

NORTH CAROLINA FILED
WAKE COUNTY 2008 OCT 31 AM 11:30

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
08 CVS 18884

WAKE COUNTY Y. C.S.C.
KAY R. HAGAN,

Plaintiff,
BY _____

v.

**MOTION TO DISMISS PURSUANT
TO RULE 12(b)(6) – N.C. Rules Civ. Pro.**

ELIZABETH H. DOLE and THE
ELIZABETH DOLE COMMITTEE,
INC.,

Defendants.

NOW COME Defendants Elizabeth H. Dole and The Elizabeth Dole Committee, Inc. (collectively, "Dole") and hereby file and serve this Motion to Dismiss the foregoing action filed by Plaintiff Kay R. Hagan for the failure to state a claim pursuant to Rule 12(b)(6) of the North Carolina Rules of Civil Procedure. As grounds for this Motion, Defendants show the following:

1. The function of a motion to dismiss under Rule 12(b)(6) is to test the law of a claim and not the facts which support the claim. *Renwick v. News and Observer and Renwick v. Greensboro News*, 310 N.C. 312, 315, 312 S.E.2d 405, 408, cert. denied, 469 U.S. 858, 105 S. Ct. 187, 83 L. Ed. 2d 121 (1984). Dismissal is proper, however, "when on its face the complaint reveals either no law supports the plaintiff's claim or the absence of fact sufficient to make a good claim, or when some fact disclosed in the complaint necessarily defeats the plaintiff's claim." *Andrews v. Elliot*, 109 N.C. App. 271, 274, 426 S.E.2d 430, 432 (1993).

2. Plaintiff's Complaint filed pursuant to Rule 3 of the North Carolina Rules of Civil Procedure is essentially a political press release that attempts to manufacture causes of action where none clearly exist under well-settled North Carolina and Federal case law.

3. This ill-conceived lawsuit was filed in an effort to discourage the public dissemination of actual facts asserted in the political advertisement that Plaintiff appears to

object to – despite her willingness to attend a fundraiser sponsored by members of the “Godless Americans PAC.”

4. The factual assertions complained of in the political advertisement are unequivocally true, are protected speech and are absolutely privileged.

5. Nothing contained in the political advertisement is defamatory. *See, Daniels v. Metro Magazine*, ___ N.C. App. ___, 634 S.E.2d 586, 34 Media L. Rep. 2363 (2006), *Craven v. SEIU Cope*, ___ N.C. App. ___, 656 S.E.2d 729, 733 (2008).

6. The Plaintiff, Kay R. Hagan – candidate for the United States Senate, is a public figure and cannot sustain her burden under the applicable constitutional standards.

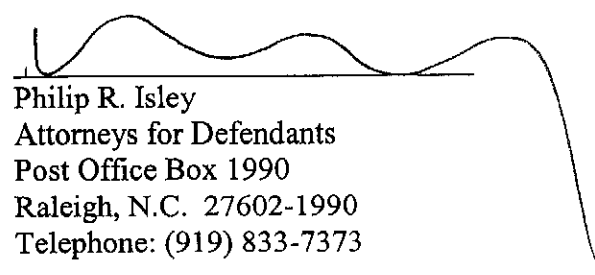
7. The Plaintiff has failed to properly allege any cause of action that would entitle Plaintiff to an award of attorneys’ fees or treble damages.

8. The Plaintiff appears to state a claim for a “false light” tort. If so, no such cause of action exists in North Carolina. *Renwick v. News and Observer and Renwick v. Greensboro News*, 310 N.C. 312, 315, 312 S.E.2d 405, 408, *cert. denied*, 469 U.S. 858, 105 S. Ct. 187, 83 L. Ed. 2d 121 (1984).

9. The Plaintiff’s Rule 3 Complaint should be dismissed.

This the 31st day of October, 2008.

Boyce & Isley, PLLC


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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that I have served a copy of the foregoing *Motion to Dismiss* by e-mail and by hand-delivery to the last known address to me as follows:

R. Bruce Thompson
Parker Poe Adams and Bernstein
Post Office Box 389
Raleigh, NC 27602

This the 31st day of October, 2008.

Boyce & Isley, PLLC



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