

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

Supreme Court No. 20130011
Burleigh County Case No. 08-2012-CV-00309

Empower the Taxpayer, on behalf of)
itself and the 28,000 + North Dakotans)
who signed the Petition, Charlene)
Nelson, and Robert Hale,)

Plaintiffs and Appellants,)

vs.)

State Tax Commissioner Cory Fong,)
Senator Dwight Cook, Senator David)
Oehlke, Representative Charles)
Damschen, Representative Lonnie)
Winrich, Divide County)
Commissioner Doug Graupe, Cass)
County Commissioner Scott Wagner,)
Wahpeton Finance Director Darcie)
Huwe, Williams County Auditor Beth)
Innis, North Dakota Association of)
Counties, North Dakota Association)
of County Commissioners, North)
Dakota League of Cities, North Dakota)
Weed Control Association, North)
Dakota School Board Association,)

Defendants.)

-----)
Divide County Commissioner)
Doug Graupe, Cass County Commissioner)
Scott Wagner, Wahpeton Finance Director)
Darcie Huwe, Williams County Auditor)
Beth Innis, North Dakota Association)
of Counties, North Dakota Association)
of County Commissioners, North Dakota)
League of Cities, North Dakota Weed)
Control Association, North Dakota)
School Board Association,)

Appellees.)

APPEAL FROM THE ORDER FOR PARTIAL SANCTIONS DATED AUGUST 30, 2012, AND THE ORDER DENYING MOTION TO RECONSIDER PARTIAL SANCTIONS UNDER RULE 11 DATED NOVEMBER 27, 2012 OF THE HONORABLE BRUCE A. ROMANICK, DISTRICT COURT JUDGE SOUTH CENTRAL JUDICIAL DISTRICT, BURLEIGH COUNTY

BRIEF OF APPELLEES DIVIDE COUNTY COMMISSIONER DOUG GRAUPE, CASS COUNTY COMMISSIONER SCOTT WAGNER, WAHPETON FINANCE DIRECTOR DARCIÉ HUWE, AND WILLIAMS COUNTY AUDITOR BETH INNIS

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RESPONSE TO PLAINTIFFS' ISSUES PRESENTED

(1.) Individual County Defendants object to Plaintiffs' Issues Presented. Plaintiffs' misconstrue the nature of their claims against the Individual County Defendants in an improper attempt to expand the scope of this Court's review. Plaintiffs' assertion the district court failed to address the merits of all of Plaintiffs' claims against the Individual County Defendants is without merit. The specific conduct of the Individual County Defendants alleged by Plaintiffs to have violated the Corrupt Practices Act was their taking a public position in opposition to initiated Measure 2. Plaintiffs' specific allegations of wrongdoing by the Individual County Defendants did not implicate the misuse of any property or services belonging to the government, and did not involve any publication by the Individual County Defendants in any political advertisement or news release. It was on this basis the district court properly concluded the Plaintiffs' claims as against the Individual County Defendants were frivolous and in violation of Rule 11 of the North Dakota Rules of Civil Procedure. The district court concluded no competent attorney, after a reasonable inquiry into the law, would believe such a cause of action exists. Therefore, the Plaintiffs' appeal should be limited to the following issues:

1. Whether the district court abused its discretion in concluding Plaintiffs' claim the Individual County Defendants violated the Act by publicly stating their opposition to Measure 2 was frivolous.
2. Whether the district court abused its discretion in requiring Plaintiffs, at Plaintiffs' expense and as a sanction under Rule 11, to publish a retraction of their allegations of impropriety and corruption against the Individual County Defendants relative to the Individual County Defendants opposition to Measure 2.

3. Whether the district court's determination of the amount of attorneys' fees awarded the Individual County Defendants was clearly erroneous.

4. Whether Plaintiffs' due process rights were violated relative to the district court's imposition of sanctions upon Plaintiffs.

RESPONSE TO PLAINTIFFS' STATEMENT OF FACTS
[STATEMENT OF THE CASE]

(2.) The Statement of Facts [i.e. Statement of the Case] contained in Appellants' Brief contain numerous legal conclusions cast as factual allegations, all of which are denied by the Individual County Defendants. Individual County Defendants deny distributing false and misleading information about the effect of Measure 2, deny mischaracterizing the Legislative Council report referenced in the Complaint, deny misusing property or services belonging to the government to advocate for or against Measure 2, and deny any violation of the Act by County Defendants.

(3.) The vote on Measure 2 occurred on June 12, 2012, and not June 5, 2012 as asserted by Plaintiffs.

(4.) County Defendants deny the Attorney General opinions alluded to in paragraph 7 of Appellants' Brief prohibit any of the County Defendants' conduct alleged in the Complaint. Each of the referenced Attorney General opinions involved the misuse of property and/or services belonging to the government for political advocacy – no such use of government property or services is even alleged as to the County Defendants.

(5.) County Defendants deny the *Affidavit of Charlene Nelson* constitutes evidence of irreparable harm to the Plaintiffs as alleged in paragraph 9 of Appellants' Brief. Instead, said affidavit merely alleges irreparable harm.

(6.) Plaintiffs' summary of the basis for the district court's dismissal of this action in paragraph 12 of Appellants' Brief is distorted. The district court determined Plaintiffs lack standing to enforce the Act as the Act is penal. This Court upheld this determination on appeal. *Empower the Taxpayer v. Fong*, 2012 ND 119, ¶ 6, 817 N.W.2d 381.

(7.) Paragraph 14 fails to note the district court fully addressed the legal merits of Plaintiffs' claim for which sanctions were imposed. The district court concluded Plaintiffs' claim a public official cannot take a public position on an initiated measure was frivolous, in violation of Rule 11, N.D. R. Civ. P. Whether the district court addressed the merits of Plaintiffs' other legal claims is immaterial. Sanctions under Rule 11 may be properly imposed when any legal claim is frivolous.

RESPONSE TO PLAINTIFFS' STATEMENT OF THE FACTS

(8.) Plaintiffs' Statement of the Facts is comprised of twenty-two enumerated paragraphs (¶¶ 23-45) of facts or statements which Plaintiffs contend are undisputed. In actuality, as explained below, only three of the enumerated paragraphs (¶¶ 33, 37, and 44) contain undisputed facts or statements, with the remainder being either wholly inaccurate, or inaccurate through material omission or mischaracterization as discussed in this brief.

