

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

MICHAEL T. ROSSIDES
10401 McDowell Mountain Ranch Road
#2166
Scottsdale, AZ 85255

Plaintiff,

v.

JOHN ASHCROFT, in his official
capacity as Attorney General
of the United States, U.S.
Department of Justice, Room
B-103, 950 Pennsylvania
Avenue, N.W., Washington,
D.C. 20530-0001

Defendant.

CIVIL ACTION NO.
#CV'03 2527 PHX JAT

COMPLAINT

This is an action for declaratory relief pursuant to 28 U.S.C. § 2201. Plaintiff is an individual who seeks to use bets as a form of speech, seeks to license his patents concerning the use of bets as a form of speech, and seeks to provide a forum to others to use bets as a form of speech. A bet is a form of speech because it communicates an opinion. Plaintiff seeks declaratory judgment that bets used as speech are protected by the First Amendment and, therefore, cannot be prohibited by statute. Plaintiff seeks preliminary and permanent injunctive relief against the criminal enforcement of the Federal Interstate Wire Wager Act (Wire Act), 18 U.S.C. § 1084, with respect to bets used as speech.

PARTIES

1. Plaintiff Michael T. Rossides resides at 11167 E. Mirasol Circle, Scottsdale, AZ 85255. Rossides is an individual who has authored patents concerning the use of bets as speech. Rossides is doing business as (DBA) Bet Press, www.betpress.com, a planned online forum for posting and transacting bet offers for the purpose of speech.
2. Defendant John Ashcroft is the Attorney General of the United States. Defendant Ashcroft is responsible for the enforcement of the criminal laws of the United States, including the Wire Act.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1361 and 2201, because this declaratory judgment action challenges the constitutionality of a federal statute. There is personal jurisdiction over defendant Ashcroft. Venue is properly laid in this District under 28 U.S.C. § 1391(b) and 1391(e).

STANDING

4. Plaintiff has standing to bring and maintain this action because his planned activities have been, and will continue to be, directly affected by the Wire Act.
5. A probability bet (P-bet) is a form of speech for expressing opinions.
6. Rossides would like to offer a variety of P-bets for the purpose communicating his opinions, but he will not do so for fear of prosecution under the Wire Act.

7. Rossides would like to license his U.S. patents (numbers 5,575,474 and 6,443,841), entitled *Communications System Using Bets*, but is unable to do so because potential licensees and users fear prosecution under the Wire Act.

8. Rossides would like to engage in the business of providing an electronic forum in which people can express their views through bets. To this end, Rossides has formed Bet Press (www.betpress.com) but will not enable people to offer bets through Bet Press for fear of prosecution under the Wire Act.

9. As discussed further below, the effects of the Wire Act are to deny Rossides his freedom of speech in creating, posting bets and engaging in bets; to deny Rossides use of his patents; and to deny Rossides the opportunity to operate Bet Press, a forum enabling people to engage in speech through bets. Thus, the Wire Act has caused the plaintiff concrete and particularized injuries to his freedom of expression. The effect of this law is an actual, present injury, and the threat of enforcement against the plaintiff who violates the law causes an imminent injury. Therefore, plaintiff has suffered an injury in fact, and this injury has been caused by his fear of prosecution by Defendant Ashcroft for violations of the Wire Act.

10. These injuries can be redressed by a declaratory judgment that The Wire Act is unconstitutional with respect to bets used as speech, and by preliminary and permanent injunctive relief against the criminal enforcement of the Wire Act with respect to bets used as speech.

BACKGROUND

A. The First Amendment

11. The First Amendment to the United States Constitution states:

Congress shall make no law...abridging the freedom of speech, or of the press...

B. Definition of Probability Bets

12. This complaint concerns Rossides's ability to use probability bets (P-bets) and Bet Press's ability to enable P-bets.

13. A P-bet is a *composite statement* in which a person called a bettor:

(a) Makes a statement that can be found true or false.

