

## Legal stink poops out with jurors

By Diane Carman Denver Post Staff Columnist May 26, 2007

The jury has spoken. Poop is speech. Freedom of poop is protected. Power to the pooper.

Step carefully now.

Kathleen Ensz grinned as she left Weld County District Court last week after she was acquitted of depositing a noxious substance with the intention of interfering with the use and enjoyment of a building, a charge that hasn't seen a lot of action in Colorado legal history.

"What I have said 6 zillion times is that I had no idea that what I did could ever be conjured up to be a crime," said the 64-year-old retired French professor.

Apparently the jury agreed.

What Ensz did on May 31, 2006, was place a 3-inch-long specimen of fresh feces produced by her German shepherd inside a glossy campaign brochure with U.S. Rep. Marilyn Musgrave's picture on it and drop it outside the building in which the congresswoman's Greeley office was located.

She never anticipated the poop- storm that would follow.

An office worker noticed the package and was going to dispose of it in a Dumpster but decided, instead, to tell Musgrave's aides that it had arrived, apparently concerned about censoring her mail.

Musgrave's staff called the police, who decided the package was suspicious - maybe even explosive - and launched an investigation.

Ensz had not bothered to remove her address from the brochure so her trail was easy to follow. No poop-sniffing dogs were required.

When the cops arrived at her home, she admitted delivering the stinker. "It was, very simply, my personal protest of Marilyn Musgrave's representation," said Ensz, a Democrat. "It was a political statement."

District Attorney Ken Buck, a Republican and a dogged Musgrave supporter, didn't see it that way. "I'm glad we brought the charge," he told reporters after the jury overruled his judgment.

Ensz said from the beginning she was stunned by the charge, which she considered frivolous and politically motivated.

>Her attorney, Shannon Lyons, said she could have avoided the trial, but she wouldn't back down.

"They offered her a plea bargain with a deferred sentence, but she refused to plead guilty. She believed she hadn't committed a crime," he said.

It was not a crime, Ensz insisted, "it was a protest.

"People used the power of the government and concocted stories, aiming for a citizen who's making a very simple personal protest. It's not right."

Ensz was ecstatic when the jury ruling was announced.

She was hardly alone.

Denver First Amendment attorney Daniel Recht said that if the verdict had gone the other way, it would have signaled a further erosion of free-speech rights across the country.

"I'm not aware of any other animal-excrement cases," he said. "There have been many '(expletive deleted) you' cases, and the Supreme Court has said that while it might not be very dignified, the First Amendment doesn't just protect dignified speech, it protects all speech."

"It's one of the great enduring beauties of the criminal-justice system, that juries have the ultimate say."

Ensz said she doesn't yet know how much her protest cost. "I won't know till I get all the legal bills," she said, "but in the great scheme of things, it was not a lot."

While Ensz has no plans to expand her poop-o-gram campaign, she is proud she defended the rights of all those who might engage in cheap, downright odoriferous political statements.

With political campaigns awash in money, she said, one voice is easily ignored. "I never really got involved until 2000, but I've been so upset with what's been going on since then, I decided I had to become politically active."

For better or worse, Ensz used what resources she had at hand to make her point.

Now, thanks to her, we have the legal precedent that poop is constitutionally protected speech.

Let's hope the tactic doesn't catch on.

Then again, the American political culture can hardly get any worse.

After all, if she'd had the cash, Ensz might have delivered a "more dignified" protest like the congresswoman suggested last week.

She could have gone out and made an attack ad.

If you are in need of an experienced business litigator or criminal defense attorney, please call Recht & Kornfeld today.

Call Us At  
303.573.1900  
Fax: 303.446.9400  
1600 Stout Street, Suite 1000  
Denver, CO 80202