ARGUMENT

I. APPLICABLE STANDARD

(9.) Conduct prohibited by Rule 11 of the North Dakota Rules of Civil Procedure is contained in subsection 11(b), which provides, in relevant part, as follows:

(b) Representations to the Court. By presenting to the court a pleading, written motion, or other paper, whether by signing, filing, submitting, or later advocating it, an attorney or self-represented party certifies that to the best of the

person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

- (1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;
- (2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;

* * *

N.D. R. Civ. P. 11(b) (emphasis in original). The applicable standard of review relative to a district court's sanction of a party for a violation of Rule 11(b) has been summarized by this Court as follows:

If a district court determines a party has violated N.D.R.Civ.P. 11(b), it may sanction the party, attorney, or law firm. N.D.R.Civ.P. 11(c). The determination of whether to impose sanctions for a N.D.R.Civ.P. 11 violation lies within the sound discretion of the district court. A district court's decision regarding N.D.R.Civ.P. 11 sanctions will not be disturbed unless this Court determines the district court abused its discretion. Further, if there are any factual determinations relevant to the sanctions issue, this Court reviews the district court's finding under the clearly erroneous standard.

In re Pederson Trust, 2008 ND 210, ¶ 22, 757 N.W.2d 740 (citations and quotations omitted).

(10.) Noting there are very few reported decisions in North Dakota thoroughly discussing the standard the district court should use to sanction an attorney, the district court looked to the interpretation of the similar Rule 11 of the Federal Rules of Civil Procedure. (App. 181-82.)

Under Fed.R.Civ.P. 11, both the tests for frivolousness and improper purpose are objective tests. 47 Am.Jur.Trials 521, § 5 (May 2012). "Under the 'frivolous' test, the court determines whether a competent attorney admitted to practice before the district court could reasonably have had a good-faith belief in the merit of a factual or legal contention after an objectively reasonable inquiry." *Id.* "Under the 'improper purpose' test, the court determines whether the pleading, motion, or other paper has been interposed for purposes of delay, harassment, or

increasing costs of litigation.” *Id.* Most courts will not sanction a party under the improper purpose test if the pleading has “some merit.” *Id.*

(App. 182.) The district court concluded the appropriate inquiry in this case was therefore whether Plaintiffs’ claim at issue had some merit.

(11.) As discussed below, the district court did not abuse its discretion in sanctioning the Plaintiffs’ violation of Rule 11(b) as Plaintiffs’ claim against the Individual County Defendants at issue had no merit.

II. THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION IN IMPOSING SANCTIONS UPON PLAINTIFFS

A. Plaintiffs’ Conduct Warranting Sanctions

(12.) Plaintiffs’ commenced this action on February 16, 2012 alleging the defendants violated the Corrupt Practices Act by advocating against North Dakota Property Tax Amendment, Measure 2. The Plaintiffs’ specific allegations of wrongful conduct against each of the Individual County Defendants are contained in paragraphs 39 (Divide County Commissioner Doug Graupe), 40 (Cass County Commissioner Scott Wagner), 41 (Wahpeton Finance Director Darcie Huwe) and 42 (Williams County Auditor Beth Innis) of Plaintiffs’ Complaint. (App. 35-37.) In each of Plaintiffs’ allegations against the Individual County Defendants, the Plaintiffs assert each defendant “publicly stated opposition to North Dakota Property Tax Amendment, Measure 2”, and then provide a quotation of the allegedly offensive statements made by each defendant. Of significance is the fact none of the alleged wrongful conduct implicates any misuse of property or services belonging to the government as required for application of N.D.C.C. § 16.1-10-02, and none of the alleged statements were published by the Individual County Defendants in any political advertisement or news release as required for application of

N.D.C.C. § 16.1-10-04. In addition, all of the quoted statements constitute opinions, and therefore, could not constitute false statements as required for application of N.D.C.C. § 16.1-10-04. *See Dist. One Republican Comm. v. District One Democrat Comm.*, 466 N.W.2d 820, 830 (N.D. 1991)(a mere expression of an opinion does not constitute a false statement under the Corrupt Practices Act.) Further, the alleged statements made by Individual County Defendants Darcie Huwe and Beth Innis were made in response to questioning by newspaper reporters in May of 2010, nearly fifteen months before N.D.C.C. § 16.1-10-02 was amended to become applicable to initiated measures such as Measure 2, and before Measure 2 was even accepted by the North Dakota Secretary of State as a ballot measure. Section 16.1-10-02 also expressly exempts from its application “activities undertaken in the performance of public office or a position taken in any bona fide news story, commentary, or editorial.” N.D.C.C. § 16.1-10-02(2)(a).

(13.) On the same day the Plaintiffs’ commenced this action, Plaintiffs held a press conference at the North Dakota State Capitol to announce the filing of this action, and made certain statements to the press which were published in numerous newspapers throughout the State of North Dakota. Plaintiffs’ characterization of the claims being asserted against the defendants in this lawsuit are reflected in an exemplar article entitled “Measure 2 supporters file suit against opponents” which was posted on the Bismarck Tribune’s website on February 16, 2012. (App. 98.) Other newspapers published similar articles. Summarizing, Plaintiffs asserted during the press conference the defendants in this action had violated the “Corrupt Practices Act by spreading false information about Measure 2 and illegally advocating a position on the adoption or rejection of the ballot measure.” (App. 98-99.) The article reflects the following statements were also made by

Plaintiffs:

“These entities are intentionally engaging in lies, misrepresentations, deception, mischaracterizations and fearmongering,” Hale said.

* * *

Lynn Boughey, an attorney for Empower the Taxpayer, said the group is seeking to have either a preliminary injunction or temporary restraining order put in place against those in government agencies or publicly funded groups from advocating a position on Measure 2. . . .

“They’re not supposed to advocate one way or another,” Boughey said.

* * *

Boughey said entities are only allowed to provide neutral information that doesn’t advocate a position to the public on ballot measures. He said the proponents of Measure 2 welcome a public debate on the measure so long as it’s fair.

“We’re not asking them not to talk, we’re asking them not to lie,” Boughey said.

(App. 98-99.) No allegation of any misuse of property or services belonging to the government was referenced by Plaintiffs during the press conference, nor was any allegation made any defendant published a political advertisement or news release containing false or misleading information concerning Measure 2. Plaintiffs represented to the press and the public the defendants were violating the Corrupt Practices Act by simply expressing their opinions in opposition to Measure 2.

(14.) On March 6, 2012, the defendants filed motions to dismiss with the district court requesting dismissal of Plaintiffs’ Complaint on numerous bases, including, but not limited to, that Plaintiffs’ lacked standing to enforce the penal Act. The dispositive motions advised Plaintiffs, in detail, of the frivolous nature of their claims in this action.

