017-H6172A.

At the time of the vote on the amendment to the Right Farm to Act, Zarrella was in the middle of a long-running legal dispute as to whether the Town of Exeter could, under the existing Right to

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<sup>1</sup> The R.I. Ethics Code has a six-year statute of limitations, 520-RICR-00-00-3.1. The complaint alleges that Shekarchi's conduct violated the Ethics Code regarding this legislation from May 31, 2017 onward, which encompassed the time when: (a) 2017-H6172 was amended to become 2017-H6172A; (b) the House debated and voted on 2017-H6172A, and (c) any potential negotiations occurred between the House leadership and Senate leadership regarding its passage by the Senate.

<sup>2</sup> Presumably, as House Majority Leader Shekarchi played a role in developing or agreeing to this amended version of 2017-H6172 before it was approved by the House Municipal Government Committee.

<sup>3</sup> 2017-H6172A, "House limits curbs on farm events," *Providence Journal* (6/27/2017).

<sup>4</sup> R.I. House Journal of 6/26/17 through 6/28/17, at 75; "House limits curbs on farm events," *Providence Journal* (6/27/2017); Video of 6/27/2017 R.I. House of Representatives floor session, 6/27/2017 <https://ritv.devosvideo.com/show?video=c387019b8a06&apg=720b5070>. As a member of House leadership, Shekarchi may have played a role in developing the amended version 2017-H6172 which was voted on by the House.

<sup>5</sup> "Growing Controversy" *Providence Journal* (6/5/2017); Video of 6/27/2017 R.I. House of Representatives floor session, 6/27/2017 <https://ritv.devosvideo.com/show?video=c387019b8a06&apg=720b5070> (see remarks by Rep. Giarrusso at 27-minute mark and Rep. Chippendale at 34-minute mark).

Farm Act, prohibit Zarrella from hosting weddings for a fee on his 32-acre of farm.<sup>6</sup> In July 2016, a Superior Court judge determined that the Town of Exeter could, under the existing Right to Farm Act, prohibit Zarrella from hosting weddings. Zarrella appealed the decision to the R.I. Supreme Court, and that appeal was pending at the time the General Assembly was considering and voted on 2017-H6172A.<sup>7</sup> In January 2018, the R.I. Supreme Court ruled in favor of the Town of Exeter and denied Zarrella's appeal.<sup>8</sup>

At the time this legislation was being considered by the General Assembly, Zarrella was a legal client of Shekarchi, a land use attorney. Shekarchi was performing legal work for businesses associated with Zarrella. For example, on June 13, 2017, Shekarchi represented Zarrella Associates on a zoning petition before the Warwick Zoning Board.<sup>9</sup> On October 10, 2017 Shekarchi represented Zarrella Development before the Warwick Zoning Board on two zoning petitions, both of which had been filed with Zoning Board on August 22, 2017.<sup>10</sup> Zarrella Development is a business of which Zarrella is an officer, and in which he presumably has a financial interest.<sup>11</sup> Zarrella Associates is a business in which Gerald Zarrella, Jr. is an officer, and Zarrella Jr. is affiliated with Zarrella Development; presumably Zarrella, himself, has a financial interest in Zarrella Associates as well.<sup>12</sup>

## RELEVANT LAWS:

### R.I. Gen. Laws § 36-14-2

(3)"Business associate" means a person joined together with another person to achieve a common financial objective.

### R.I. Gen. Laws § 36-14-5

(a) No person subject to this code of ethics shall have any interest, financial or otherwise, direct or indirect, or engage in any business, employment, transaction, or professional activity, or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his or her

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<sup>6</sup> Gerald P. Zarrella Trust, et al. v. Town of Exeter et al, C.A. WC-15-0218, (R.I. Super. July 19, 2016). The legal dispute between Zarrella and the Town of Exeter over his ability to host weddings first arose in 2011, and ended in an amended consent judgment. Rep. Robert Craven was part of Zarrella's legal team in that phase of the dispute. The dispute began anew after an amendment to the Right to Farm Act passed the R.I. General Assembly in 2014. Zarrella argued that this change in state law allowed him to host weddings for a fee on his farm. Gerald P. Zarrella Trust, et al. v. Town of Exeter et al, 176 A.3d 467, 469 (R.I. 2018). The amendment which passed the General Assembly in 2014 was 2014 R.I. Pub Laws 406 (H.B. 7234) (amending R.I. Gen. Laws § 2-23-4). The bill had been co-sponsored by Shekarchi. About the time, Zarrella filed a new law suit against the Town of Exeter in 2015, Shekarchi cosponsored legislation (2015-H6100) that would have specifically changed state law to allow farms to host weddings.

