No. COA 12-455 THIRTY-B DISTRICT

NORTH CAROLINA COURT OF APPEALS

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Friends of Joe Sam Queen, a political committee, Plaintiff	)	
	)	From Haywood County
v.	)	No. 11 CVS 89
Ralph Hise for NC Senate, a political committee; and North Carolina Republican Party, a political committee, Defendants	)	

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PLAINTIFF-APPELLANT'S BRIEF

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PLAINTIFF-APPELLANT'S BRIEF

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ISSUES PRESENTED

I. WHETHER THE TRIAL COURT ERRED IN DENYING PLAINTIFF'S MOTIONS FOR SUMMARY JUDGMENT UNDER N.C. R. CIV. P. 56?

II. WHETHER THE TRIAL COURT ERRED IN GRANTING THE DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT AND DISMISSING ALL OF THE PLAINTIFF'S CLAIMS?

STATEMENT OF THE CASE

Plaintiff filed its Notice of Complaint Regarding Failure to Disclose on Television or Radio Campaign Advertising with the Haywood County Board of Elections on November 5, 2010. Within the 90 days contemplated by N.C.G.S. § 163-278.39A(f), on January 28, 2011, Plaintiff initiated this action in Haywood County Superior Court by the filing of its Complaint. Subsequently, after the filing of an Answer by the Defendants, discovery ensued, and the parties filed cross Motions for Summary Judgment. The Motions were heard at the December 5, 2011 session of Haywood County Superior Court before the Honorable Gary E. Trawick. On December 14, 2011, the Court entered its Order and Final Judgment, denying the Plaintiff's Motions for Summary Judgment and granting the Defendants' Motion for Summary Judgment and dismissing all of the Plaintiff's claims.

On December 22, 2011, the Plaintiff filed its Notice of Appeal from the Order and Final Judgment of the trial court granting the Defendant's Motions for Summary Judgment, denying the Plaintiff's Motions for Summary Judgment and dismissing all of the Plaintiff's claims. The Plaintiff served its proposed Record on Appeal, after an extension of time was obtained from the trial court, in a timely fashion on February 27, 2012, and the parties agreed upon the contents of the Record on April 3, 2012. (R p 118).

The Record on Appeal was filed in this Court on April 16, 2012 and docketed on April 17, 2012. The Plaintiff received an extension of time in which to file its brief on May 8, 2012, extending the time to June 18, 2012. This Brief is, therefore, timely filed.

STATEMENT OF THE GROUNDS FOR APPELLATE REVIEW

Plaintiff appeals from the Order and Final Judgment of the Superior Court of Haywood County which granted the Defendants' Motion for Summary Judgment and denied the Plaintiff's Motions for Summary Judgment and dismissed the Plaintiff's claims with prejudice. This appeal is therefore proper, pursuant to N.C.G.S. § 7A-27(b).

STATEMENT OF THE FACTS

The Plaintiff Friends of Joe Sam Queen is the campaign committee of Joe Sam Queen, Democratic nominee in the 47th Senate District in the 2010 election cycle. (R p 64). The Defendant Ralph Hise for NC Senate is the campaign committee of Ralph Hise, Republican nominee in the 47th Senate District in the 2010 election cycle. *Id*. The Defendant North Carolina Republican Executive Committee is the previous name of the political party committee now known simply as the North Carolina Republican Party ("Republican Party").

During the spring of 2010, the North Carolina Republican Party negotiated an agreement with American Media and Advocacy Group ("American Media")

whereby American Media would provide certain services to the Republican Party in the placing of television advertising for candidates of the Republican Party. Though the agreement bears the date April 30, 2010, it was not signed until August 16, 2010. (R pp 99-100). The media agreement between the Republican Party and American Media was signed by Russell Peck, Executive Director of the Republican Party, and Robin Roberts, President of National Media, Inc., the parent entity of American Media.

On the same day the agreement was signed, American Media prepared an invoice to the Defendant, Ralph Hise for NC Senate ("Hise Committee"), for the purchase of airtime in the amount of $189,120.90. On August 19, the Republican Party, after approval by Jim Blaine, director of the Republican Senate Caucus, Russell Peck, and Steven B. Long, elected Treasurer of the Republican Party, paid the sum of $189,120.90 by wire transfer to American Media. The invoice shows the approvals and authorizations, and notes, in the hand of Karen Langham, an employee of the party, that the invoice was "PAID" by wire transfer and was to be reported by the Hise Committee as an in-kind contribution by the Republican Party. (R p 102; Rule 9(d) Documentary Exhibits (hereinafter "Exhibits"), Tab 8, pp 20-21).

On the following day, American Media, utilizing the money paid to it by the Republican Party, purchased $165,724.50 of television advertising time on

television stations providing broadcast and cable service in the markets available to candidates in the 47th Senate District. (Exhibits, Tab 7, pp 27-28). The remaining funds were retained by American Media for commissions and other contractual reserves. (R p 52). Notwithstanding the fact that the Republican Party paid for the advertisements (and that the Hise Committee, on August 20, had not paid any amount for television advertising), American Media falsely represented to television stations receiving payments from American Media that the advertising time was purchased by the Hise Committee. Specifically, television and cable stations in the media markets serving the 47th Senate District received one or more versions of an "Agreement Form for Political Candidate Advertisements," which contained the specific but false representation from American Media that "I represent that the payment for the above described broadcast time has been furnished by: Ralph Hise for NC Senate." (R pp 87-88).

The use of the Agreement Form for Political Candidate Advertisements, which is published and provided by the National Association of Broadcasters, enables the purchaser to purchase television advertising time without risk of review or rejection by the television station because the Federal Communications Act of 1934 obligates television stations to provide television advertising time to candidates without risk of substantive scrutiny for truthfulness and accuracy. In

consideration thereof, the television stations receive immunity from defamation liability. *See* 47 U.S.C. § 315, *et seq*.

Thereafter, the Republican Party paid to American Media additional sums of $50,000.00, $7,963.70, $9,002.65, $12,125.00, and $8,929.90, each by wire transfer. (R pp 85, 103-107). The foregoing payments were represented to the Hise Committee by the Republican Party as in-kind contributions to the Hise Committee. (Exhibits, Tab 2, pp 1-3; Tab 8, p 14). The Hise Committee, in response, reported each of the payments for media buys by the Republican Party as in-kind contributions to the Hise Committee on its reports filed with the North Carolina State Board of Elections. (Exhibits, Tab 7, pp 38-39).