(15.) On March 9, 2012, counsel for County Defendants made a written demand to Plaintiffs’ counsel for the voluntary dismissal of Plaintiffs’ claims in this action as

against the County Defendants, and again pointed out the frivolous nature of Plaintiffs' claims, and noted the improper purpose of Plaintiffs' action was to harass and chill the exercise of constitutional free speech rights prior to the June 2012 vote on Measure 2 – a clear abuse of our legal system. (App. 96-97.) County Defendants' counsel advised Plaintiffs' counsel sanctions under Rule 11 of the North Dakota Rules of Civil Procedure would be sought should Plaintiffs fail to voluntarily dismiss their claims in this action on or before 5:00 p.m. on March 13, 2012. Plaintiffs did not voluntarily dismiss their claims against the County Defendants as demanded. *County Defendants' Motion for Imposition of Rule 11 Sanctions* (App. 84) was served upon the Plaintiffs by mail on March 16, 2012, but not filed with the district court. The district court dismissed the Plaintiffs' claims, in their entirety, on April 12, 2012 (App. 103) on the basis the Plaintiffs' lacked standing to prosecute a claim under the Act as the Act was penal and did not provide for a private right of action in a civil case. This Court affirmed such holding on June 7, 2012. On August 30, 2012, the district court entered its *Order Granting Partial Sanctions under Rule 11* (App. 180), at issue on this appeal. On September 14, 2012, Plaintiffs filed *Plaintiffs' Motion for Reconsideration of Rule 11 Sanctions* (App. 248), which was denied by the district court pursuant to *Order Denying Motion to Reconsider Partial Sanctions Under Rule 11* entered November 27, 2012 (App. 274), also at issue in this appeal.

(16.) Plaintiffs were advised by all parties to this action, numerous times, in detail, as to why they lacked standing to bring a claim under the Act, the frivolous nature of their legal claims, and the inappropriate purpose for which the action was commenced, including pursuant to dispositive motions submitted to the district court by the County

Defendants and State Defendants, pursuant to correspondence from counsel for County Defendants to counsel for Plaintiffs, as well as pursuant to County Defendants' then pending motion for Rule 11 sanctions. As required, County Defendants waited at least twenty-days following service of the motion for Rule 11 sanctions upon the Plaintiffs before County Defendants filed their motion with the district court.

B. Plaintiffs' Claims Against The Individual County Defendants

(17.) Although Plaintiffs' contend their Complaint alleged the defendants used public property or services for a political purpose in violation of § 16.1-10-02, and published political advertisements and news releases containing false or misleading information concerning Measure 2 in violation of § 16.1-10-04, examination of Plaintiffs' specific allegations of wrongdoing on the part of the Individual County Defendants reveals otherwise. The allegations as to each Individual County Defendant are addressed below.

1. Divide County Commissioner Doug Graupe

(18.) Plaintiffs alleged Divide County Commissioner Doug Graupe published an article in the North Dakota County Commissioners Association publication of an unspecified date which advocated against Measure 2. Graupe's article was published in a publication of the North Dakota Association of County Commissioners ("NDACC"), a private non-profit corporation. Whether the NDACC received funding from governmental organizations is immaterial as the scope of the Act is expressly limited to the use of property or services belonging to the government. Once public funds are given to a private entity, they no longer belong to the government. The publication in which Graupe's article was published was paid for by a non-governmental entity, NDACC. In addition, even assuming the NDACC's publication could be construed as constituting a

direct expenditure for the purpose of promoting the passage or defeat of Measure 2, any such expenditure was statutorily authorized pursuant to N.D.C.C. § 16.1-08.1-03.5. As a result, Plaintiffs' allegations against Graupe do not implicate § 16.1-10-02.

(19.) Further, the article in the NDACC publication cannot reasonably be construed to constitute a "political advertisement" or "news release" under § 16.1-10-04. Although these terms are not defined by the Act, or elsewhere in the North Dakota Century Code, the plain meaning ordinarily attributed to these terms would exclude simply being quoted by newspaper or television reporters. The terms would also logically exclude activities expressly excluded from the definition of "political purpose" relative to the misuse of property or services belonging to the government, including any position (opinion) taken in any bona fide news article, commentary or editorial under § 16.1-10-02(2)(a).

2. Cass County Commissioner Scott Wagner

(20.) Plaintiffs' allegations against Cass County Commissioner Scott Wagner cannot reasonably be interpreted as alleging any misuse of property or services belonging to the government. Instead, Plaintiffs merely allege Wagner made verbal statements during a North Dakota Association of Counties ("NDAC") forum discussing Measure 2 which took place at the Ramkota Hotel in Bismarck, North Dakota on October 17, 2011. Plaintiffs do not contend the Ramkota Hotel constitutes property belonging to the government (it is privately owned). Further, NDAC is a private (non-governmental) non-profit corporation. Any expenditure by NDAC in hosting said forum would not have constituted the misuse of property or services belonging to the government. Wagner's presentation at the forum also could not reasonably be characterized as Wagner's publication of a political advertisement or news release governed by § 16.1-10-04.

3. Wahpeton Finance Director Darcie Huwe

(21.) The alleged improper conduct of Wahpeton Finance Director Darcie Huwe entails her verbal response to questioning from a reporter from the Wahpeton Daily News newspaper which was published on May 19, 2010. Plaintiffs' Complaint does not allege any misuse, or allege facts from which it could be concluded property or services belonging to the government were utilized by Huwe in making the statements to a reporter. Responding to a reporter's questions cannot reasonably be characterized as the publication of a political advertisement or news release by Huwe under § 16.1-10-04. In addition, the definition of "political purpose" under § 16.1-10-02 expressly excludes "activities undertaken in the performance of public office or a position taken in any bona fide news story, commentary, or editorial." N.D.C.C. § 16.1-10-02(2)(a). The statements made by Huwe were in response to questioning by a newspaper reporter, and as such, constitute a position taken in any bona fide news story, commentary, or editorial. Further, these statements were made on or about May 19, 2010, prior to the signed petition for placement of Measure 2 on the ballot being filed with the North Dakota Secretary of State's office. As a result, the statements at issue did not pertain to a state-wide initiated measure when they were made. Also, at the time these statements were made, the Act's definition of "political purpose" did not include the phrase "a statewide initiated or referred measure, a constitutional amendment or measure, a political subdivision ballot measure". Such language was added to the definition of "political purpose" effective August 1, 2011. In other words, at the time Huwe made these statements to the reporter, the Act did not pertain to speech concerning state-wide initiated measures or constitutional amendments or measures at issue in this case.

4. Williams County Auditor Beth Innis

(22.) For the same reasons why Plaintiffs' claims against Darcie Huwe were frivolous, they were also frivolous as to Williams County Auditor Beth Innis. The only alleged improper conduct by Innis entails her verbal responses to questioning from a reporter from the Williston Herald newspaper which was published on May 24, 2010, prior to the Act's application to state-wide initiated measures. The Act expressly excludes from the definition of the term "political activity" "activities undertaken in the performance of public office or a position taken in any bona fide news story, commentary, or editorial." N.D.C.C. § 16.1-10-02(2)(a). The statements made by Innis were in response to questioning by a newspaper reporter, and as such, constitute a position taken in any bona fide news story, commentary, or editorial. Further, these statements were made on or about May 24, 2010, prior to Measure 2 even being approved as a ballot measure, and prior to the Act's application to state-wide initiated measures and constitutional amendments or measures. Further, Huwe's statements to a news reporter cannot reasonably be characterized as the publication of a political advertisement or news release by Innis under § 16.1-10-04.