<sup>7</sup> The Gerald P. Zarrella Trust, et al. v. Town of Exeter et al, 176 A.3d 467 (R.I. 2018). "Lawsuit claims neighbors dumped chicken waste near property, sickened wedding guests," *Providence Journal*, (9/15/2016).

<sup>8</sup> The Gerald P. Zarrella Trust, et al. v. Town of Exeter et al, 176 A.3d 467 (R.I. 2018): "R.I. Supreme Court said no to weddings on Exeter farmland" *Providence Journal* (1/16/18).

<sup>9</sup> Warwick Zoning Board Minutes 6/13/2017.

<sup>10</sup> Warwick Zoning Board Minutes 10/10/2017, zoning board applications 8/22/2017.

<sup>11</sup> 2017 Annual Report of Zarrella Development with R.I. Sec. of State

<sup>12</sup> 2017 Annual Report of Zarrella Associates with R.I. Sec. of State; Letter of Zarrella Jr. (10/10/2017).

duties or employment in the public interest and of his or her responsibilities as prescribed in the laws of this state, as defined in § 36-14-7.

(d) No person subject to this code of ethics shall use in any way his or her public office or confidential information received through his or her holding any public office to obtain financial gain, other than that provided by law, for him or herself or any person within his or her family, any business associate, or any business by which the person is employed or which the person represents.

### **R.I. Gen. Laws § 36-14-7**

(a) A person subject to this code of ethics has an interest which is in substantial conflict with the proper discharge of his or her duties or employment in the public interest and of his or her responsibilities as prescribed in the laws of this state, if he or she has reason to believe or expect that he or she or any person within his or her family or any business associate, or any business by which the person is employed or which the person represents will derive a direct monetary gain or suffer a direct monetary loss, as the case may be, by reason of his or her official activity.

(b) A person subject to this code of ethics does not have an interest which is in substantial conflict with the proper discharge of his or her duties in the public interest and of his or her responsibilities as prescribed by the laws of this state, if any benefit or detriment accrues to him or her or any person within his or her family or any business associate, or any business by which the person is employed or which the person represents, as a member of a business, profession, occupation, or group, or of any significant and definable class of persons within the business, profession, occupation, or group, to no greater extent than any other similarly situated member of the business, profession, occupation, or group, or of the significant and definable class of persons within the business, profession, occupation or group.

### **LEGAL ARGUMENT:**

Sherkachi and Zarrella were business associates under the Rhode Island Ethics Code during the time General Assembly was considering 2017-H6172A and when the House voted on it on June 27, 2017. Shekarchi is a land use attorney and one of his clients is Zarrella. While the legislation was being considered, amended and voted on, Shekarchi was performing legal work for businesses associated with Zarrella. On June 13, 2017, Shekarchi represented Zarrella Associates on a zoning petition before the Warwick Zoning Board.<sup>13</sup> On October 10, 2017 Shekarchi represented Zarrella Development before the Warwick Zoning Board on two zoning petitions, both of which had been filed with the Zoning Board on August 22, 2017.<sup>14</sup> Zarrella Development is a business of which Zarrella is an officer, and in which he presumably has a financial interest.<sup>15</sup> Zarrella Associates is a business in which Gerald Zarrella, Jr. is an officer, and Zarrella Jr. is affiliated with Zarrella

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<sup>13</sup> Warwick Zoning Board Minutes 6/13/2017.

<sup>14</sup> Warwick Zoning Board Minutes 10/10/2017, zoning applications filed

<sup>15</sup> 2017 Annual Report of Zarrella Development with R.I. Sec. of State

Development; presumably Zarrella, himself, has a financial interest in Zarrella Associates as well.<sup>16</sup>

A business associate “means a person joined together with another person to achieve a common financial objective.” R.I.G.L. § 36-14-2(3). The Ethics Commission has routinely recognized that a business associate relationship exists between a lawyer and his clients.<sup>17</sup> A business associate relationship exists between an attorney and a client if there is : (1) an “ongoing matter,” (2) unpaid “bills for prior representation”, or (3) “plans for specific representation in the near future”.<sup>18</sup> Based on the activities Shekarchi performed for businesses associated with Zarrella in 2017, Shekarchi had an attorney-client relationship with Zarrella while 2017-H6172A was being considered by the General Assembly. Specifically, at the time of the House vote on June 27, 2017, Shekarchi had with Zarrella an “ongoing matter,” unpaid “bills for prior representation”, or “plans for specific representation in the near future” with Zarrella.<sup>19</sup>

