

Vermont Democratic Party v. Republican Governor's Assoc., No. S1285-04 Cnc (Norton, J., Oct. 29, 2004)

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STATE OF VERMONT
Chittenden County, ss.:

SUPERIOR COURT
Docket No. S1285-04 CnC

VERMONT DEMOCRATIC PARTY,
PETER CLAVELLE

v.

REPUBLICAN GOVERNORS'
ASSOCIATION

ENTRY

Both the Vermont Democrats and the Republican Governors have requested further clarification of this court's October 28, 2004 injunctive order against the Republican Governors' Association. While this order stands on its own, the court will attempt to shed the light of additional meaning for the sake of the parties in the time remaining before the election. In the court's previous order, the Republican Governors were ordered to "withdraw or cancel all future campaign advertising in Vermont

to the extent it may do so without financial detriment.” This simply means that the Republican Governors must withdraw or cancel all future advertising, except those advertisements where the money cannot be refunded. That does not include incidental or de minimus expenses such as non-refundable “vendor” fees or phone calls.

This is consistent with the Attorney General’s position that the Republican Governors should not be punished by the complete loss of monies spent on advertising arrangements made prior to the October 22d letter from the Attorney General. This is also consistent with the testimony of Mark Michaud, the communications director for the state Democratic Party, who said refunds were a common practice for pulled ads. The affidavit of Michael Powers, for example, shows WCAX-TV accepts cancellation of prepaid advertising with a refund of the cost of broadcast time not used.

The October 28th order also carries with it the implied duty to act in good faith. As the Attorney General points out in his response:

Indeed, the Republican Governors Association should already have been taking steps to comply with the Order, and any failure to take such actions should not be protected by the filing of a motion to clarify. . . . While WFFF-TV would have required a cancellation notice at the close of business yesterday to cancel advertisements for Monday, November 1, 2004, it also indicated an ability to be flexible in this regard concerning the advertisements of the Republican Governors Association.

State of Vermont’s Response to Request for Clarification of Injunction Order, S1285-04 CnC (Oct. 29, 2004).

The court expects that the Republican Governors, an association made up of the chief executives sworn to uphold the law, would have and will continue to comply with this legal injunction to the fullest extent of its power. The court is also certain that the Attorney General will take any further action necessary to ensure compliance.

The October 28, 2004 preliminary injunction order against the Republican Governors' Association shall continue and shall be implemented consistent with this entry.

Dated at Burlington, Vermont _____, 2004.

Judge