C. Plaintiffs' Claims Were Frivolous And Asserted For An Improper Purpose

(23.) As discussed, Plaintiffs' sole claim against the Individual County Defendants based upon the wrongful conduct alleged to have been engaged in by them is that they violated the Corrupt Practices Act by stating their positions in opposition to Measure 2. The district court concluded "a competent attorney could not have had a good faith belief that a cause of action exists merely for a public official stating his or her opposition to an initiated measure." (App. 184.)

1. The Act's Prohibitions Do Not Extend To All Political Speech

(24.) Plaintiffs assert throughout their Complaint the Individual County Defendants are prohibited from publicly stating any position, either for or against Measure 2. In fact, Plaintiffs requested the district court enjoin the defendants from “advocating any position on Measure 2.” (App. 50-51.) The problem with such a claim is the Act cannot reasonably be interpreted as prohibiting all political speech. Instead, the Act’s prohibitions are limited to the willful misuse of property and services belonging to the government for political purposes, and the knowing or reckless dissemination of false, deceptive or misleading information through publication in any political advertisement or news release – none of which occurred.

(25.) Even assuming the Individual County Defendants violated the Act, which is denied, Plaintiffs’ requested injunction prohibiting defendants “from advocating any position on Measure 2” could never be granted as the request goes well beyond the scope of the Act. In addition, any such injunction would violate defendants’ right of free expression under the First Amendment to the Constitution of the United States of America, as well as Article I, § 4 of the Constitution of North Dakota¹.

As stated by the United States Supreme Court:

The manifest function of the First Amendment in a representative government requires the legislators be given the widest latitude to express their views on issues of policy. The central commitment of the First Amendment, as summarized in the opinion of the Court in *New York Times v. Sullivan*, 376 U.S. 254, 270 . . . (1964), is that debate on public issues should be uninhibited, robust, and wide-open. . . . Just as erroneous statements must be protected to give freedom of expression the breathing space it needs to survive, so statements

¹ Article I, § 4 of the Constitution of North Dakota provides, in relevant part, “[e]very man may freely write, speak and publish his opinions on all subjects, being responsible for the abuse of that privilege. . . .”

criticizing public policy and the implementation of it must be similarly protected. . . . The interest of the public in hearing all sides of a public issue is hardly advanced by extending more protection to citizen-critics than to legislators. Legislators have an obligation to take positions on controversial political questions so that their constituents can be fully informed by them, and be better able to assess their qualifications for office; also so they may be represented in governmental debates by the person they have elected to represent them.

Bond v. Floyd, 385 U.S. 116, 136-37, 87 S.Ct. 339, 349-50, 17 L.Ed.2d 235 (1966).

States have a legitimate interest in preserving the integrity of their electoral processes But when a State seeks to uphold that interest by restricting speech, the limitations on state authority imposed by the First Amendment are manifestly implicated.

* * *

[D]emonstrable falsehoods are not protected by the First Amendment in the same manner as truthful statements But erroneous statement is inevitable in free debate, and . . . it must be protected if the freedoms of expression are to have the “breathing space” that they need . . . to survive, . . .

The chilling effect of such absolute accountability for factual misstatements in the course of political debate is incompatible with the atmosphere of free discussion contemplated by the First Amendment in the context of political campaigns.

Dist. One Republican Comm., 466 N.W.2d at 828 (quoting *Brown v. Hartlage*, 456 U.S. 45, 60-61, 102 S.Ct. 1523, 1528, 71 L.Ed.2d 732, 740, 745-746 (1982)).

2. Neither The Act, Nor Attorney General Opinions Interpreting The Act, Support Plaintiffs’ Claim at Issue

(26.) Plaintiffs rely upon a strained reading of N.D.C.C. § 16.1-10-02(1), which provides:

16.1-10-02. Use of state or political subdivision services or property for political purposes.

1. No person may use any property belonging to or leased by, or any service which is provided to or carried on by, either directly or by contract, the state or

any agency, department, bureau, board, commission, or political subdivision thereof, for any political purpose.

(emphasis added.) Effective since August 1, 2011, the term “political purpose” has been defined, in relevant part, as follows:

“Political purpose” means any activity undertaken in support of or in opposition to a statewide initiated or referred measure, a constitutional amendment or measure, a political subdivision ballot measure, or the election or nomination of a candidate to public office and includes using “vote for”, “oppose”, or any similar support or opposition language in any advertisement whether the activity is undertaken by a candidate, a political committee, a political party, or any person. . . . The term does not include activities undertaken in the performance of a public office or a position taken in a bona fide news story, commentary, or editorial. Factual information may be presented regarding a ballot question solely for the purpose of educating voters if the information does not advocate for or against or otherwise reflect a position on the adoption or rejection of the ballot measure.

N.D.C.C. § 16.1-10-02(2)(a). The language “statewide initiated or referred measure, a constitutional amendment or measure, a political subdivision ballot measure” was added to the definition of “political purpose” effective August 1, 2011. In other words, prior to August 1, 2011, the prohibition upon the use of public property and services for political purposes under § 16.1-10-02 did not technically apply to statewide initiated or referred measures, or constitutional amendments or measures, at issue in this case.

(27.) Plaintiffs assert that under § 16.1-10-02, only neutral factual information may be provided to the public by public officials, even in circumstances where no public property or services are being used. Plaintiffs’ grossly misconstrue the following portion of the definition of what constitutes a “political purpose”:

The term does not include activities undertaken in the performance of public office or a position taken in any bona fide news story, commentary, or editorial. Factual information may be presented regarding a ballot question solely for the purpose of educating voters if the information does not advocate for or against or otherwise reflect a position on the adoption or rejection of the ballot question.

Plaintiffs essentially argue the first sentence is limited by the second sentence so that only neutral factual information may ever be provided regarding a ballot question. This interpretation flies in the face of the unambiguous wording of the statute, and defies common sense. The phrase “a position taken” in the first sentence clearly encompasses something more than merely stating facts – it encompasses an expression of an opinion, whether for, against or neutral on a matter. Statements of the Individual County Defendants appearing in news stories, commentary or editorials are expressly excluded from the definition of “political purpose.” The second sentence encompasses other situations not covered by the first sentence. In addition, the language relied upon by Plaintiffs only appears in the definition of “political purpose”. The only prohibitions contained in § 16.1-10-02 appear in subdivision 1 which unambiguously only applies to instances where property or services belonging to the government are being misused for a political purpose. No competent attorney could reasonably conclude § 16.1-10-02 provides a blanket prohibition upon public officials expressing any position on an initiated measure.