Because Shekarchi and Zarrella are business associates, Shekarchi is prohibited from using his public office to financially benefit Zarrella. Shekarchi cannot develop an amendment to legislation, advocate for and vote for this legislation or negotiate with other legislators to pass legislation that financially benefits his client.<sup>20</sup> It is irrelevant that Shekarchi was not representing Zarrella in the legal matter that would have been impacted by the amendment to the Right Farm to Act, 2017-H6172A. A legislator “may not participate or vote in any matter” that would affect his client if the “lawyer is ... representing” the client “in an unrelated matter.”<sup>21</sup> It is also irrelevant as to whether Shekarchi financially benefited from voting on 2017-H6172A. The Rhode Island Ethics Codes states: “No person subject to this Code of Ethics shall use in any way his or her public office ... to obtain financial gain” for “any business associate.” R.I.G.L. § 36-14-5(d). The Commission has indicated that a public official “must recuse from any matters ... that involve or financially impact ... his current business associates, ... or any of their individual or combined business ventures.”<sup>22</sup>

When Shekarchi advocated for and voted in favor of 2017-H6172A, Shekarchi had a reason to believe or expect that Zarrella, his business associate, would derive a direct financial benefit if the legislation became law. A few months before the vote, there were news reports that Zarrella was in a long running legal dispute with the Town of Exeter over his ability to hold weddings on

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<sup>16</sup> 2017 Annual Report of Zarrella Associates with R.I. Sec. of State; Letter of Zarrella Jr. (10/10/2017).

<sup>17</sup> A.O. 1998-142, Joseph Paolino; A.O. 1995-81, Julius Krasner.

<sup>18</sup> A.O. 2003-17, Steve Gregson.

<sup>19</sup> If Shekarchi denies that an attorney-client relationship existed between himself and Zarrella during the pertinent time period in 2017, then the Ethics Commission should use its power to compel the production of documents and testimony from witnesses through the use of a subpoena in order to determine the existence of such as relationship between Shekarchi and Zarrella. 520-RICR-00-00-3.14; R.I.G.L. §36-14-12(a).

<sup>20</sup> If Shekarchi denies he played a role in developing the amended version of 2017-H6172A or negotiating with other legislators, including those in the Senate, to obtain its passage beyond what he did on the House floor on June 27, 2017, then the Ethics Commission should use its power to compel the production of documents and testimony from witnesses through the use of a subpoena in order to determine the extent of Shekarchi’s conduct in relation to 2017-H6172A pursuant to 520-RICR-00-00-3.14 and R.I.G.L. §36-14-12(a) because legislative immunity is limited under these circumstances by the R.I. Constitution Article III, Section 8 and Article VI, Section 5.

<sup>21</sup> See A.O. 1995-81, Julius Krasner.

<sup>22</sup> A.O. 2016-29, Robert B. Boyer.

his 32-acre farm.<sup>23</sup> While Zarrella’s case was on appeal to the R.I. Supreme Court, there was a well-publicized incident where a neighbor of Zarrella had dumped raw chicken excrement in close proximity to Zarrella’s property prior to Zarrella hosting a wedding.<sup>24</sup> Also, a news report in 2017 indicated that opponents of the bill claimed that the “the speaker and majority leader are pushing this bill ... to help rich friends.”<sup>25</sup> During the floor debate, one representative stated that the legislation “benefits two people in the state of Rhode Island”, and another representative discussed how the legislation is for one to three entities who are being denied the ability to engage in an activity by local officials.<sup>26</sup> Shekarchi is an experienced land use attorney who has a long-standing attorney-client relationship with Zarrella. Shekarchi would have reasonably foreseen that the adoption of the amendment to the Right Farm to Act, 2017-H6172A, would have financially benefited Zarrella who was in the middle of a well-publicized long running legal dispute over his ability to hold weddings for a fee on his farm.