(b) States the odds – a ratio that specifies the number of dollars a bettor picking TRUE has to risk for each dollar that an opposing bettor picking FALSE has to risk.
The odds can be considered an estimate of the probability that the statement is true.

(c) Makes a choice of TRUE or FALSE.

(d) Offers to risk an amount of money – a stake – to be given to an opposing bettor if the opposing bettor's choice of TRUE or FALSE turns out to be correct. The opposing bettor chooses the opposing side from the first bettor, and risks an amount

of money, specified by the odds, to be given to the first bettor if the first bettor's choice turns out to be correct.

Thus, in addition to being a statement, a form of opinion, a P-bet that has not been accepted is an *offer*. And, a P-bet that is accepted is an *agreement*.

C. P-Bets Are a Form of Speech

14. A plain probability statement is speech, for it is an opinion, as in, "I think the probability is 80% that the Federal deficit in 2004 will be greater than \$200 billion."

15. If the speaker of a probability statement adds financial risk to form a bet offer, the statement remains an opinion, as in, "I think the probability is 80% that the Federal deficit in 2004 will be greater than \$200 billion, *and* I'm willing to risk \$1,000 at 1-4 odds (I will risk \$4 for every \$1 that an opposing bettor risks) that it will be greater." The addition of financial risk cannot magically turn a probability statement into "non-speech," into meaningless static, that is. Thus, by simple logic a bet offer is speech.

16. Many commentators have pointed out that bets of all kinds can be powerful statements. This idea is expressed in the saying, "Put your money where your mouth is."

17. An ordinary opinion usually contains little risk of penalty, therefore people freely state misleading opinions, especially misleadingly optimistic opinions, as when a company touts a product, a CEO touts his company's prospects, or a politician touts a "pork barrel" project.

18. By contrast, a P-bet explicitly contains a financial incentive that penalizes dishonestly optimistic probability statements (e.g., one would lose on average in a bet by stating that a doomed company has a 50% chance of making long-term profits). Therefore, bets are often more credible than ordinary statements.

19. Nobel Prizes (<http://www.nobel.se/economics/laureates/2001/press.html>) have been awarded in Economics for “signaling theory” which explores the idea that putting your money where your mouth is creates a “credible signal.”

20. Dr. Robin Hanson has pointed out that “policy markets” where people wager on political questions are forums for speech <http://hanson.gmu.edu/iffreespeech.html>.

21. Because P-bets can be credible signals, they can be speech.

22. P-bets satisfy any reasonable tests/definitions of speech, such as:

(a) Test 1: Speech is something intentionally created that communicates a message.

For example, the statement, “It will rain tomorrow,” is speech.

(b) Test 2: Speech is something intentionally created that communicates a message that has a greater than zero probability of influencing belief. For example, the statement, “It will rain tomorrow,” may influence belief.

(c) Test 3: Speech is something intentionally created that communicates a message that has a greater than zero probability of influencing behavior. For example, the statement, “It will rain tomorrow,” may influence behavior.

(d) P-bets satisfy these three tests, as can be seen in an example:

“It will rain tomorrow”

I will risk \$25,000

At 1-9 odds (90% chance)

On TRUE.

23. An empirical test of P-bets as speech is planned. Bet Press plans to hire an advertising firm to do a split run advertising test in which two ads are to be run, both identical except that one ad contains a P-bet.

24. If the ad with the P-bet sells more, this result will be evidence that P-bets can influence *belief* and *behavior* more powerfully than ordinary speech – definitive evidence that P-bets themselves are speech.

25. This possible split-run result is related to the fact that a product with a money back guarantee sells better, on average, than one without. Peter Drucker in *Managing for Results* cites the money back guarantee as an important innovation of the 19th Century:

[Innovation] is the missing link between having a number of disconnected elements, each marginally effective, and an integrated system of great powers...Sears built its business on the innovation of a “money-back-and-no-questions-asked” guarantee to the farm customers. All the ingredients of a successful mail-order business existed. What was lacking was the simple element of confidence in the customer.