(28.) Plaintiffs also rely upon several North Dakota Attorney General Opinions, none of which address the issues before this Court. Specifically, Plaintiffs refer to N.D. Op. Atty. Gen. No. L-11 (opining “a state agency or entity may not use state funds or resources to advocate for or against a ballot measure, absent a constitutional or statutory provision permitting it”), N.D. Op. Atty. Gen. No. L-55 (opining “that while a school district may provide the public with neutral factual information, it may not, without express legislative authority, expend public funds to advocate the school board’s position on a ballot measure”), and 2002 N.D. Op. Atty. Gen. No. L-61 (opining an eight page

newspaper insert published by the McLean County Board of County Commissioners with public funds violated the Corrupt Practices Act as it advocated in favor of the proposed bond measure to build a new courthouse). None of these opinions support Plaintiffs' frivolous claims at issue as none of them stand for the blanket proposition public officials are prohibited by the Act from publicly stating their position for or against an initiated measure. In addition, all of these opinions are distinguishable from the issue before this Court as all of the opinions addressed the misuse of public property or services for a political purpose, not at issue relative to the Plaintiffs' claims against the Individual County Defendants.

(29.) Plaintiffs further rely upon N.D.C.C. § 16.1-10-04 of the Act in support of the proposition public officials are prohibited under the Act from publicly stating a position against an initiated measure. Section 16.1-10-04 provides as follows:

16.1-10-04. Publication of false information in political advertisements - Penalty.

A person is guilty of a class A misdemeanor if that person knowingly, or with reckless disregard for its truth or falsity, publishes any political advertisement or news release that contains any assertion, representation, or statement of fact, including information concerning a candidate's prior public record, which is untrue, deceptive, or misleading, whether on behalf of or in opposition to any candidate for public office, initiated measure, referred measure, constitutional amendment, or any other issue, question, or proposal on an election ballot, and whether the publication is by radio, television, newspaper, pamphlet, folder, display cards, signs, posters, billboard advertisements, websites, electronic transmission, or by any other public means. This section does not apply to a newspaper, television or radio station, or other commercial medium that is not the source of the political advertisement or news release.

(30.) As a preliminary matter, it is Plaintiffs' claim public officials cannot publicly express any position on an initiated measure. In addition, the Plaintiffs' specific allegations of wrongful conduct on the part of the Individual County Defendants do not

involve the Individual County Defendants publication of any “political advertisement” or “news release.” Although these terms are not defined by the Act, or elsewhere in the North Dakota Century Code, the plain meaning ordinarily attributed to these terms would exclude simply being quoted by newspaper or television reporters. The terms would also logically exclude activities expressly excluded from prohibited conduct relative to the misuse of property or services belonging to the government, including any position (opinion) taken in any bona fide news article, commentary or editorial. In addition, statements made during a public forum pertaining to the subject ballot measure cannot logically be construed as “political advertising” or a “news release” and is more akin to the constitutionally protected activity of free expression of opinions.

(31.) In addition, in interpreting a substantially similar prior version of Section 16.1-10-04², this Court concluded:

A political statement is not false within the meaning of a corrupt practices act if the evidence discloses any reasonable inference that the statement is factually correct or that it is an expression of opinion.

Dist. One Republican Comm., 466 N.W.2d at 830. All of the alleged statements by the Individual County Defendants constituted expressions of opinion relative to Measure 2 and were therefore not false within the meaning of the Act. In the alternative, even

² The prior version of N.D.C.C. § 16.1-10-04 interpreted by the Court in *Dist. One Republican Comm. v. Dist. One Democrat Comm.*, 466 N.W.2d 820 (N.D. 1991) provided as follows: “[n]o person may knowingly sponsor any political advertisement or news release that contains any assertion, representation, or statement of fact, including information concerning a candidate’s prior record, which the sponsor knows to be untrue, deceptive, or misleading, whether on behalf of or in opposition to any candidate for public office, initiated measure, referred measure, constitutional amendment, or any other issue, question, or proposal on an election ballot, and whether such publication is by radio, television, newspaper, pamphlet, folder, display cards, signs, posters or billboard advertisements, or by any other public means. Any person who violates the provisions of this section is guilty of a class A misdemeanor.”

assuming, arguendo, any of the alleged statements are construed as expressing something more than an opinion, there was at least a reasonable inference the statements were factually correct.

3. Plaintiffs' Claim Violated Rule 11(b), N.D. R. Civ. P.

(32.) Plaintiffs' Complaint violates 11(b)(1) as the allegations were made for the improper purposes of harassment of the named-defendants, as well as the improper purpose of chilling everyone's constitutional free speech rights relative to any criticism of the proposed amendment to the North Dakota Constitution pursuant to Measure 2. The clear purpose of Plaintiffs' action was to squelch any dissent to the proposed initiated measure prior to the June public vote thereon. Plaintiffs' improper purpose is illustrated by the request for injunctive relief "prohibiting the defendants from advocating any position on Measure 2." (App. 50-51.) This theme of complete prohibition upon speech adverse to Measure 2 permeates the Plaintiffs' Complaint and is wholly without basis in law. These allegations also violate N.D. R. Civ. P. 11(b)(2) as they are so contrary to free speech rights guaranteed by our federal and state constitutions, they cannot reasonably be characterized as a non-frivolous request for an extension, modification, or reversal of existing law, or the establishment of new law.

(33.) Further illustrating plaintiffs' improper purpose of commencing this action is the press conference held by plaintiffs upon the filing of this action on February 16, 2012, comments from which were published in numerous publications around the State of North Dakota. Obviously, even a frivolous claim someone has violated the "Corrupt" Practices Act will lead a portion of the population to believe there is something wrongful about speaking out against Measure 2 – the intended purpose of this action. Individual

County Defendants were approached by citizens inquiring about the “corruption” being alleged. False accusations of corruption affect public perceptions and have a chilling effect on speech. The fact such accusation were made on the eve of a critical vote on Measure 2, at a time when the public was in need of more, not less, information regarding Measure 2, warranted the imposition of sanctions under Rule 11. The opinions of all defendants in this action, individuals possessing experience and knowledge regarding the potential impact of passage of Measure 2, are a valuable resource to be considered by the citizens of this State. Plaintiffs’ action sought to deprive the citizens of this resource.

III. THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION BY ORDERING PLAINTIFFS’ TO PUBLISH A RETRACTION OF THEIR FRIVOLOUS CLAIM, AT PLAINTIFFS’ EXPENSE

(34.) Sanctions available for a violation of Rule 11(b) of the North Dakota Rules of Civil Procedure are provided in Rule 11(c), which provides as follows:

(c) Sanctions.

- (1) *In General.* If, after notice and a reasonable opportunity to respond, the court determines that Rule 11(b) has been violated, the court may impose an appropriate sanction on any attorney, law firm, or party that violated the rule or is responsible for the violation. Absent exceptional circumstances, a law firm must be held jointly responsible for a violation committed by its partner, associate, or employee.
- (2) *Motion for Sanctions.* A motion for sanctions must be made separately from any other motion and must describe the specific conduct that allegedly violates Rule 11(b). The motion, brief, and other supporting papers must be served under Rule 5, but must not be filed or be presented to the court if the challenged paper, claim, defense, contention, or denial is withdrawn or appropriately corrected within 21 days after service or within another time the court sets. The respondent must have 10 days after a motion for sanctions is filed to serve and file and answer brief and other supporting papers. If warranted, the court may award to the prevailing

party the reasonable expenses, including attorney's fees, incurred for the motion.