Because the legislation, 2017-H6172A, uniquely financially benefited Zarrella, it does not fall within the class exemption. The class exception applies to “any benefit”, which “accrues” to “any business associate,” which is a “member ... of any significant and definable class of persons ... to no greater extent than any other similarly situated member of the ... group.” R.I.G.L § 36-14-7(b). This legislation did not impact a significant class of persons. This legislation did not treat all farm owners the same. Owners of farms with 15 acres or more were treated differently than all other farms because under the legislation, municipalities were specifically required to allow these farms to host 10 weddings every year. The Ethics “Commission has applied the 7(b) exception where the matter concerned large groups, such as all members of a community, all hunters, all social workers, or all state pension recipients.”<sup>27</sup> In fact, the Ethics Commission has ruled that “legislators may vote on matters” when it affected “a large class,” but where the legislation affected “a smaller subgroup of a class, the Commission concluded that the legislator could not participate in the matter.”<sup>28</sup> There were 1,043 farms in Rhode Island in 2017. Of these, only 287 farms were 50 acres or more. The U.S. Department of Agriculture did not breakdown how many farms were 15 acres to 49 acres, but it did report that there were 377 farms that were between 10 to 49 acres.<sup>29</sup> In all likelihood, a sizable portion of the farms in this category are between 10 to 14 acres. Therefore, farms that are 15 acres or more constitutes a subgroup of all farms and likely a minority of all farms in Rhode Island.

Furthermore, the legislation did not impact all farmers with 15 acres or more the same. This legislation would have benefited farms located in municipalities which did not allow farms to host weddings much more than farms located in municipalities which allowed farms to host weddings for a fee. It appears that many Rhode Island municipalities with large farms allow these farms to

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<sup>23</sup> “Lawsuit claims neighbors dumped chicken waste near property, sickened wedding guests,” *Providence Journal*, (9/15/2016).

<sup>24</sup> *Id.*

<sup>25</sup> “Growing Controversy” *Providence Journal* (6/5/2017).

<sup>26</sup> Video of 6/27/2017 R.I. House of Representatives floor session, 6/27/2017 <https://ritv.devosvideo.com/show?video=c387019b8a06&apg=720b5070> (see remarks by Rep. Giarrusso at 27-minute mark and Rep. Chippendale at 34-minute mark).

<sup>27</sup> A.O. 1996-66, Charles Beck.

<sup>28</sup> *Id.*

<sup>29</sup> 2017 Census of Agriculture, RI Profile, U.S. Department of Agriculture

host weddings for a fee.<sup>30</sup> It also appears that only about three municipalities had ordinances that either expressly prohibited farms from hosting weddings or which were applied in manner so as to deny a farm owner the ability to host any weddings.<sup>31</sup> Therefore, this legislation was designed to financially benefit a very small number of farm owners, like Shekarchi's client Zarrella who own a farm of 15 acres or more in a municipality, like the Town of Exeter, that prohibit weddings from being hosted on a farm for a fee. This very small subset of large farm owners cannot be treated "significant" and qualify for the class exception. The Ethics Commission has repeatedly determined that small groups do not qualify for the class exception. For example, Ethics Commission did not apply the class exception to a subgroup of 85 employees within a union.<sup>32</sup> The Ethics Commission also determined that an ordinance that affected taxes for approximately 100 businesses was not encompassed by the class exception.<sup>33</sup> Lastly, the Ethics Commission determined that an ordinance that affected property taxes for 192 households was not covered by the class exception.<sup>34</sup> A piece of legislation that benefited a small number of large farm owners in a few towns is not covered by the class exception.

In addition, the "totality of the circumstances" surrounding this legislation indicates that the class exception does not apply as well.<sup>35</sup> Zarrella was not "similarly situated" with any other farm owner in Rhode Island. This legislation passed the House while Zarrella's case was on appeal before the R.I. Supreme Court. No other owner of a farm with 15 acres or more had ongoing court litigation on the issue of whether an owner of a farm could host a wedding. If this legislation had become law, it would have essentially mooted Zarrella's appeal since it would made it clear that under the Right Farm to Act Zarrella could host weddings for a fee on his farm. Also, at the time of the legislation was being passed, there was only one other large farm owner, Carolyn Rafaelian, who was publicly lobbying for this legislation. However, Rafaelian's Sakonnet Vineyard was not in the same situation as Zarrella's farm. Although Zarrella's farm could not host weddings, her farm was "permitted to host larger wedding type functions" by the Town of Little Compton.<sup>36</sup> Therefore, Zarrella was not even "similarly situated" with Rafaelian. Simply put, if this legislation had become law, it would have benefited Zarrella to a greater extent than anyone else.

