

BEFORE THE COMMISSIONER OF  
POLITICAL PRACTICES

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In the Matter of the Complaint     )  
Against Christopher Harris         )  
                                                  )  
**SUMMARY OF FACTS  
AND  
STATEMENT OF FINDINGS**

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Mark DeGroot filed a complaint alleging that Christopher Harris violated Mont. Code Ann. § 13-37-131 by making false statements regarding matters that were relevant to the issues in a campaign.

**SUMMARY OF FACTS**

1. Mark DeGroot, the complainant in this matter, was the Constitution Party candidate for House District 66 in the 2004 election. His opponent in the general election was Christopher Harris. Rep. Harris ultimately won the election, and currently represents House District 66 in the Montana Legislature.

2. Mark DeGroot passed away in February, 2005. His son, Bryce DeGroot, who was Mark DeGroot's campaign manager, requested that the office of the Commissioner (Commissioner) proceed with the investigation of the complaint. The Commissioner determined that it was possible to complete the investigation despite the death of Mr. DeGroot, and therefore decided to proceed with the investigation.

3. Mark DeGroot alleged that Rep. Harris published campaign materials containing "false, unverified, erroneous, and misleading information."

4. During the campaign Rep. Harris authorized the publication of a campaign flyer that included the following text (emphasis in original):

DON'T LET DEGROOT TAKE AWAY YOUR RIGHT TO VOTE!

As a Montana voter, you have the right to hire and fire Montana's U.S. Senators.

The 17<sup>th</sup> Amendment to the U.S. Constitution provides for the direct election of U.S. Senators.

However, Mark DeGroot and the "Constitution" Party want to repeal the 17<sup>th</sup> Amendment and take away your right to vote for U.S. Senators.<sup>1</sup>

Representative Chris Harris believes your right to vote for U.S. Senators is an essential part of American Democracy.

Taking away your right to vote – ***it's not only extreme, it's wrong.***

<sup>1</sup> See the Montana Constitution Party's website <http://home.centurytel.net/amfam/COPOMT/> Mark DeGroot is the Constitution Party candidate for House District 66

5. Mark DeGroot contended that he had never publicly indicated any position on the 17<sup>th</sup> Amendment; and therefore the statement regarding the 17<sup>th</sup> Amendment contained in the flyer was false.

6. Rep. Harris stated he obtained the information for his campaign flyer from the national Constitution Party website, the Montana Constitution Party website, and Mark DeGroot's own website.

7. Both the national Constitution Party website and the Constitution Party of Montana website contain the following statements as part of their respective platforms:

The U.S. Constitution, as originally framed in Article I, Section 3, provided for U.S. Senators to be elected by state legislators. This provided the states direct representation in the legislative branch so as to deter the usurpation of powers that are Constitutionally reserved to the states or to the people.

The Seventeenth Amendment (providing for direct, popular election of U.S. Senators) took away from state governments their Constitutional role of indirect participation in the federal legislative process.

If we are to see a return to the states those powers, programs, and sources of revenue that the federal government has unconstitutionally taken away, then it is also vital that we repeal the Seventeenth Amendment and return to state legislatures the function of electing the U.S. Senate. In so doing, this would return the U.S. Senate to being a body that represents the legislatures of the several states on the federal level and, thus, a tremendously vital part of the designed checks and balances of power that our Constitution originally provided.

8. The Constitution Party of Montana website also contains the following statements:

We believe that the 17<sup>th</sup> Amendment should be repealed and the selection of our United States Senators should be restored to the respective States Legislatures [sic] as established in our Constitution. We call for the respective State Legislatures to demand their Senator appointees to be answerable to that legislative body as elected by the citizens of the State.

9. Although Mr. DeGroot's campaign website did not directly address the Constitution Party's position regarding the 17<sup>th</sup> Amendment, it did include the following statement:

The Constitution Party is the leader in reestablishing the proper role of government. That is why I have aligned with the Constitution Party – it holds to the founding principles and philosophy of our country *more* than the other parties. We need to get back to those roots. (Emphasis in original).

10. During the campaign Mr. DeGroot asked Rep. Harris to stop publishing the ads. Rep. Harris sent an email to Mr. DeGroot stating that he would immediately stop all campaign advertising regarding Mr. DeGroot's position on the 17<sup>th</sup> Amendment if Mr. DeGroot would 1) publicly announce his support for the right of Montana voters to elect their U.S. Senators and 2) publicly state any other disagreements he (DeGroot) had with the platform and principles of the Montana Constitution Party. In response, Mr. DeGroot emailed the following: "As has been stated in the public throng, you've spread falsehoods, and YOU are WRONG." (Emphasis in original).

