

November 20, 2009

Cathy L. Neumann
Complaint Coordinator
Office of Licensing and Registration
35 State House Station
Augusta, Maine 04333-0035

Re: *Complaint #2009-SOC-5932*
Response to Complaint filed against Donald B. Mendell, Jr.

Dear Ms. Neumann:

I write this response to the complaint filed against me by Ann Sullivan dated October 19, 2009. I urge the Board to dismiss this baseless complaint that is nothing more than an attack by someone who disagrees with the viewpoint I advocated publicly in a statewide political campaign.

As you well know, there has been a spirited political campaign for the past number of months in Maine over the referendum to repeal the Legislature's actions redefining marriage to include same-sex couples. In the course of the political campaign, I participated in a television commercial in which I urged people to vote Yes on 1. I discussed the effect on public school curricula if the Legislature's redefinition of marriage were allowed by the voters to go into effect. I did this TV ad as a response to a TV ad done by a fellow teacher at my school who urged a "no" vote on 1. I participated in the TV ad in my personal capacity; not as an employee or representative of Nokomis Regional High School.

The frivolous complaint filed by Ms. Sullivan is nothing more than an attack on me for exercising my First Amendment rights in a political campaign and expressing ideas with which she disagrees. She is asking this Board to act as a political censor and wield the ethical principles of the social work profession as a weapon to punish people holding viewpoints on public issues with which she disagrees. This Board should soundly reject her invitation to violate the First Amendment.

Ms. Sullivan's complaint points to no incident where I have acted in my professional capacity as a social worker. Indeed, Ms. Sullivan cannot point to any such incidents because she does not know me. She is neither a client nor colleague of mine. Instead Ms. Sullivan speculates, based on hearsay and unverified conjecture, that publicly stating my views that children are best raised by their own father and mother might somehow limit my ability to help those I serve at the public school. This is preposterous and baseless, and my long career as a social worker is strong evidence showing my commitment to give effective help to those in need.

In essence, the complaint states that I violated the ethical standards by supporting the Yes on 1 campaign in our state. The First Amendment protects the right of all people to participate

and express their opinions in a political debate. The ethical standards cannot limit one's First Amendment rights to speak in a campaign. Ms. Sullivan is asking this Board to state that in order to become a licensed social worker in Maine, one must surrender his or her First Amendment rights to speak in favor of traditional marriage, or any other topic that could purportedly violated the ethical principles. (Of course, Ms. Sullivan believes that speaking in favor of redefining marriage in Maine is totally acceptable and would not violate ethical principles, showing how she is urging this Board to skew the ethical standards in favor of one side of this political debate).

The Supreme Court wrote over forty years ago that

[w]hatever differences may exist about interpretations of the First Amendment, there is practically universal agreement that a major purpose of that Amendment was to protect the free discussion of governmental affairs. This of course includes discussions of candidates, structures and forms of government, the manner in which government is operated or should be operated, and all such matters relating to political processes.

Mills v. Alabama, 384 U.S. 214, 218-219 (1966). The Supreme Court has also stated that "[w]e have recognized that the First Amendment reflects a 'profound national commitment' to the principle that 'debate on public issues should be uninhibited, robust, and wide-open,' *New York Times Co. v. Sullivan*, 376 U. S. 254, 270 (1964), and have consistently commented on the central importance of protecting speech on public issues." *Boos v. Barry*, 485 U.S. 312, 318 (1988) (some citations omitted). In other words, the First Amendment fully protects my right to speak publicly about my personal views on our state's political issues, no matter how disagreeable they are to Ms. Sullivan.

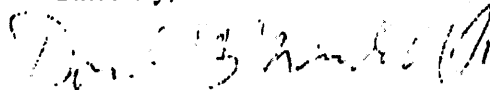
The complaint claims that I have violated Section 2.01 of the National Association of Social Workers (NASW) Code of Ethics, codified in Maine by 02-416-16 Me. Code R. § 3(G), which states "(a) Social workers should treat colleagues with respect and should represent accurately and fairly the qualifications, views, and obligations of colleagues (b) Social workers should avoid unwarranted negative criticism of colleagues in communications with clients or with other professionals." My participation in the TV ad is merely my personal response to the assertion of a fellow teacher about an assertion she made when urging people to vote no on 1 in a TV ad. Ms. Sullivan's complaint fails to demonstrate any factual basis that I disrespected fellow professionals or misstated their qualifications, views and obligations. Ms. Sullivan's complaint also fails to show that my participation in the TV ad communicated any criticism of colleagues to clients or other professionals. I communicated my personal beliefs in the ad, which I have a constitutionally protected right to do. Section 2.01 does not forbid a social worker from disagreeing publicly with a colleague on an important issue that voters are deciding.

The complaint also claims that I have violated NASW Sections 4.2 and 6.04 which state that social workers should act to prevent and eliminate discrimination. The complaint assumes that traditional marriage laws are inherently discriminatory, a much debated and controversial conclusion that has been rejected by many state and federal courts around the nation, as well as the voters in 31 states. The voters of Maine rejected the notion that defining marriage as one

man and one woman is discriminatory. I cannot be in violation of the ethical standards for social workers when I advocate in favor of the very public policy the State of Maine has on marriage, and has had since its first days as a state in the Union. This board should have no part of this politically-motivated effort to misuse the Code of Ethics to demonize a fellow social worker holding a different view.

In my many years as a social worker, I have had no complaints filed against me. The fact that this complaint has been filed against me because of my advocacy for the Yes on 1 campaign in a TV commercial demonstrates that Ms. Sullivan did not file a genuine complaint about an alleged ethical violation. This Board should summarily dismiss the complaint as frivolous and baseless, and have no part of Ms. Sullivan's invitation to violate the First Amendment.

Sincerely,



Donald B. Mendell, Jr.
License #LM2897