26. A related tool is *earnest* money, which a speaker uses to convert a promise, for example, “I will buy your house in 30 days,” into a kind of bet, for example, “I will buy your house in 30 days or else pay you \$1,000.” Earnest money usually creates a far more credible signal than simply giving ones word; otherwise, earnest money would not be employed.

D. Specialized P-Bets As Forms of Speech

27. In addition to enabling general P-bets, Bet Press has introduced three specialized P-bets for attacking three outstanding problems of public communication:

(a) *Cargo Cult Bets*: Their purpose is to solve the problem of how to debunk misleading statements and validate fair statements.

(b) *Product and Service Bets*: Their purpose is to solve the problem of how to communicate that one product or service is better than another.

(c) *Financial Disclosure Bets*: Their purpose is to solve the problem of eliciting honest assessments about public companies, mutual funds, and other investment vehicles from managers who work for the companies, funds and vehicles.

Given their purposes, these specialized P-bets are clearly forms of speech.

E. Plaintiff's Actions Pursuing the Conception of P-Bets as Speech

28. Rossides filed for and was granted U.S. patents 5,575,474 and 6,443,841 for a "Communications System Using Bets."

29. Rossides has applied for additional patents covering communications methods and systems using bets.

30. Rossides formed Bet Press for the purpose of enabling people to use bets as a new, more credible form of speech.

31. Bet Press now seeks to enable anyone to post and transact bets publicly for the purpose of expressing opinions.

32. Rossides now seeks to post bets in Bet Press for the purpose of expressing his own opinions on a variety of subjects.

(a) Using a Cargo Cult Bet, Rossides would like to show the public that an attack in 2000 on John McCain by the Campaign for George Bush was misleading.

(b) Using a Cargo Cult Bet, Rossides would like to communicate to the public that a health claim for a diet supplement is misleading.

(c) Using a Product/Service Bet, Rossides would like to communicate to the public that one sunscreen is better than other sunscreens sold at stores.

(d) Using a Financial Disclosure Bet, Rossides would like to reveal Calpine Corporation's chief executive's honest estimate of the probability that Calpine will default on a loan within 3 years.

(e) Using a bet, Rossides would like to reveal President Bush's estimate of the probability that a specified number of jobs will be added to the U.S. economy by December 31, 2004 as a result of the tax cut he promoted and signed into law.

(f) Using a bet, Rossides would like to reveal Professor Theodore Postol's estimate of the probability that he is correct about a fatal flaw in the U.S. missile defense system.

(g) Using a bet, Rossides would like to reveal what the U.S. Attorney General believes will happen, and the odds of those things happening, as a result of California Proposition 36 decriminalizing possession of certain drugs.

F. The Wire Act

33. The "Wire Wager Act" codified at 18 U.S.C. § 1084 (1994) is a statute that prohibits the transmission of "betting" and "wagering" information, but does not define the terms:

"Sec. 1084. - Transmission of wagering information; penalties

(a) Whoever being engaged in the business of betting or wagering knowingly uses a wire communication facility for the transmission in interstate or foreign commerce of bets or wagers or information assisting in the placing of bets or wagers on any sporting event or contest, or for the transmission of a wire communication which

entitles the recipient to receive money or credit as a result of bets or wagers, or for information assisting in the placing of bets or wagers, shall be fined under this title or imprisoned not more than two years, or both.

34. “The purpose of the statute is said to be:

(1) to assist the various States and the District of Columbia in the enforcement of their laws pertaining to gambling, bookmaking, and like offenses and to aid in the suppression of organized gambling activities by prohibiting the use of wire communication facilities which are or will be used for the transmission of bets or wagers and gambling information in interstate and foreign commerce.”