In October 2010, representatives of the Republican Party, including Karen Langham and possibly Jim Blaine, contacted the North Carolina State Board of Elections and consulted with Jason Schrader, a campaign finance specialist on staff. (Exhibits, Tab 8, p 30). Ms. Langham advised Mr. Schrader of the television advertisement purchases made by the Republican Party and sought his advice as to the proper reporting of the purchases. Mr. Schrader advised the Republican Party that such purchases should be reported as "coordinated party expenditures." *Id*. Thereafter, on October 25, 2010, the Republican Party, in accordance with the instructions from the State Board of Elections, properly reported the contributions as coordinated party expenditures in support of the candidacy of Ralph Hise in the

Republican Party's Third Quarter Plus 2010 report, despite the erroneous disclosure on the advertisements. (Exhibits, Tab 8, pp 25-26). The characterization of the payments for the advertising as "expenditures" is significant in that it correctly acknowledges that the Republican Party made the payments to the vendor, not the Hise Committee.

On October 28, 2010, Andrew Whalen, a registered voter in Wake County, commenced an action in the Superior Court of Wake County alleging that the Republican Party had paid for advertisements bearing the disclosure of the Hise Committee, and sought injunctive relief to stop them. The Motion for Injunctive Relief was heard on Friday, October 29, 2010, just four (4) days before the November 2 General Election, and the Plaintiff's motion was denied.

Following the hearing, representatives of the Republican Party met in one or more meetings, including a meeting with counsel, and thereafter adopted a new approach to reporting the previously reported payments by the Republican Party for the purchase of television advertising. (Exhibits, Tab 6, pp 87-88). The Republican Party decided to re-characterize the previously reported purchases of television advertising as "contributions" instead of "coordinated party expenditures." (Exhibits, Tab 8, pp 35-36).

Thereafter, on November 1, the North Carolina Republican Party amended its previously-filed report, which had been filed in accordance with the instructions

of the State Board of Elections. The amended Third Quarter Plus 2010 report, rather than reporting the advertisements purchased by the Republican Party as "coordinated party expenditures," instead denominated the advertisements purchased by the Republican Party as "contributions to political candidate/party committee." In addition, the report designated the contributions as in-kind contributions to the Hise Committee. (Exhibits, Tab 8, pp 35-36).

On its 4th Quarter 2010 report, the Republican Party again reported payments by the Republican Party to American Media for the purchase of television advertising time not as "coordinated party expenditures," as advised by the State Board of Elections, but again as "contributions to political candidate/party committee." (Exhibits, Tab 8, p 32).

The Defendants, Republican Party and Hise Committee, maintain in this case that, contrary to their original report, the Republican Party has made "contributions" to the Hise Committee by the contribution of money to an account of the Hise Committee maintained at American Media. (Exhibits, Tab 7, p 25; Tab 6, p 71). However, no report of the Hise Committee has ever identified any account of the Hise Committee as being maintained at American Media. (Exhibits, Tab 7, p 11). The Hise Committee has never reported the receipt of these funds as "contributions;" rather, they have always been denominated as "in-kind

contributions," meaning that the form of the contribution was other than money. (Exhibits, Tab 7, p 38).

The Plaintiff obtained from National Media and its affiliate, American Media, a collection of documents. V. Anthony Asbridge, a forensic accountant employed by Plaintiff's counsel, conducted an examination of certain of those documents and certain publicly available documents, including filings with the State Board of Elections. (R p 58). Mr. Asbridge examined those records with the purpose of determining what sums had been paid to American Media by the Republican Party to purchase advertisements to benefit the Hise Committee. *Id*. From his examination, he prepared an affidavit in which he set forth his determination that the Republican Party had paid the sum of $277,142.15 to American Media. *Id*.

Mr. Asbridge then determined that American Media had been paid the sum of $49,327.36 by the Hise Committee, and that the Hise Committee had received a refund from American Media after the election in the amount of $12,281.05. (R p 59). Therefore, applying the refund paid to the Hise Committee against the payments made by the Hise Committee produces a total payment by the Hise Committee for its advertising airtime to American Media in the amount of $37,046.31. *Id*. Therefore, of the total paid to American Media by the Hise

Committee and the Republican Party for the benefit of the Hise Committee, 88.65% of such funds were paid by the Republican Party. *Id*.

The Plaintiff also engaged the services of Deborah White, a media buyer. Ms. White examined certain documents prepared by television stations related to the advertising on the part of the Hise Committee. (R p 51). She also reviewed certain documents prepared by and produced by American Media, and, from an examination of those documents, determined that the total sum of $277,906.06 was expended for advertising time by American Media for the benefit of the Hise Committee. (R p 52). The remaining funds received by American Media from the Defendants were applied to commissions and reserves. *Id*.

All of the television advertising, whether paid for with funds furnished by the Republican Party or by the Hise Committee, bore the disclosure "Paid for by Ralph Hise for NC Senate." (Exhibits, Tab 6, p 61). No advertisement bore a joint sponsorship disclosure or a political party sponsorship disclosure. Of the total amount of $277,906.06 of advertising purchased, the percentage paid for by the Republican Party and hence bearing improper disclosures was 88.65%, or $246,363.72 of advertising. (R pp 52, 59).

STANDARD OF REVIEW

Rule 56 of the North Carolina Rules of Civil Procedure provides that summary judgment is proper when the "pleadings, depositions, answers to

interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law." N.C.G.S. § 1A-1, Rule 56(c). The party moving for summary judgment has the burden of proving that there are no genuine issues of material fact and that they are entitled to judgment as a matter of law. *See Lowe v. Bradford*, 305 N.C. 366, 369-70, 289 S.E.2d 363, 366 (1982).

The standard of review for the Court of Appeals upon the appeal of a grant of summary judgment is *de novo*. *See Forbis v. Neal*, 361 N.C. 519, 649 S.E.2d 382 (2007). The Court's *de novo* review should be focused on whether the trial court properly concluded that there was no genuine issue of material fact and that the party moving for summary judgment was entitled as a matter of law to summary judgment. *See Ellis v. Williams*, 319 N.C. 413, 355 S.E.2d 479 (1987).