- (3) *On the Court's Initiative.* On its own, the court may order an attorney, law firm, or party to show cause why conduct specifically described in the order has not violated Rule 11(b).
- (4) *Nature of a Sanction.* A sanction imposed under this rule must be limited to what suffices to deter repetition of the conduct or comparable conduct by others similarly situated. The sanction may include nonmonetary directives; an order to pay a penalty into court; or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of part or all of the reasonable attorney's fees and other expenses directly resulting from the violation.
- (5) *Limitations on Monetary Sanctions.* The court must not impose a monetary sanction:
 - (A) against a represented party for violating Rule 11(b)(2); or
 - (B) on its own, unless it issued the show-cause order under Rule 11(c)(3) before voluntary dismissal or settlement of the claims made by or against the party that is, or whose attorneys are, to be sanctioned.
- (6) *Requirements for an Order.* An order imposing a sanction must describe the sanctioned conduct and explain the basis for the sanction.

N.D. R. Civ. P. 11 (emphasis in original). In other words, the district court had the power to sanction Plaintiffs with a monetary sanction of an award of the Individual County Defendants' attorneys' fees and costs in this action, as well as nonmonetary sanctions for the purpose of deterring similar conduct by others in the future.

(35.) In the present case, considering the reprehensible motive behind the Plaintiffs' frivolous action, the district court was justified in awarding the Individual County Defendants their reasonable attorneys' fees and costs associated with defending this action, from its inception. In addition, considering the proximity to the June election on Measure 2, and considering the broad media coverage of Plaintiffs' action as a direct

result of a press conference scheduled by the Plaintiffs, the district court was also justified in requiring the Plaintiffs' to prepare a written retraction of their allegations of corruption, of lying by Individual County Defendants, and allegations as to the alleged impropriety of anyone expressing their opinions for or against Measure 2, for state-wide publication at the expense of Plaintiffs. Although such a sanction will not completely undo the injury caused by this frivolous action, it will hopefully warm the environment for the free exchange of ideas and opinions in advance of future ballot measures. Such a written retraction serves not only to remedy the wrong perpetrated against the Individual County Defendants, but also to deter others from engaging in similar wrongful conduct in the future. It is important to note Plaintiffs' allegations of corruption and impropriety against the Individual County Defendants were made during a press conference scheduled by Plaintiffs. This is not a situation where Plaintiffs were merely responding to inquiries initiated by the press. Under the circumstances, a statewide retraction is an appropriate and allowable remedy specifically tailored to address the egregious wrong being sanctioned.

(36.) The frivolous nature of Plaintiffs' claims is also evidenced, in part, by the fact they could not even meet the threshold requirement of standing. Plaintiffs assertion this is an issue of first impression is not accurate. As explained in briefing by both the County Defendants and State Defendants, this Court stated in *District One Republican Committee v. District One Democrat Committee*, 466 N.W.2d 820, 827 (N.D. 1991), although a violation of the Act could previously support a civil election contest prior to

changes in the law in 1979³, this Court expressly stated the changes to the law now preclude such a civil action premised upon a violation of the Act as the Act is penal in nature and the bases for a civil election contest are now spelled out in a separate chapter of the North Dakota Century Code specifically governing elections. The issue of standing under the Act was not an issue of first impression when Plaintiffs commenced their action against defendants.

(37.) Plaintiffs' frivolous claims also invariably caused serious irreparable harm, not only to the reputations of the defendants, but also to the electoral process in general. Plaintiffs' allegations of "lies" and "corruption" on the part of defendants and other public officials relative to their simply stating their positions on measure 2, published state-wide in newspapers and on the internet, undoubtedly created at least the impression with the public that it was illegal for public officials to express their opinions on ballot measures. Plaintiffs' commencement, active promotion to the public through press conferences organized by Plaintiffs, and ongoing pursuit through their appeal of this frivolous action has, and continues, to cause serious irreparable harm to defendants, and the public at large. The sanctions imposed upon Plaintiffs were entirely appropriate to prevent similar conduct by Plaintiffs, or others, in the future, and to try to remedy the intentional wrongs perpetrated by Plaintiffs against defendants and society.

(38.) Public officials are elected and expected by the electorate to take positions on initiated measures and other matters which come before them. In essence, Plaintiffs sued

³ The cases cited by Plaintiffs are very old and predate changes to the Act and elections laws between 1979 and 1981.

the Individual County Defendants' arguing they were precluded, and operating illegally, by performing the duties they were in fact elected to perform.

(39.) Plaintiffs' First Amendment argument is a red herring. The district court's sanction was appropriately tailored to address and attempt to remedy the specific wrong perpetrated by the Plaintiffs. As discussed, the Plaintiffs called a press conference for the purpose of publishing the frivolous allegation it was an unlawful violation of the Corrupt Practices Act for public official to take any position on Measure 2. Such claim had, and will likely continue to have, a chilling effect on the First Amendment rights of all public officials in this state, and to the detriment of the voting population of this state, and our electoral system in general. Plaintiffs'⁴ hauled the defendants into court on the eve of the ballot measure and represented to the public they were engaging in corrupt practices, and were perpetrating lies, without any legal or factual justification. This was done for the improper purpose of influencing the June ballot measure. Publication of a retraction of this frivolous claim is an appropriately tailored sanction under the circumstances.

IV. THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION IN DETERMINING THE AMOUNT OF ATTORNEYS' FEES AWARDED

(40.) Plaintiffs' assertion it was improper for the district court to award the Individual County Defendants their proportionate share (4/7ths) of the total attorney fees incurred by the County Defendants in defending against the Plaintiffs' claims in this action as a sanction is without merit.

⁴ Plaintiff Robert Hale, represented by attorney Lynn M. Boughey, is a serial filer of lawsuits against the government. *See, e.g., Hale v. State*, 2012 ND 148, 818 N.W.2d 684; *Hale v. Ward County*, 2012 ND 144, 818 N.W.2d 697; *Go Committee ex rel. Hale v. City of Minot*, 2005 ND 136, 701 N.W.2d 865.

[I]t is well established that district courts are considered experts in determining what is a reasonable amount of attorney fees and we will not reverse the court's decision about the amount and reasonableness of the attorney fees absent a clear abuse of discretion. A court abuses its discretion when it acts in an arbitrary, unreasonable, or unconscionable manner, or if it misinterprets or misapplies the law.

Lynch v. Sweeney, 2007 ND 81, ¶ 10, 732 N.W.2d 377 (citations omitted).