Furthermore, Shekarchi cannot rely on the A.O. 2018-31 in his defense. First, this opinion was rendered after the 2017 legislative session. Second, the facts in A.O. 2018-31 differed from the facts surrounding the amendment to the Right to Farm Act. In A.O. 2018-31 the Ethics Commission determined that a state senator could participate in the legislative process regarding a bill affecting sex abuse victims although her law firm represented one or two clients that could benefit from the legislation because the senator's "clients would not be impacted by the law's

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<sup>30</sup> Video of 6/27/2017 R.I. House of Representatives floor session, 6/27/2017 <https://ritv.devosvideo.com/show?video=c387019b8a06&apg=720b5070> (see remarks by Rep. Marshall at 42 to 46-minute mark and Rep. Newberry's response at 46-minute mark where it mentioned that the Towns of Bristol and South Kingstown allow weddings on farms). There are farms located in various Rhode Island municipalities that host weddings. See "10 Best Barn and Farm Venues in Rhode Island."

<sup>31</sup> Richmond Ordinance §18.47.030(C); West Greenwich Ordinance § 400-199; Gerald P. Zarrella Trust, et al. v. Town of Exeter et al., C.A. WC-15-0218, (R.I. Super. July 19, 2016).

<sup>32</sup> A.O. 1997-75, Melanie Marcaccio.

<sup>33</sup> A.O. 1996-66, Charles Beck.

<sup>34</sup> A.O. 1999-82, Tow of Foster.

<sup>35</sup> A.O. 2018-31, Donna M. Nesselbush.

<sup>36</sup> "Growing Controversy" *Providence Journal* (6/5/2017); Little Compton Resorts, Inc v. Zoning Board for the Town of Little Compton, C.A. No. NC-2016-0262 (R.I. Super. November 22, 2016).

passages to any greater or lesser extent than other similarly situated victims.”<sup>37</sup> The bill being discussed in A.O. 2018-31 would have allowed an unknown, potentially large number of sex abuse victims to file law suits that had been barred by a statute of limitations. In contrast, the amendment to the Right to Farm Act, 2017-H6172A, would have uniquely benefited Shekarchi’s client, Zarrella, because it could have ended a pending appeal Zarrella had before the Supreme Court in Zarrella’s favor thereby helping Zarrella avoid further litigation expense.

Previously, the Ethics Commission has determined that House Speakers who supported legislation which benefited a client violated the Ethics Code. In 1994, the Ethics Commission determined that House Speaker John Harwood had engaged in conduct that “falls within the prohibitions” of the Ethics Code when he supported various bills which benefited his clients.<sup>38</sup> In Complaint No. 93-66, Harwood had supported bills to help various clients after law suits for these clients had already been filed in court.<sup>39</sup> Harwood paid the Ethics Commission \$5,000 to resolve the complaint. In 2003, the Ethics Commission fined Gordon Fox \$10,000 because he voted for legislation which benefited a client of his law firm.<sup>40</sup> Like these prior House Speakers, the Ethics Commission should determine that Shekarchi violated the Ethics Code. He supported legislation that was designed to affect the outcome of ongoing litigation involving his client.

## CONCLUSION

Shekarchi violated R.I.G.L §§ 36-14-5(a), and 36-14-5(d) by supporting legislation which benefited his client. This is not the typical class exception case. This legislation was designed to financially benefit a very small group of large farms which were located in municipalities that prohibited farm owners from hosting weddings for a fee. Furthermore, the legislation would have benefited Shekarchi’s client to a greater extent than others since it could have ended a pending appeal before the R.I. Supreme Court appeal in favor of his client. In 2016, voters approved an amendment to the state constitution to give the Ethics Commission clear authority over the legislative activities of state legislators. The Ethics Commission should use that authority to investigate and fine Shekarchi. The Ethics Commission needs to make it clear that lawyers, when serving as a legislator, are supposed to do what is the best interest of their constituents, not their clients.

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<sup>37</sup> A.O. 2018-31, Donna M. Nesselbush.

<sup>38</sup> Complaint No. 93-66, John Harwood.

<sup>39</sup> “The leading candidate for House speaker flies tattered ethics banner” *Providence Journal* (12/27/1992).

<sup>40</sup> Complaint Nos. 2003-06, and 2003-07, Gordon Fox.