ARGUMENT

This case involves the "Stand By Your Ad" provisions of the North Carolina General Statutes that were enacted by the General Assembly in 1999. Session Law 1999-453, called the Campaign Reform Act of 1999, added Part 1A of Article 22A, which is entitled "Disclosure Requirements for Media Advertisements," to Chapter 163. With the enactment of "Stand By Your Ad," the legislature put in place significant disclosure requirements which made certain that the sponsorship of political advertisements, whether they be on television, radio, or in the print

media, was completely clear to the public. The public would now be aware, when watching or hearing political advertisements, exactly who paid for the advertisement, and whether a candidate was responsible for the advertisement and its contents. Requiring the candidate to say, in their own words, that they had approved the advertisements brought an additional sense of ownership on the part of the candidates to the advertisements. The concepts of "Stand By Your Ad" were later recognized and approved by Congress by incorporation into the Bipartisan Campaign Reform Act of 2002. *See* 2 U.S.C. § 441d. North Carolina's early steps in making certain that candidates were responsible for their advertising were acknowledged and then copied throughout the country.

The "Stand By Your Ad" statutory scheme contains a legal remedy for candidates whose opponents or whose opponents' supporters fail to abide by the requirements. In N.C.G.S. § 163-278.39A(f), the General Assembly allows a candidate whose opponent or whose opponent's supporters have violated the disclosure requirements to bring a civil action, after notice and on the condition that the candidate bringing the action has completely complied with the act, to prove that the violations took place. The General Assembly also provided an incentive to candidates for compliance in that the remedy for such violations would inure to the benefit of the candidate who complied. The measure of damages set by the General Assembly is the amount of money spent for the airing of

advertisements which ran with inappropriate disclosures. *See* N.C.G.S. § 163-278.39(f).

This Court, in its *de novo* review, should hold that Plaintiff's Motions for Summary Judgment should have been granted because the Plaintiff showed that the undisputed facts prove that the Defendant Republican Party paid for television advertisements that were run in behalf of the Hise Committee, but the advertisements did not bear the appropriate disclosures, pursuant to N.C.G.S. § 163-278.39A, whether for sponsorship by the Party or joint sponsorship. The Defendant Hise Committee is also liable for violations of N.C.G.S. § 163-278.39A because it allowed advertisements to be run <u>in its name</u> that were paid for by the Defendant Republican Party. Despite the Defendants' attempts to re-characterize the nature of the transactions that took place leading up to the November 2010 General Election, the facts show that the Defendant Republican Party made payments to American Media for Hise Committee advertisements. The funds sent by the Defendant Republican Party were never received into any Hise Committee bank account, and were never in the actual possession of the Hise Committee. The funds, though, were then used to purchase television advertisements with the false disclaimer that they were paid for by the Hise Committee.

Because the undisputed facts show that violations of § 163-278.39A took place, Plaintiff was entitled to the recovery of damages, as set forth in N.C.G.S. §

163-278.39A(f). The statutorily-mandated measure of damages is the amount of money that was spent on the advertisements which bore the improper disclosure. The Plaintiff has shown, by the affidavits of V. Anthony Asbridge and Deborah White, that $246,363.72 was spent on television advertisements that were paid for by the Defendant Republican Party. (R pp 52, 59). The Plaintiff is entitled to damages in that amount.

I. THE TRIAL COURT ERRED IN DENYING PLAINTIFF'S MOTIONS FOR SUMMARY JUDGMENT BECAUSE THE DEFENDANTS VIOLATED N.C.G.S. § 163-278.39A BY AIRING TELEVISION ADVERTISEMENTS THAT BORE ERRONEOUS DISCLOSURES AS TO WHO SPONSORED THE ADVERTISEMENTS.

The undisputed facts show that the Defendants violated the disclosure requirements of N.C.G.S. § 163-278.39A. § 163-278.39A(b) contains specific disclosure requirements for advertisements that are aired on television, and contains different disclosure requirements depending upon who sponsored the advertisement. The full text of the relevant statutes is attached in the Appendix. There are separate and distinct disclosure requirements for candidates, political parties, political action committees, individuals, and other sponsors. *See* N.C.G.S. § 163-278.39A(b)(1), (2), (3), (4), (5)-(7), and (e1) respectively. The statute also has requirements for situations where there are joint sponsors, as found in subsection (e1). In this case, the Plaintiff contends and has shown, by the

undisputed facts, that the Defendant Republican Party paid for the airing of advertisements that were run in behalf of the Ralph Hise for NC Senate campaign. Alternatively, one could conclude that the Defendants' use of a common media buyer meant the advertisements were jointly sponsored by both the Hise Committee and the Republican Party for the benefit of the Hise Committee. Joint sponsorship, pursuant to N.C.G.S. § 163-278.39A(e1), requires that all sponsors be disclosed. In either case, these advertisements did not bear the appropriate disclosure as set forth in N.C.G.S. § 163-278.39A(b)(2) for political party organizations or N.C.G.S. § 163-278.39A(e1) for joint sponsors. All of the advertisements were aired with the disclosure set out in subsection (b)(1), which pertains to candidates. (Exhibits, Tab 6, p 61). Because these advertisements were in some portion paid for by the Republican Party but bore the disclosure for only a candidate, they are in violation of the statute, and the Plaintiff was entitled to summary judgment.

A. The Republican Party made direct payments for the airing of advertisements that bore disclosures falsely representing that they had been sponsored solely by the Hise Committee.

On August 16, 2010, American Media prepared an invoice to the Hise Committee for the purchase of television advertising in the amount of $189,120.90. (R p 102). On August 19, 2010, the Defendant Republican Party, not the Hise Committee, paid the sum of $189,120.90 by wire transfer to American Media.

(Exhibits, Tab 8, pp 20-21). These funds were never sent to any account owned by the Hise Committee. On August 20, 2010, American Media, before it received it any funds whatsoever from the Hise Committee, utilized the Republican Party money to purchase $165,724.50 in television advertising time that benefitted the Hise Committee. (Exhibits, Tab 7, pp 27-28). The advertisements purchased with those funds benefitted the Hise Committee and bore a disclosure stating that they were paid for by the Hise Committee. *Id*. American Media provided the television stations with the National Association of Broadcasters form which indicated that the funds for the payment had been "furnished" by the Hise Committee, when, in fact, the funds had been furnished by the Republican Party. (R pp 87-88). In no sense were the funds used to purchase these advertisements furnished by the Hise Committee. Having paid for the advertisements as invoiced by American Media, the Republican Party was the sponsor for those advertisements and was required to have placed upon those advertisements the disclaimer for a political party pursuant to subsection b(2) or a joint sponsor pursuant to subsection (e1) of N.C.G.S. § 163-278.39A. The failure to do so was a violation of the statute.

