

BEFORE THE COMMISSIONER OF  
POLITICAL PRACTICES

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IN THE MATTER OF THE COMPLAINT AGAINST BILL FARRELL	) ) ) )	SUMMARY OF FACTS AND STATEMENT OF FINDINGS
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Terry Klampe of Florence, Montana, in a complaint filed with this office on October 22, 1992, alleges that former Senator Bill Farrell misrepresented his (Klampe's) position on the issue of gun control, thereby violating the provisions of the political criminal libel statute, section 13-35-234, Montana Code Annotated (MCA). That statute provides as follows:

(1) It is unlawful for any person to make or publish any false statement or charge reflecting on any candidate's character or morality or to knowingly misrepresent the voting record or position on public issues of any candidate. A person making such a statement or representation with knowledge of its falsity or with a reckless disregard as to whether it is true or not is guilty of a misdemeanor.

(2) In addition to the misdemeanor penalty of subsection (1), a successful candidate who is adjudicated guilty of violating this section may be removed from office as provided in 13-35-106 and 13-35-107.

The results of an investigation of the alleged violation are set forth in the summary of facts that follows.

SUMMARY OF FACTS

1. Terry Klampe and Bill Farrell were candidates competing for the office of state senate in Senate District 31 in the 1992 general election.

2. Farrell was an incumbent state senator running for re-election.

3. Klampe complains about newspaper and radio campaign advertisements placed by Farrell during the election campaign. The newspaper advertisement, a copy of which was provided by Klampe in support of his complaint, included a photograph of Farrell and stated the following:

DO YOU WANT T [SIC] LOSE YOUR  
RIGHT TO BEAR ARMS & HUNT?

IF NOT, VOTE...

William E. "Bill"  
FARRELL

Senate District 31

The NRA has given me an "A+" rating because I will not restrict your hunting rights or right to bear arms.

My opponent, who received a "D" rating based on his own answers to an NRA questionnaire [sic], would definitely vote for restrictive controls on firearms and/or your hunting rights.

The advertisement appeared in the October 21, 1992, edition of the Bitterroot Star.

Two radio advertisements placed by Farrell provided these campaign messages:

This is Senator Bill Farrell, representing Senate District 31. I don't need Hoyt Axton to sugar coat my record with the NRA. The National Rifle Association gave me an A+ rating. My opponent, Terry Klampe, was given a D based on his own answers to a questionnaire from NRA. A D rating means he will definitely vote to restrict your rights to bear arms. The choice is clear. I'm asking for your vote on election day. Paid for by Farrell for Senate.

The NRA says Bill Farrell's legislative record has earned him an A+ rating because he'll not vote to restrict your hunting rights or right to bear arms. His opponent, who received a D rating based on his own answers to an NRA questionnaire, would definitely vote for restrictive controls on firearms and your hunting rights. The choice is clear. Bill Farrell is asking you to vote for him on November 3rd. Paid for by Farrell for Senate.

4. Klampe complains that both the newspaper and radio advertisements misrepresented his position because they suggested that he would restrict hunting rights if elected to the senate. Klampe claims that he is not opposed to hunting and that he never has been opposed to it.

5. Farrell states that during a campaign forum in Florence, Montana, on October 7, 1992, Klampe brought up the issue of gun control and presented an unsigned position paper on the issue. After the forum, Farrell compiled the advertisements based on answers that he and Klampe had given in response to a questionnaire prepared by the National Rifle Association (NRA).

6. Klampe and Farrell both responded to the NRA questionnaire that was sent out to a broad array of candidates for public office. The NRA, based on candidates' responses to its questionnaire, "rated" or "graded" each candidate from A to F. The ratings were published in the October, 1992, issue of American Rifleman, the NRA's official journal. Farrell received an "A+" rating, which, according to the NRA, means: "An incumbent who is not only pro-gun and pro-hunting, but also has gone the extra mile in defense of the Second Amendment and hunting rights." Klampe received a "D" rating, which, according to the NRA, means: "Would

definitely vote for restrictive controls on firearms and/or hunting rights."

STATEMENT OF FINDINGS

Section 13-35-234, MCA, quoted in full on page one, is Montana's political criminal libel statute. The portion of the statute relevant to this case makes it ". . . unlawful for any person to . . . knowingly misrepresent the voting record or position on public issues of any candidate." Emphasis added. A violation can be established through proof of alternative mental states. The statute requires proof that a person misrepresented a candidate's position on public issues either "knowingly" or "with reckless disregard" as to the truth of the representation. Matter of the Complaint Against Jack Rea, Summary of Facts and Statement of Findings, May 10, 1991, at 13-14. Thus, to establish a violation it would be necessary to prove either that the person who made the representation was "aware of a high probability" that the representation was false or that the person in fact "entertained serious doubts as to the truth" of the representation. Id. at 13-16.

Farrell, in fashioning the advertisements that are the subject of this complaint, appears to have relied exclusively on the conclusions that the NRA had drawn from the results of its candidate questionnaire on the issue of gun control. The NRA's conclusion, that Klampe "would definitely vote for restrictive controls on firearms and/or hunting rights," is its prediction of

Klampe's future voting behavior. It is, of course, sheer speculation to attempt, as the NRA did, to predict how a legislator will vote on a particular issue. Farrell displayed poor judgment by not making it clear in the wording of his advertisements that this was the NRA's prediction of Klampe's future voting tendencies, not necessarily Farrell's prediction, and in not questioning the accuracy of the NRA's prediction. The investigation, however, uncovered no evidence to support a finding that Farrell was "aware of a high probability" that the representation in the advertisements was false or that he had "entertained serious doubts as to the truth" of the representation. Farrell, in fact, appears simply to have accepted as true the NRA's prediction and incorporated it into his campaign advertisements. Under these circumstances, evidence is insufficient to conclude that the representation was made with the mental state required by the statute.

Based on the facts and these findings, I conclude that no further action is warranted against Bill Farrell.

DATED this 29th day of December, 1992.

  
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DOLORES COLBURG  
Commissioner of Political Practices