(41.) Defense counsels' billings for work for the Individual County Defendants are substantially justified. Plaintiffs assert the work undertaken by defense counsel would have been, for the most part, incurred in any event to defend the North Dakota Association of Counties, North Dakota League of Cities and the North Dakota School Board Association. This is incorrect. Defense counsel had numerous telephone conferences with the Individual County Defendants, personal meetings with some of those defendants, and numerous email communications with them. (App. 261.) In fact, an equal amount of time was spent with each of the Individual County Defendants as was spent with the Association Defendants. (App. 261). In other words, defense counsel spent equal time representing and defending all seven of defense counsel's clients.

(42.) Defense counsel's work defending the Individual County Defendants was in no way minimal and in fact the claims against the Individual County Defendants differed in some respects from the claims against the association Defendants. (App. 261.) The district court was provided invoices detailing the extensive work performed by counsel in defending this action against the County Defendants (App. 188-225.) A mere cursory review of the district court docket also evidences considerable work was performed by counsel for the County Defendants in this action, including briefing to this Court in the prior appeal. The district court's sanction requiring the Plaintiffs' pay four/sevenths of the total overall attorney fees and costs incurred is substantiated by the briefing and other

required handling of this case by defense counsel. It was also warranted as an effective deterrent to similar future conduct by Plaintiffs, and others.

V. PLAINTIFFS' DUE PROCESS RIGHTS WERE NOT VIOLATED

(43.) Plaintiffs' assertion their due process rights were violated as the district court allegedly did not conduct a hearing on, or otherwise afford Plaintiffs an opportunity to object to Plaintiffs' requested attorneys' fees award is without merit. Pursuant to *Order Granting Partial Sanctions Under Rule 11* entered August 30, 2012 (App. 180), the district court instructed counsel for the County Defendants to submit an affidavit to the district court regarding the portion of attorneys fees incurred in defending the Individual County Defendants in this action for review. (App. 184-85.) As instructed, counsel for the County Defendants filed with the district court on September 5, 2012 the affidavit testimony with supporting documentation on the issue of attorneys fees incurred by the Individual County Defendants in defending this action. (App. 186-225.) Such affidavit and supporting materials were served upon counsel for Plaintiffs on September 5, 2012. (Docket 139.) On September 14, 2012, Plaintiffs' filed *Plaintiffs' Motion for Reconsideration of Sanctions Under Rule 11* (App. 248) and supporting brief (App. 226-246). Plaintiffs directly challenged the attorneys' fees requested in both Plaintiffs' principal and reply briefs in support of Plaintiffs' motion for reconsideration. (App. 243-44, 271-72.) The district court did not actually award any attorneys fees or costs to the Individual County Defendants until November 27, 2012. (App. 274.) In other words, Plaintiffs were not only afforded an opportunity to object to the requested attorneys' fees, they actually did so in two briefs. Plaintiffs also never requested a hearing on the attorneys' fees issue. Plaintiffs' due process argument is without merit.

CONCLUSION

(44.) For the foregoing reasons, the County Defendants request the district court's *Order Granting Partial Sanctions Under Rule 11* dated August 30, 2012, and *Order Denying Motion to Reconsider Partial Sanctions Under Rule 11* dated November 27, 2012, be affirmed, in their entirety.

Dated this 29th day of April, 2013.

SMITH BAKKE PORSBORG
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CERTIFICATE OF COMPLIANCE

(45.) The undersigned, as attorneys for the Defendant/Appellees Divide County Commissioner Doug Graupe, Cass County Commissioner Scott Wagner, Wahpeton Finance Director Darcie Huwe, and Williams County Auditor Beth Innis, in the above matter, and as the authors of the above brief, hereby certify, in compliance with Rule 32(a) of the North Dakota Rules of Appellate Procedure, that the above brief was prepared with proportional type face and that the total number of words in the above brief, excluding words in the table of contents, table of authorities, signature block, certificate of service and certificate of compliance totals 7,921.

Dated this 29th day of April, 2013.

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CERTIFICATE OF SERVICE

(46.) I hereby certify that a true and correct copy of the foregoing **BRIEF OF APPELLEES DIVIDE COUNTY COMMISSIONER DOUG GRAUPE, CASS COUNTY COMMISSIONER SCOTT WAGNER, WAHPETON FINANCE DIRECTOR DARCIE HUWE, AND WILLIAMS COUNTY AUDITOR BETH INNIS** was on the 29th day of April, 2013, filed electronically with the clerk of court via email and served electronically or via mail on the following as indicated below:

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ADDENDUM

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documentary or otherwise, required of the person may tend to incriminate or degrade the person. No person may be prosecuted nor subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which the person may testify or produce evidence, documentary or otherwise, and no testimony so given or produced may be used against the person in any criminal investigation or proceeding.

16.1-08.1-03.5. Allowable corporate contributions and expenditures - Report required.

1. Corporations, cooperative corporations, limited liability companies, and associations may make contributions to a measure committee, as described in section 16.1-08.1-01, for the purpose of promoting passage or defeat of initiated or referred measures. Corporations, cooperative corporations, limited liability companies, and associations may make expenditures and contributions for promoting any general political philosophy or belief deemed in the best interest of the employees, stockholders, patrons, or members of the corporation, cooperative corporation, limited liability company, or association other than a "political purpose" as defined by this chapter.
2. A corporation, cooperative corporation, limited liability company, or association may make a donation of property or money to a state political party or nonprofit entity affiliated with or under the control of a state political party for deposit in a separate and segregated fund. Money in the fund must be used exclusively by the state political party or nonprofit entity affiliated with or under the control of a state political party for purchasing, maintaining, or renovating a building and for the purchase of fixtures for the building. A state political party or nonprofit entity affiliated with or under the control of a state political party receiving a donation under this subsection shall file a statement with the secretary of state no later than the thirty-first day of January of each calendar year. The statement must include the name and mailing address of each donor, the amount of each donation, the date each donation was received, all expenditures made from the fund during the previous calendar year, and cash on hand in the fund at the start and close of the reporting period. Any income and financial gain generated from a building purchased, maintained, or renovated from donations authorized under this subsection and not otherwise authorized by law must be deposited in the building fund and must be reported when the political party or nonprofit entity files the statement required under this subsection.
3. A corporation, cooperative corporation, limited liability company, or association may make a direct expenditure for the purpose of promoting passage or defeat of initiated or referred measures. A direct expenditure statement must be filed with the secretary of state within forty-eight hours after making the expenditure. The statement must include:
 - a. The full name of the corporation, cooperative corporation, limited liability company, or association;
 - b. The complete address of the corporation, cooperative corporation, limited liability company, or association;
 - c. The name and telephone number of the person completing the report;
 - d. The title of the measure and whether the expenditure is made in support of or opposition to the measure;
 - e. The election date on which the measure either will appear or did appear on the ballot;
 - f. The amount of the expenditure;
 - g. The cumulative total amount of expenditures since the beginning of the calendar year in support of or opposition to the measure;
 - h. The printed name and signature of the person completing the report, attesting to the report being true, complete, and correct; and
 - i. The date on which the report was signed.