Over the remaining course of the 2010 General Election, the Republican Party made payments to American Media in the amounts of $50,000.00, $7,963.70, $9,002.65, $12,125.00, and $8,929.90 by wire transfer, each in response to an invoice from American Media. (R pp 85, 103-107). These funds were utilized in a

similar fashion to purchase advertising time for the benefit of the Hise Committee which bore a Hise Committee disclaimer. In each instance where these funds were utilized to purchase advertisements bearing a Hise Committee disclaimer, further violations of the statute took place. In total, the combined funds of the Republican Party and the Hise Committee were utilized to purchase $277,906.06 in television advertisements. (R p 52). Of the total funds sent to American Media by the combined Hise Committee and Republican Party, 88.65% of the funds came from the Republican Party. (R p 59). Therefore, as a result, the Republican Party purchased advertisements in the amount of $246,363.72. (R pp 52, 59). All of these advertisements bore disclaimers claiming that they were paid for by the Hise Committee. (Exhibits, Tab 7, pp 27-28). None of them bore disclaimers noting that their complete or partial sponsor was the Republican Party. (Exhibits, Tab 6, p 61). The failure to disclose the Republican Party as a sponsor of these advertisements was in direct violation of the statute.

Similarly, the Defendant Hise Committee is liable for violations of the Stand By Your Ad statutes. Because it allowed its name and disclaimer to be placed on advertisements that it knew were paid for by the Republican Party, the candidate committee for Senator Ralph Hise was also in violation of the statute. As stated in his deposition, Senator Ralph Hise has acknowledged that he, in behalf of his committee, authorized all the advertisements that were run by American Media for

the benefit of his committee. (Exhibits, Tab 7, pp 21-22). Having authorized these advertisements to run with inappropriate disclaimers, the Defendant Hise Committee is also liable for violations of the statute.

The damages for such violations are the amount of the funds spent to run the advertisements with inappropriate disclaimers. Pursuant to N.C.G.S. § 163-278.39A(f), "A candidate for an elective office who complied with the television and radio disclosure requirements throughout that candidate's entire campaign shall have a monetary remedy in a civil action against (i) an opposing candidate or candidate committee whose television or radio advertisement violates these disclosure requirements AND (ii) against any political party organization, political action committee, individual, or other sponsor whose advertisement for that elective office violates these disclosure requirements" (emphasis added). N.C.G.S. § 163-278.39A(f). Certain conditions are placed upon the candidate who wishes to bring the civil action for this remedy. Pursuant to subsection (f)(1), the candidate must file a "Notice of Complaint Regarding Failure to Disclose on Television or Radio Campaign Advertising" with "one county board of elections within the electoral area in which they are candidates. The timely filing of this notice preserves the candidate's right to bring an action in Superior Court any time within 90 days after the election. A candidate shall bring the civil action in the county where the candidate filed the notice." N.C.G.S. § 163-278.39A(f).

In this case, the Plaintiff timely filed its Notice with the Haywood County Board of Elections on November 5, 2010. Thus, the notice was timely filed no later than the first Friday after the Tuesday on which the election occurred. *See* N.C.G.S. § 163-278.39A(f)(1). This action was timely filed on January 28, 2011, which was less than 90 days after the election. Because the Plaintiff filed its notice in Haywood County, this action was properly brought in Haywood County Superior Court.

As set forth in the Affidavit of Joe Sam Queen, the Plaintiff complied in all respects with the disclosure requirements in airing its television and radio advertisements. (R p 65). The funds which paid for all television and radio advertisements that were aired came from the bank account of the Plaintiff Friends of Joe Sam Queen committee. *Id*. The funds which were wired or sent by check to the media buyers for the Plaintiff all came from Plaintiff's account. *Id*. It is undisputed that all of the advertisements run by the Plaintiff in the 2010 General Election bore the appropriate disclosure that they were "Paid for by Friends of Joe Sam Queen." *Id*. The Defendants have offered no evidence that the funds utilized to pay for those advertisements came from any account other than that belonging to the Plaintiff. Further, they have made no argument, nor proffered any evidence, to show that the advertisements bore improper disclaimers or disclaimers showing sponsorship by any entity other than Friends of Joe Sam Queen.

Thus, having met the prerequisites to the bringing of this action, Plaintiff has shown that Defendants violated the disclosure requirements, and Plaintiff was entitled to damages for its civil remedy.

B. The Plaintiff is entitled to money damages as a result of the Defendants' violation of N.C.G.S. § 163-278.39A.

The damages allowed by the civil remedy in N.C.G.S. § 163-278.39A(f) are set forth in subsection (2): "Upon receiving a favorable verdict in accordance with existing law, the Plaintiff candidate shall receive a monetary award of actual damages. The price of actual damages shall be calculated as the total dollar amount of television and radio advertising time that was aired and that the Plaintiff candidate correctly identifies as being in violation of the disclosure requirements of this section." N.C.G.S. § 163-278.39A(f)(2).

In total, throughout the 2010 General Election, American Media received funds from the Republican Party for the benefit of the Hise Committee totaling $277,142.15. (R p 58). American Media received $49,327.36 from the Hise Committee for purchasing advertisements. (R p 59). The total amount received by American Media was $326,469.51, and the percentage of those funds that were received from the Republican Party was 84.9%. *Id*. Factoring for the $12,281.05 that was refunded to the Hise Committee after the election took place, the actual

percentage of funds for which the Republican Party was responsible was 88.65%. *Id*.

As stated in the Affidavit of Deborah White, it can be ascertained that, of the total amount of money received for the benefit of the Hise Committee, $326,469.51, American Media spent $277,906.06 for television advertising time. (R p 52). The rest of the funds were utilized for commissions, consultants, and as refunds. *Id*. Noting that the percentage of the original funds which came from the Republican Party was 88.65%, 88.65% of $277,906.06 is $246,363.72. The total amount of advertising which bore improper disclosures pursuant to N.C.G.S. § 163-278.39A in this case was $246,363.72, the sum to which the Plaintiff is entitled to recover from the Defendants, jointly and severally. (R pp 52, 59); N.C.G.S. § 163-278.39A(f)(3).

II. THE TRIAL COURT ERRED IN GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AND DISMISSING PLAINTIFF'S CLAIMS.

The Defendants contended in the trial court that the Plaintiff, Friends of Joe Sam Queen, was barred from recovery on the grounds that it, too, violated the provisions of N.C.G.S. § 163-278.39A. That position is in error.

Each and every television and radio advertisement airing in behalf of Friends of Joe Sam Queen was purchased utilizing funds lawfully belonging to the Friends of Joe Sam Queen, and the disclosures required by the applicable statute properly

appeared and correctly disclosed that the advertisements were paid for by Friends of Joe Sam Queen. (R p 65). No evidence has been adduced by the Defendants which contradicts this position.