11. Mark DeGroot submitted a letter to the editor that was published in the Bozeman Daily Chronicle on October 20, 2004. In the letter Mr. DeGroot reiterated his contention that he had never stated a position on the 17<sup>th</sup> Amendment.

12. Bryce DeGroot stated that, while he did not believe Mark DeGroot was a member of the Constitution Party of Montana, Mark DeGroot was a member of the national Constitution Party. In response to an inquiry for this investigation, Kurtis Oliverson, Treasurer of the Constitution Party of Montana, stated that he had checked with the Chairman and the Vice-Chairman of the state party. Their conclusion was that Mark DeGroot was a member of the Constitution Party of Montana when he ran for the Montana Legislature in 2004. According to an email from Mr. Oliverson, this conclusion was based partly on the facts that Mark DeGroot had clearly communicated his acceptance of the Constitution Party of Montana's platform, and had obtained permission from the party to run for the Montana Legislature as a Constitution Party candidate.

13. According to the Bylaws of the Constitution Party of Montana, a member of the party is required sign a statement affirming that he or she has read the Constitution, Bylaws and Platform of the party, and that he or she is in agreement with the principles contained therein. In his email Kurtis Oliverson stated that pledge cards representing membership were first introduced at the party's state meeting in December, 2004. Mark DeGroot was not able to attend that meeting, and therefore was not able to sign a pledge card. Mr. Oliverson's email states that Mark DeGroot was nevertheless considered a member of the party despite not having signed a pledge card.

14. This investigation did not disclose any public statements by Mark DeGroot wherein he expressed any disagreement with the Constitution Party of Montana's position regarding repeal of the 17<sup>th</sup> Amendment. At most, as set forth in Facts 5 and 11, he indicated he did not have a position on the matter.

## STATEMENT OF FINDINGS

Rep. Harris is accused of violating Mont. Code Ann. § 13-37-131(1), which provides:

**Misrepresentation of voting record -- political civil libel.** (1) It is unlawful for a person to misrepresent a candidate's public voting record or any other matter that is relevant to the issues of the campaign with knowledge that the assertion is false or with a reckless disregard of whether or not the assertion is false.

To establish a violation of this statute, it would be necessary to prove that Rep. Harris misrepresented a "matter that is relevant to the issues of the campaign," and either did so "with knowledge that the assertion is false" or "with a reckless disregard of whether or not the assertion is false."

Recently, in the Matter of the Complaint Against Bradley Molnar and John E. Olsen (April 4, 2006), this office discussed in some detail the standard of proof necessary to establish a violation of Mont. Code Ann. § 13-37-131. The original source of the standard is the decision of the United States Supreme Court in New York Times v. Sullivan, 376 U.S. 254 (1964). To prove that a person acted with "reckless disregard" in violation of the statute, there must be *clear and convincing evidence* that the person who made the representation *subjectively entertained serious doubts* as to the truth of the representation. See Gertz v. Robert Welch, Inc., 418 U.S. 323, 334 n. 6 (1974); and St. Amant v. Thompson, 390 U.S. 727, 732 (1968).

The facts established in this case do not support such a finding. Rep. Harris reviewed the websites of the national Constitution Party and the state Constitution Party of Montana, both of which clearly advocate the repeal of the 17<sup>th</sup> Amendment to the United States Constitution. While Mr. DeGroot's website does not contain a similar statement regarding the 17<sup>th</sup> Amendment, it does include Mr. DeGroot's statement unambiguously expressing his support for the principles espoused by the Constitution

Party. Moreover, a representative of the Constitution Party of Montana confirmed that Mr. DeGroot was a member of the party when he ran for the Montana Legislature, that Mr. DeGroot had expressed his acceptance of the party's platform, and that Mr. DeGroot had obtained the permission of the state party leadership to run for office as a Constitution Party candidate. At no time did Mr. DeGroot publicly express his disagreement with any positions expressed in the party platform, including support for repeal of the 17<sup>th</sup> Amendment.

Rep. Harris made the reasonable conclusion that since Mark DeGroot was running as a Constitution Party candidate, he supported the all principles set forth in the party's platform, including the concept that the 17<sup>th</sup> Amendment should be repealed. Under the circumstances, and given the high standard of proof established by the United States Supreme Court in New York Times and subsequent decisions, there is insufficient evidence in this case to prove a violation of Montana Code Annotated § 13-37-131(1).

### **CONCLUSION**

Based on the preceding Summary of Facts and Statement of Findings there is insufficient evidence to conclude that Rep. Christopher Harris violated Montana campaign finance and practices laws.

Dated this 14<sup>th</sup> day of April, 2006.

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Gordon Higgins  
Commissioner