CHAPTER 16.1-10 CORRUPT PRACTICES

16.1-10-01. Corrupt practice - What constitutes.

A person is guilty of corrupt practice within the meaning of this chapter if the person willfully engages in any of the following:

1. Expends any money for election purposes contrary to the provisions of this chapter.
2. Engages in any of the practices prohibited by section 12.1-14-02 or 12.1-14-03.
3. Is guilty of the use of state services or property or the services or property of a political subdivision of the state for political purposes.

16.1-10-02. Use of state or political subdivision services or property for political purposes.

1. No person may use any property belonging to or leased by, or any service which is provided to or carried on by, either directly or by contract, the state or any agency, department, bureau, board, commission, or political subdivision thereof, for any political purpose.
2. The following definitions must be used for the purposes of this section:
 - a. "Political purpose" means any activity undertaken in support of or in opposition to a statewide initiated or referred measure, a constitutional amendment or measure, a political subdivision ballot measure, or the election or nomination of a candidate to public office and includes using "vote for", "oppose", or any similar support or opposition language in any advertisement whether the activity is undertaken by a candidate, a political committee, a political party, or any person. In the period thirty days before a primary election and sixty days before a special or general election, "political purpose" also means any activity in which a candidate's name, office, district, or any term meaning the same as "incumbent" or "challenger" is used in support of or in opposition to the election or nomination of a candidate to public office. The term does not include activities undertaken in the performance of public office or a position taken in any bona fide news story, commentary, or editorial. Factual information may be presented regarding a ballot question solely for the purpose of educating voters if the information does not advocate for or against or otherwise reflect a position on the adoption or rejection of the ballot question.
 - b. "Property" includes motor vehicles, telephones, typewriters, adding machines, postage or postage meters, funds of money, and buildings. However, nothing in this section may be construed to prohibit any candidate, political party, committee, or organization from using any public building for such political meetings as may be required by law, or to prohibit such candidate, party, committee, or organization from hiring the use of any public building for any political purpose if such lease or hiring is otherwise permitted by law.
 - c. "Services" includes the use of employees during regular working hours for which such employees have not taken annual or sick leave or other compensatory leave.

16.1-10-03. Political badge, button, or insignia at elections.

No individual may buy, sell, give, or provide any political badge, button, or any insignia within a polling place or within one hundred feet [30.48 meters] from the entrance to the room containing the polling place while it is open for voting. No such political badge, button, or insignia may be worn within that same area while a polling place is open for voting.

16.1-10-04. Publication of false information in political advertisements - Penalty.

A person is guilty of a class A misdemeanor if that person knowingly, or with reckless disregard for its truth or falsity, publishes any political advertisement or news release that contains any assertion, representation, or statement of fact, including information concerning a

candidate's prior public record, which is untrue, deceptive, or misleading, whether on behalf of or in opposition to any candidate for public office, initiated measure, referred measure, constitutional amendment, or any other issue, question, or proposal on an election ballot, and whether the publication is by radio, television, newspaper, pamphlet, folder, display cards, signs, posters, billboard advertisements, websites, electronic transmission, or by any other public means. This section does not apply to a newspaper, television or radio station, or other commercial medium that is not the source of the political advertisement or news release.

16.1-10-04.1. Certain political advertisements to disclose name of sponsor - Name disclosure requirements.

Every political advertisement by newspaper, pamphlet or folder, display card, sign, poster, or billboard, website, or by any other similar public means, on behalf of or in opposition to any candidate for public office, designed to assist, injure, or defeat the candidate by reflecting upon the candidate's personal character or political action, or by a measure committee, or a corporation making a direct expenditure either for or against a measure, must disclose on the advertisement the name of the person, as defined in section 16.1-08.1-01, or political party paying for the advertisement. If the name of a political party, association, or partnership is used, the disclaimer must also include the name of the chairman or other responsible individual from the political party, association, or partnership. The name of the person paying for any radio or television broadcast containing any advertising announcement for or against any candidate for public office must be announced at the close of the broadcast. If the name of a political party, association, or partnership is used, the disclaimer must also include the name of the chairman or other responsible individual from the political party, association, or partnership. In every political advertisement in which the name of the person paying for the advertisement is disclosed, the first and last name of any named individual must be disclosed. An advertisement paid for by an individual candidate or group of candidates must disclose that the advertisement was paid for by the individual candidate or group of candidates. The first and last name or names of the candidates paying for the advertisement are not required to be disclosed. This section does not apply to campaign buttons.

16.1-10-05. Paying owner, editor, publisher, or agent of newspaper to advocate or oppose candidate editorially prohibited.

No person may pay or give anything of value to the owner, editor, publisher, or agent of any newspaper or other periodical, or radio or television station, to induce the person to advocate editorially or to oppose any candidate for nomination or election, and no such owner, editor, publisher, or agent may accept such inducement.

16.1-10-06. Electioneering on election day - Penalty.

Any person asking, soliciting, or in any manner trying to induce or persuade, any voter on an election day to vote or refrain from voting for any candidate or the candidates or ticket of any political party or organization, or any measure submitted to the people, is guilty of an infraction. The display upon motor vehicles of adhesive signs which are not readily removable and which promote the candidacy of any individual, any political party, or a vote upon any measure, and political advertisements promoting the candidacy of any individual, political party, or a vote upon any measure which are displayed on fixed permanent billboards, may not, however, be deemed a violation of this section.

16.1-10-06.1. Paying for certain election-related activities prohibited.

No person may pay another person for:

1. Any loss or damage due to attendance at the polls;
2. Registering;
3. The expense of transportation to or from the polls; or
4. Personal services to be performed on the day of a caucus, primary election, or any election which tend in any way, directly or indirectly, to affect the result of such caucus or election.

The provisions of this section do not apply to the hiring of a person whose sole duty it is to act as a challenger and to watch the count of official ballots.

16.1-10-06.2. Sale or distribution at polling place.

A person may not approach a person attempting to enter a polling place, or who is in a polling place, for the purpose of selling, soliciting for sale, advertising for sale, or distributing any merchandise, product, literature, or service. A person may not approach a person attempting to enter a polling place, who is in a polling place, or who is leaving a polling place for the purpose of gathering signatures for any reason. These prohibitions apply in any polling place or within one hundred feet [30.48 meters] from any entrance leading into a polling place on election day.

16.1-10-07. Candidate guilty of corrupt practice to vacate nomination of office.

If any person is found guilty of any corrupt practice, the person must be punished by being deprived of the person's government job, or the person's nomination or election must be declared void, as the case may be. This section does not remove from office a person who is already in office and who has entered upon the discharge of the person's duties when such office is subject to the impeachment provisions of the Constitution of North Dakota.

16.1-10-08. Penalty for violation of chapter.

Any person violating any provision of this chapter, for which another penalty is not specifically provided, is guilty of a class A misdemeanor.