The Defendants argued that funds contributed to the Friends of Joe Sam Queen by the North Carolina Democratic Party were used to purchase advertising and that any violations by the Defendants were negated by the alleged similar violations by the Plaintiff. This contention is simply wrong. Funds contributed lawfully by the North Carolina Democratic Party to the Friends of Joe Sam Queen and received into a lawful account of the Friends of Joe Sam Queen were, in fact, funds owned and under the control of Friends of Joe Sam Queen. The expenditure of such funds by Friends of Joe Sam Queen for advertisements bearing the disclosure "Paid for by Friends of Joe Sam Queen" is entirely consistent with the applicable provisions of N.C.G.S. § 163-278.39A(b)(1). Had the Republican Party contributed its funds to the Hise Committee directly, rather than paying for the advertisements, there would have been no grounds for this action.

The Defendants also argued that the Plaintiff was in violation of the statute by trying to show that percentages of contributions received by the Friends of Joe Sam Queen from the North Carolina Democratic Party equate to the Democratic Party having purchased the airing of the advertisements. At the point at which Friends of Joe Sam Queen received funds in its bank account, those funds were

undeniably the property of Friends of Joe Sam Queen. No other interpretation is valid under existing campaign finance rules. Funds lawfully contributed to and received by Friends of Joe Sam Queen became the property of the Plaintiff, and as such, because all of the payments for the airing of advertisements came from the Plaintiff, the Plaintiff complied with the statute. In any event, the contributions from the North Carolina Democratic Party to the Plaintiff were lawful, as there are no limits on the amounts that may be contributed to a candidate committee by a political party. *See* N.C.G.S. § 163-278.13(e).

The Defendants also argued that monies expended by the North Carolina Democratic Party for other purposes, including the production of campaign video, is somehow proof that the Friends of Joe Sam Queen failed to comply with the statute in issue. Again, the Defendants' arguments are unavailing. The applicable statute is designed to require a political candidate or entity paying for the airing of television advertising to disclose that it is, in fact, paying for or sponsoring the airing of television advertising.

The North Carolina Democratic Party was not a sponsor of the Plaintiff's advertisements because it paid production costs for videos. N.C.G.S. § 163-278.38Z contains definitions of terms that are used in Part 1A of Article 22A of Chapter 163. In subsection (1), "advertisement" is defined as "any message appearing in the print media, or on television, or on a radio that constitutes a

contribution or expenditure under this Article." N.C.G.S. § 163-278.38Z(1). The word "sponsor" is defined to mean "a candidate, candidate committee, political party organization, political action committee, referendum committee, individual, or other entity that purchases an advertisement." N.C.G.S. § 163-278.38Z(10). Thus, according to these definitions, for the purposes of the appropriate disclaimer, the sponsor is the person who purchased a message which appears on television, on the radio, or in the print media. Because an "advertisement," by definition, must "appear[] … on television," payments made for production costs of an advertising video do not constitute sponsorship. Certainly, a video created but never aired on television would not be a valid trigger for a lawsuit based on improper disclosures. If video remains unused or is placed on the internet (an avenue of dissemination not regulated by N.C.G.S. §§ 163-278.39 and 163-278.39A), it is not subject to the disclosure requirements. It is the purchase and use of airtime on television that, under the statute, turns a video into an advertisement. Only a party purchasing advertising time and placing a message on television is a "sponsor" within the meaning of the statute.

Thus, the North Carolina Democratic Party did not purchase an advertisement and was not a "sponsor" within the meaning of N.C.G.S. § 163-278.39A. The videos were produced well in advance of their use, and the North Carolina Democratic Party did not pay for the airing of television advertisements.

It lawfully made an in-kind contribution in the amount of some of the production costs for videos used by the candidate.

Further support for the exclusion of the payment of production costs from the definition of sponsorship or purchase of the television advertisement is found in the lack of a mention of production costs or the other tangential costs affiliated with the making of political advertisements in the applicable statutes. In particular, it is noteworthy that the various statutes which require the disclosures only refer to the "purchase" of advertisements, and in that context, they refer to the purchase of advertisements in the print media, on radio, or in television, not the production or creation of such advertisements.

Further, in N.C.G.S. §163-278.39A(f), which provides the civil remedy for violations of the statute and which creates a measure of damages, there is no mention of production costs. The only measure of damages is the amount of money paid for the airing of the advertisements. "The price of actual damages shall be calculated as the total dollar amount of television and radio advertising time that was aired and that the plaintiff candidate correctly identifies as being in violation of the disclosure requirements of this section." N.C.G.S. §163-278.39A(f)(2). Furthermore, there are other definite costs related to the production and creation of political advertisements. These include research, polling, script development, actual production, including the costs of actors and studio time.

These are not accounted for in the damages provision of the statute and are therefore similarly not relevant to the determination of who purchased or sponsored the advertisement.

The Defendants may also attempt to equate Plaintiff's compliant activities with disbursements by the Defendant Republican Party to what the Defendants have described as an "account" of the Defendant Hise Committee at American Media. The Defendants' actions are not the equivalent of Plaintiff's compliance with the statute. The American Media "account" was never disclosed by the Hise Committee to the State Board of Elections as required by law, nor could it have been. Neither were the contents of the "account" reported as cash on hand belonging to the Hise Committee. The account was not maintained as required by N.C.G.S. § 163-278.8, "in a bank account or accounts used exclusively by the political committee." The funds at American Media were transmitted there, on at least one occasion, commingled with "contributions" to other candidates and were kept by American Media commingled with other funds. (Exhibits, Tab 3, p 1).

Defendants' claim, that an account exists at American Media in the name of the Hise Committee and that contributions were made to that account, if true, would be in direct violation of other statutes. In particular, N.C.G.S. § 163-278.16(a)(2) requires that no contribution may be received or expenditure made "unless the contribution is received or the expenditure made by or through the

treasurer of the candidate, political committee, or referendum committee" (emphasis added). There is no indication whatsoever that Shirley Hise, the Hise Committee's treasurer, had any role in the receipt or spending of the funds at American Media.

The Hise Committee's only reporting with respect to these funds was the receipt of in-kind contributions. (Exhibits, Tab 7, p 38). The Hise Committee made those reports as a result of letters sent to it by the Defendant Republican Party, which denominated and reported these funds as in-kind contributions throughout the 2010 election cycle. (Exhibits, Tab 2, pp 1-3, Tab 8, p 14).

