

2. The ads listed twelve various issues and the corresponding responses of both Complainant and his opponent. Various options were listed for each issue, either “yes,” “no,” “no response,” or “undecided.”

3. The heading of the 1996 NPAT includes the following note: “The 1996 Montana National Political Awareness Test (NPAT) asks candidates which items they will support if elected. It does not ask them to indicate which items they will oppose. If a candidate does not select a response to any part or all of any question, it does not necessarily indicate that the candidate is opposed to that particular item.”

4. The ads also included the Internet access address so citizens could view the NPAT responses on an individual basis.

5. In the ad Respondents shortened the questions on the NPAT survey in the interest of shortening the space required. For example, one NPAT question was “Decriminalize the possession and private use of certain illegal drugs such as marijuana” and the Respondents shortened statement was “Legalize drugs like marijuana.” Respondents maintain that their effort was not to mislead anyone, but rather to shorten the information into a format best suited for the newspaper ads. Complainant states that there are large differences between the term “decriminalize” and “legalize” and that the change in language results in misrepresentation of his views on the matter.

6. All of Complainant’s responses to the twelve issues reported in the ads were accurately reported verbatim from the NPAT survey. Respondents chose twelve issues out of numerous issues on the survey. The issues which Respondents chose were issues that they felt were important to voters.

7. Complainant complained to the NPAT of the ads placed by Respondents. Project Vote Smart, the sponsors of the NPAT survey, issued a press advisory on October 30, 1996. The press advisory stated in part: "It is Project Vote Smart policy to condemn any use of Project Vote Smart information resources to misinform the voters for personal gain."

STATEMENT OF FINDINGS

Section 13-35-234, MCA, provides:

Political criminal libel -- misrepresenting voting records. (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.

Assuming that the requisite mental state exists, the political criminal libel statute can be violated in any of four ways. The statute can be violated by: a false statement or charge reflecting on a candidate's character; a false statement or charge reflecting on a candidate's morality; a misrepresentation of a candidate's voting record; or a misrepresentation of a candidate's position on a public issue. Complainant alleges that Respondents misrepresented his position on a public issue when they published an ad in the area newspapers summarizing Complainant's response to the NPAT survey.

The issue in this case is whether or not changing the terminology from the NPAT phrase of "decriminalize possession and use of certain illegal drugs such as marijuana" to the phrase "legalize drugs like marijuana" constitutes "misrepresentation" of Complainant's position on a public issue.

Black's Law Dictionary (Abridged Sixth Edition) defines "decriminalization" as: "An official act generally accomplished by legislation, in which an act or omission, formerly criminal, is made non-criminal and without punitive sanctions." The term "legalize" is defined as: "To make legal or lawful. To confirm or validate what was before void or unlawful. To add the sanction and authority of law to that which before was without or against law." In comparing these phrases it is clear that the term "decriminalize" is somewhat more narrow than "legalize," however, the general meaning is nearly synonymous.

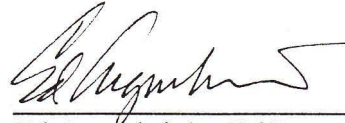
Complainant has expressed his opinion concerning the public issue of marijuana use as supporting the private possession and use of the drug in instances of medicinal need, such as relieving the side effects of cancer treatment or glaucoma. Complainant stated that he does not support the general legalization of the drug to allow growth, distribution and dealing on a legal basis. However, nothing in the NPAT survey indicated that Complainant was supporting medicinal use rather than recreational use. The survey simply indicated support of possession and private use. One could reasonably make the assumption that if decriminalized, a person could enjoy the effects of marijuana legally for either medicinal or recreational use. While it is true that Respondents altered the exact wording of the issue from the NPAT survey, I specifically find no appreciable difference in the change of terminology. Presumably the intent to alter the original phrase was for the purpose of shortening the ad for the most suitable newspaper format.

I find that the alteration of the phrases from their original form to the form published in the ads does not rise to the level of misrepresentation of the Complainant's position on the public issues reported in the ads.

CONCLUSION

Based on the preceding facts and evidence, there is insufficient evidence to conclude that Larry O'Toole or Ed Smith violated section 13-35-234, MCA.

DATED this 1st day of November, 1996.



Ed Argenbright, Ed.D.
Commissioner