

Debate held for Utah County Attorney seat ahead of elections

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Katie England

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Libertarian candidate Andrew McCullough, left, and Republican candidate David Leavitt shake hands after the Utah County Attorney debate Tuesday, Oct. 9, 2018, at Utah Valley University in Orem. Isaac Hale, Daily Herald

Differing ideas about prosecuting marijuana showed a stark contrast between the two men vying to be the next Utah County Attorney.

The ACLU of Utah's Campaign for Smart Justice and the Alliance for a Better Utah's Education Fund hosted the Utah County Attorney Debate at Utah Valley University Tuesday night, third in a series of three prosecutor debates the organizations are hosting this year.

“Elections for county prosecutors often don’t get the attention they deserve,” said Jason Groth, the Smart Justice Coordinator at the ACLU of Utah, in a prepared statement. “But a single prosecutor sets the tone and assigns the priorities for how criminal justice impacts tens of thousands of Utahns.”

The two candidates, Republican David Leavitt and Libertarian Andrew McCullough, have known each other for decades, going on 30 years. They came up on opposite sides of Leavitt’s most high-profile case, when he prosecuted Tom Green for polygamy while Leavitt was Juab County Attorney.

McCullough said his law firm sent a brief in support of Green during that process, highlighting one of many differences in the viewpoints between the two.

Whomever wins the general election contest will replace sitting Utah County Attorney Jeff Buhman, who chose not to run again this year.

Marijuana prosecution

McCullough said what motivated him to run for the office was Proposition 2, which seeks to allow marijuana use for certain medical uses in Utah.

McCullough said he gets at least one new client per week who’s being prosecuted for marijuana possession. Last week, a client had her children taken away after one ounce of it was discovered in the home.

“I’m still seething,” McCullough said. “I just don’t understand why that’s important to the state of Utah.”

As Utah County Attorney, McCullough said he would not prosecute simple possession cases of marijuana — and that fewer search warrants would be issued from his office for marijuana.

“I have the right to not to prosecute certain things if I don’t want to, and I’m not going to,” McCullough said.

A self-described “nice Mormon boy” who has never had so much as a cup of coffee, much less marijuana, McCullough said he believes too much money is being spent on putting people in jail for things they don’t need to be there for.

Leavitt had a different take on it later in the debate when asked about prosecuting controlled substance possession. It boils down to the difference between wise use of prosecutorial discretion and abuse of that discretion, he said.

“A prosecutor abuses that discretion if the prosecutor says there is a crime that under no circumstance whatsoever will I prosecute that,” Leavitt said. “...Then the prosecutor crosses the line between wise use and abuse.”

Leavitt said there is no crime he will promise to never prosecute, because that would make him the legislature, which has lawmaking authority.

“I have absolutely no problem exercising discretion, saying, that crime, executed by that person hurt no one, and I simply choose not to prosecute it,” Leavitt said.

Deciding whether to prosecute illegal activity comes down to asking two questions, Leavitt said. Is the activity hurting someone, and will prosecution help?

For as long as he’s been practicing law, Leavitt said, a particular stance has been held on controlled substances and legality, but said it may be time to take a step back and look at how that’s handled.

“While I’m not going to launch head on into the debate of whether somebody should or should not be legalized,” Leavitt said, “I will say without question that we have to find a different alternative to how we’re dealing with these issues.”

Background

Since 1999, McCullough has been the principal attorney at McCullough and Associates, concentrating in freedom of expression and unreasonable search and seizure laws, according to his website biography.

He has practiced law in Utah since 1973, and has served on the board of the ACLU of Utah and as the chairman of the Utah Libertarian Party.

Leavitt grew up in southern Utah, and graduated from Brigham Young University in 1985. He later went to BYU law school and graduated in 1991. He spent several years serving as a city attorney in Nephi before he was appointed as the Juab County Attorney in 1995. He later narrowly lost re-election in 2002.

In 2004, Leavitt moved to Ukraine for a position helping Ukraine reform its judicial system. He and his wife eventually started his own organization called the Leavitt Institute for International Development, which teaches democracy and ethics to law students in Moldova, Poland, Romania and Ukraine.

Leavitt moved back to Utah in 2016 and currently resides in Orem.