The report of the contributions made by the Republican Party to American Media in behalf of the Hise Committee as in-kind contributions makes clear that it was not the Hise Committee which paid for the advertisements. An in-kind contribution is a contribution that is made in a form other than money; otherwise it would be a "normal" contribution, received and deposited into the bank account of the Hise Committee. Acknowledgement that these were in-kind contributions means that the Hise Committee received something other than money, and, in fact, received the airing of advertisements paid for by the Republican Party. Acknowledgement by both the Hise Committee and the Republican Party that these were in-kind contributions necessarily requires that the Republican Party admit that it paid for advertisements. In deposition testimony, Steven B. Long, the

elected treasurer of the Republican Party at the time of these events, acknowledged as much.

> Q (Mr. Wallace)
> Is it your--is it your contention that what the candidate, such as Mr. Hise in this case, received from the Republican Party when--when money was paid to American Media was an in-kind contribution or a monetary contribution?
>
> A (Mr. Long)
> I believe it was an in-kind contribution. But I will tell you, Mr. Wallace, that the statutes are not totally clear, and reasonable people can differ on how to characterize that payment.
>
> Q A payment to American Media bought services, did it not?
>
> MR. MCKNIGHT: Objection.
>
> A That's my understanding.
>
> Q And those services include--included certainly those services that are described in the paragraph numbered two of Exhibit 1 (R pp 99-100), correct?
>
> A I believe so, but I don't know for a fact.
>
> Q And in addition to that, the monies sent to American Media bought air time, did they not, for advertising purposes?
>
> A That was my understanding.

(Exhibits, Tab 8, pp 43-44).

The acknowledgement by the Republican Party that the Hise Committee received these contributions in the form of in-kind contributions is an acknowledgement on their part of their own violation of N.C.G.S. § 163-278.39A.

Should the court consider whether it is appropriate for a contribution to a candidate to be made directly to a vendor, rather than to the candidate, it should be important to note that the allowance of these direct contributions would lead to a system in which the accurate reporting and calculation of contributions received by candidates would be nearly impossible. If a potential contributor were allowed to set up an account for a candidate at a television station, office supply store, or other vendor, then because those funds were outside the control of the candidate and were not deposited into the candidate's bank account, the State Board of Elections would be unable to accurately audit the expenses or make certain that applicable contribution limits were adhered to, and that the expenditures made were allowable and within proper limits. The approval by this Court of a mechanism wherein payments could be made directly to a vendor would lead to a significant relaxation of the campaign finance disclosure requirements, which would leave the public without the benefit of an accurate and efficient means of disclosure of campaign finances.

Prior to the 2010 General Election cycle, undersigned counsel are unaware of any situations which involved the improper placement of disclosures on television advertisements as required by N.C.G.S. § 163-278.39A. Candidates and political parties have long known how to comply with the disclosure requirements and have done so. The public has benefitted from the disclosures and the openness

that has been afforded them as a result. However, in this case, the Defendant Republican Party chose to send funds directly to the media buyer, rather than to the candidate, because it was "administratively simpler" and "faster." (Exhibits, Tab 8, p 40). However, by taking a shortcut – an easier way to direct money for purchasing their candidate's television advertising – Defendants have violated a law which has been universally understood, lauded, and accepted. These violations should not be excused.

CONCLUSION

For all of the foregoing reasons, the Plaintiff respectfully requests that the Court reverse the Order and Final Judgment of the trial court and enter judgment in favor of the Plaintiff. The Plaintiff further requests that the Court remand this case to the trial court for the entry of judgment in favor of the Plaintiff against the Defendants, jointly and severally, for their violations of N.C.G.S. § 163-278.39A and awarding Plaintiff damages in the amount of $246,363.72, plus pre- and post-judgment interest, costs, and attorney fees.

This the 18th day of June, 2012.

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CERTIFICATE OF COMPLIANCE

This is to certify that the foregoing brief complies with the requirements of Rule 28(j) of the North Carolina Rules of Appellate Procedure with respect to the length of the brief, which utilizes a proportional typeface. The brief, excluding the cover page, index, table of cases and authorities, and certificate of service, does not exceed 8,750 words.

__/s/ Joseph A. Newsome_____
Joseph A. Newsome

CERTIFICATE OF SERVICE

This is to certify that the undersigned counsel, in conformity with Rule 13 of the North Carolina Rules of Appellate Procedure, has filed a copy of the foregoing brief with the North Carolina Court of Appeals and has served a copy of the foregoing brief upon counsel for all other parties by depositing a copy in the United States Mail, first class, postage prepaid, and addressed as follows:

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This the 18th day of June, 2012.

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APPENDIX

CONTENTS OF APPENDIX

RELEVANT STATUTORY PROVISIONS

§ 163-278.38Z. Definitions.

As used in this Part:

(1) "Advertisement" means any message appearing in the print media, on television, or on radio that constitutes a contribution or expenditure under this Article.

(2) "Candidate" means any individual who, with respect to a public office listed in G.S. 163-278.6(18), has filed a notice of candidacy or a petition requesting to be a candidate, or has been certified as a nominee of a political party for a vacancy, or has otherwise qualified as a candidate in a manner authorized by law, or has filed a statement of organization under G.S. 163-278.7 and is required to file periodic financial disclosure statements under G.S. 163-278.9.

(3) "Candidate campaign committee" means any political committee organized by or under the direction of a candidate.

(4) "Full-screen" means the only picture appearing on the television screen during the oral disclosure statement contains the disclosing person, that the picture occupies all visible space on the television screen, and that the image of the disclosing person occupies at least fifty percent (50%) of the vertical height of the television screen.

(5) "Political action committee" has the same meaning as "political committee" in G.S. 163-278.6(14), except that "political action committee" does not include any political party or political party organization.

(6) "Political party organization" means any political party executive committee or any political committee that operates under the direction of a political party executive committee or political party chair.

(7) "Print media" means billboards, cards, newspapers, newspaper inserts, magazines, mass mailings, pamphlets, fliers, periodicals, and outdoor advertising facilities.

(8) "Radio" means any radio broadcast station that is subject to the provisions of 47 U.S.C. §§ 315 and 317.

(9) "Scan line" means a standard term of measurement used in the electronic media industry calculating a certain area in a television advertisement.

(10) "Sponsor" means a candidate, candidate committee, political party organization, political action committee, referendum committee, individual, or other entity that purchases an advertisement.