Gambling Against Enforcement, Internet Sports Books and The Wire Wager Act
Joseph V. DeMarco
Assistant United States Attorney Southern District of New York
United States Attorneys’ USA Bulletin
March 2001 Vol. 49, No.2, http://www.cybercrime.gov/usamarch2001_5.htm

35. The creators of the Wire Act, first enacted in 1961, did not address the question: *Should the use of P-bets as speech be allowed?* These legislators could not have taken up this question because the concept that P-bets can be used as speech was not appreciated at the time of the passage of the Act. Hence, the Wire Act was never intended to prevent the interstate use of P-bets as speech.

G. Effect Of The Wire Act On Plaintiff

36. Rossides is denied the licensing use of patents entitled *Communications System Using Bets* because of the fear of licensees that they will be prosecuted under the Wire Act.

Rossides has contacted attorneys who agree that there is an imminent threat of prosecution.

Therefore, the Wire Act denies his freedom to use and profit from his creative works, thereby causing him actual damage.

37. Rossides would like to express opinions, and reveal opinions of others through P-bets on www.betpress.com. To these ends, Rossides has posted P-bets at www.betpress.com for display purposes, but is not willing to post these P-bets as real statements and offers because of the imminent risk of the penalties set forth in The Wire Act 18 U.S.C. § 1084(a).

Therefore, the Wire Act denies him his freedom of speech.

38. The Bet Press web site (www.betpress.com) is, at this time, only an informational site.

The ultimate purpose of the site is to be a medium of expression for people who want to use P-bets to state their opinions.

39. Bet Press will not solicit or enable real P-bets to be posted on its site because. The Wire Act makes the threat of imminent prosecution virtually certain. Therefore, the Wire Act denies Rossides DBA Bet Press his freedom of the press.

COUNT ONE

40. Plaintiff repeats and realleges paragraphs 1 through 39.

41. The Wire Act Sec. 1084 severely penalizes the interstate, electronic publishing of bet information. Therefore, the Wire Act effectively bans the use of P-bets as speech.

42. The Wire Act was never intended to ban the use of P-bets as speech.

43. Banning the use of P-bets as speech is unconstitutional, for it violates the First Amendment, which states, “Congress shall make no law...abridging the freedom of speech, or of the press...”

44. Only in extreme situations can speech and the press be *banned*:

That, at any rate, is the theory of our Constitution. It is an experiment, as all life is an experiment. Every year, if not every day, we have to wager our salvation upon some prophecy based upon imperfect knowledge. While that experiment is part of our system, I think that we should be eternally vigilant against attempts to check the expression of opinions that we loathe and believe to be fraught with death, unless they so imminently threaten immediate interference with the lawful and pressing purposes of the law that an immediate check is required to save the country.

--Oliver Wendell Holmes, Jr. (*Abrams v. United States*, 250 U.S. 616 (1919))

45. The critical question then is: *Can the use of P-bets as speech be banned because an immediate check is required to save the country?*

46. Our present state of knowledge, from two centuries of experience, argues that we do not need to ban the use of P-bets as speech in order to save the country:

- Betting instruments abound in our economy: stocks, bonds, options (of *many* kinds including complex derivatives), insurance, and so forth. These instruments vary widely but not one has ruined our society or economy.
- England allows virtually any kind of P-bet to be created between adults and P-bets have not ruined England's society or economy.

Thus, the Wire Act is unconstitutional where it bans the use of P-bets as speech.

47. Since the unconstitutional sections of the Wire Act are not severable from the remainder of The Wire Act, the entire act must be declared unconstitutional with regard to P-bets used for the purpose of speech.

48. A declaratory judgment will terminate the controversy between the parties.

WHEREFORE, plaintiff Michael Rossides requests that this Court enter judgment:

1. Declaring that 18 U.S.C. § 1084 is unconstitutional with regard to bets used as speech;
2. Enjoining defendant, his successor and their subordinates from enforcing 18 U.S.C. § 1084, against persons who use bets as speech and who provide a forum for using bets as speech;
3. Awarding such further relief as the Court deems just and appropriate.

Dated: December 22, 2003

Respectfully submitted,

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