(11) "Television" means any television broadcast station, cable television system, wireless-cable multipoint distribution system, satellite company, or telephone company transmitting video programming that is subject to the provisions of 47 U.S.C. §§ 315 and 317.

(12) "Unobscured" means the only printed material that may appear on the television screen is a visual disclosure statement required by law, and nothing is blocking the view of the disclosing person's face. (1999-453, s. 2(a); 2004-203, s. 12(a); 2010-170, s. 7.)

* * *

§ 163-278.39A. Disclosure requirements for television and radio advertisements supporting or opposing the nomination or election of one or more clearly identified candidates.

(a) Expanded Disclosure Requirements. – Any political advertisement on radio or television shall comply with the expanded disclosure requirements set forth in this section. To the extent that it provides the same information required by G.S. 163-278.39, a statement made pursuant to this section satisfies the requirements of G.S. 163-278.39 for the same advertisement.

(b) Disclosure Requirements for Television. –

(1) Candidate advertisements on television. – Television advertisements purchased by a candidate or by a candidate campaign committee supporting or opposing the nomination or election of one or more clearly identified candidates shall include a disclosure statement spoken by the candidate and containing at least the following words: "I am (or "This is____ ") [name of candidate], candidate for [name of office], and I (or "my campaign____ ") sponsored this ad." This subdivision applies only to an advertisement that mentions the name of, shows the picture of, transmits the voice of, or otherwise refers to an opposing candidate for the same office as the sponsoring candidate.

(2) Political party advertisements on television. – Television advertisements purchased by a political party organization supporting or opposing the nomination or election of one or more clearly identified candidates shall include a disclosure statement spoken by the chair, executive director, or treasurer of the political party organization and containing at least the following words: "The [name of political party organization] sponsored this ad opposing/supporting [name of candidate] for [name of office]." The disclosed name of the political party organization shall include the name of the political party as it appears on the ballot.

(3) Political action committee advertisements on television. – Television advertisements purchased by a political action committee supporting or opposing the nomination or election of one or more clearly identified candidates shall include a disclosure statement spoken by the chief executive officer or treasurer of the political action committee and containing at least the following words: "The [name of political action committee] political action committee sponsored this ad opposing/supporting [name of candidate] for [name of office]." The name of the political action committee used in the

advertisement shall be the name that appears on the statement of organization as required in G.S. 163-278.7(b)(1).

(4) Advertisements on television by an individual. – Television advertisements purchased by an individual supporting or opposing the nomination or election of one or more clearly identified candidates shall include a disclosure statement spoken by the individual and containing at least the following words: "I am [individual's name], and I sponsored this advertisement opposing/supporting [name of candidate] for [name of office].

(5) Advertisements on television by another sponsor. – Television advertisements purchased by a sponsor other than a candidate, a candidate campaign committee, a political party organization, a political action committee, or an individual which supports or opposes the nomination or election of one or more clearly identified candidates shall include a disclosure statement spoken by the chief executive or principal decision maker of the sponsor and containing at least the following words: "[Name of sponsor] sponsored this ad." If the sponsor is a corporation that has the purpose of promoting social, educational, or political ideas, the advertisement shall also include a legible listing on the screen indicating that the viewer may obtain additional information on the sponsor and the sponsor's donors from the appropriate board of elections, containing at least the following words: "For donor information contact [Name of board of elections with whom information filed]."

(6) All advertisements on television. – In any television advertisement described in subdivisions (1) through (4) of this subsection, an unobscured, full-screen picture containing the disclosing individual, either in photographic form or through the actual appearance of the disclosing individual on camera, shall be featured throughout the duration of the disclosure statement.

(7) Electioneering communications on television. – Television advertisements purchased by an individual that are electioneering communications shall include a disclosure statement spoken by the individual and containing at least the following words: "I am [individual's name], and I sponsored this advertisement opposing/supporting [name of candidate] for [name of office]." Television advertisements purchased by a sponsor other than a candidate, a candidate campaign committee, a political party organization, a political action committee, or an individual that are electioneering communications shall include a disclosure statement spoken by the chief executive or principal decision maker of the sponsor and containing at least the following words: "[Name of sponsor] sponsored this ad." If the sponsor is a corporation that has the purpose of promoting social, educational, or political ideas, the advertisement shall also include a legible listing on the screen indicating that the viewer may obtain additional information on the sponsor and the sponsor's donors from the appropriate board of elections, containing at least the following words: "For donor information contact [Name of board of elections with whom information filed]."

(c) Disclosure Requirements for Radio. –

(1) Candidate advertisements on radio. – Radio advertisements purchased by a candidate or by a candidate campaign committee supporting or opposing the nomination or election of one or more clearly identified candidates shall include a disclosure statement spoken by the candidate and containing at least

the following words: "I am (or "This is____ ") [name of candidate], candidate for [name of office], and this ad was paid for (or "sponsored" or "furnished") by [name of candidate campaign committee that paid for the advertisement]." This subdivision applies only to an advertisement that mentions the name of, transmits the voice of, or otherwise refers to an opposing candidate for the same office as the sponsoring candidate.

(2) Political party advertisements on radio. – Radio advertisements purchased by a political party organization supporting or opposing the nomination or election of one or more clearly identified candidates shall include a disclosure statement spoken by the chair, executive director, or treasurer of the political party organization and containing at least the following words: "This ad opposing/supporting [name of candidate] for [name of office] was paid for (or "sponsored" or "furnished") by [name of political party]." The disclosed name of the political party organization shall include the name of the political party as it appears on the ballot.

(3) Political action committee advertisements on radio. – Radio advertisements purchased by a political action committee supporting or opposing the nomination or election of one or more clearly identified candidates shall include a disclosure statement spoken by the chief executive officer or treasurer of the political action committee and containing at least the following words: "This ad opposing/supporting [name of candidate] for [name of office] was paid for (or "sponsored" or "furnished") by [name of political action committee] political action committee." The name of the political action committee used in the advertisement shall be the name that appears on the statement of organization as required by G.S. 163-278.7(b)(1).

(4) Advertisements on radio by an individual. – Radio advertisements purchased by an individual supporting or opposing the nomination or election of one or more clearly identified candidates shall include a disclosure statement spoken by the individual and containing at least the following words: "I am [individual's name], and this ad opposing/supporting [name of candidate] for [name of office] was paid for (or "sponsored" or "furnished") by me.

(5) Advertisements on radio by another sponsor. – Radio advertisements purchased by a sponsor other than a candidate, a candidate campaign committee, a political party organization, a political action committee, or an individual which supports or opposes the nomination or election of one or more clearly identified candidates shall include a disclosure statement spoken by the chief executive or principal decision maker of the sponsor and containing at least the following words: "[Name of sponsor] paid for (or "sponsored" or "furnished") this ad." If the sponsor is a corporation that has the purpose of promoting social, educational, or political ideas, the advertisement shall also include an aural disclosure indicating that the viewer may obtain additional information on the sponsor and the sponsor's donors from the appropriate board of elections, containing at least the following words: "For donor information contact [Name of board of elections with whom information filed]."

(6) Electioneering communication on the radio. – Radio advertisements purchased by an individual that are electioneering communications shall include a disclosure statement spoken by the individual and containing at least the following words: "I am [individual's name], and this ad

opposing/supporting [name of candidate] for [name of office] was paid for (or "sponsored" or "furnished") by me." Radio advertisements purchased by a sponsor other than a candidate, a candidate campaign committee, a political party organization, a political action committee, or an individual that are electioneering communications shall include a disclosure statement spoken by the chief executive or principal decision maker of the sponsor and containing at least the following words: "[Name of sponsor] paid for (or "sponsored" or "furnished") this ad." If the sponsor is a corporation that has the purpose of promoting social, educational, or political ideas, the advertisement shall also include an aural disclosure indicating that the viewer may obtain additional information on the sponsor and the sponsor's donors from the appropriate board of elections, containing at least the following words: "For donor information contact [Name of board of elections with whom information filed]."

(d) Placement of Disclosure Statement in Television and Radio Advertisements. – In advertisements on television, a sponsor may place the disclosure statement required by this section at any point during the advertisement, except if the duration of the advertisement is more than five minutes, the disclosure statement shall be made both at the beginning and end of the advertisement. The sponsor may provide the oral disclosure statement required by this section at the same time as the visual disclosure required under the Communications Act of 1934, 47 U.S.C. §§ 315 and 317, is shown. But any visual disclosure legend shall be at least four percent (4%) of vertical picture height in size. For advertisements on radio, the placement of the oral disclosure statement shall comply with the requirements of the Communications Act of 1934, 47 U.S.C. §§ 315 and 317.

(e) Choice of Supporting or Opposing a Candidate. – In its oral disclosure statement, a sponsoring political party organization, political action committee, individual, or other noncandidate sponsor shall choose either to identify an advertisement as supporting or opposing the nomination or election of one or more clearly identified candidates.

(e1) Joint Sponsors. – If an advertisement described in this section is jointly sponsored, the disclosure statement shall name all the sponsors and the disclosing individual shall be one of those sponsors. If a candidate is one of the sponsors, that candidate shall be the disclosing individual, and if more than one candidate is the sponsor, at least one of the candidates shall be the disclosing individual.

(f) Legal Remedy. – Pursuant to the conditions established in subdivisions (1), (2), and (3) of this subsection, a candidate for an elective office who complied with the television and radio disclosure requirements throughout that candidate's entire campaign shall have a monetary remedy in a civil action against (i) an opposing candidate or candidate committee whose television or radio advertisement violates these disclosure requirements and (ii) against any political party organization, political action committee, individual, or other sponsor whose advertisement for that elective office violates these disclosure requirements:

(1) Any plaintiff candidate in a statewide race in an action under this section shall complete and file a Notice of Complaint Regarding Failure to Disclose on Television or Radio Campaign Advertising with the State Board of Elections after the airing of the advertisement but no later than the first Friday after the Tuesday on which the election occurred. Candidates in nonstatewide races may file the notice during the same time period with one county board of elections within the electoral area in which they are candidates. The timely filing of this notice preserves the candidate's right to bring an action in

superior court any time within 90 days after the election. A candidate shall bring the civil action in the county where the candidate filed the notice.

(2) Upon receiving a favorable verdict in accordance with existing law, the plaintiff candidate shall receive a monetary award of actual damages. The price of actual damages shall be calculated as the total dollar amount of television and radio advertising time that was aired and that the plaintiff candidate correctly identifies as being in violation of the disclosure requirements of this section.

The plaintiff candidate shall also receive an award that trebles the amount of actual damages if:

a. The plaintiff candidate can establish having notified or attempted to notify the sponsor of the advertisement properly by return-receipt mail about the failure of a particular advertisement or advertisements to comply with the disclosure requirements of this section, and

b. After the notice or attempted notice, the advertisement continued to be aired.

The treble damages shall be calculated from the date on which the return-receipt notice was accepted or rejected by a defendant sponsoring candidate or candidate committee, political party organization, political action committee, or individual. The plaintiff candidate or candidate committee shall send a copy of any return-receipt mailing to the relevant board of elections as provided in subdivision (1) of this subsection within five days after the notice is returned to the possession of the candidate or candidate committee.

The plaintiff candidate may bring the civil action personally or authorize his or her candidate campaign committee to bring the civil action.

(3) A candidate who violates the disclosure requirements of State law in this section and that candidate's campaign committee shall be jointly and severally liable for the payment of damages and attorneys' fees. If the candidate is held personally liable for any payment of damages or attorneys' fees, the candidate for state or local office shall not use or be reimbursed by funds from the candidate's campaign committee in paying any amount.

(g) Relation to the Communications Act of 1934. – Television advertisements by a sponsor supporting or opposing the nomination or election of one or more clearly identified candidates shall comply with the oral disclosure requirements under State law in this section. Those advertisements shall also comply with disclosure requirements under the Communications Act of 1934, 47 U.S.C. §§ 315 and 317 by use of visual legends. The content of those visual legends is specified by the Communications Act of 1934, 47 U.S.C. §§ 315 and 317, and G.S. 163-278.39(a)(1). The size of those visual legends is determined by G.S. 163-278.39(b), which satisfies requirements under the Communications Act of 1934, 47 U.S.C. §§ 315 and 317. In the case of radio advertisements, the oral disclosure requirements under State law in this section incorporate the content requirements under the Communications Act of 1934, 47 U.S.C. §§ 315 and 317.

(h) No Additional Liability of Television or Radio Outlets. – Television or radio outlets shall not be liable under this Part for carriage of political advertisements that fail to include the disclosure requirements provided for in this Part.

(i) No Criminal Liability. – Nothing in this section regarding the disclosure requirements in subsections (b) and (c) of this section shall be relied upon or otherwise interpreted to create criminal liability. (1999-453, s. 2(a); 2000-140, ss. 83, 84; 2001-317, s. 2; 2010-170, s. 9.)