

FYI: Atty James D. Rosenberg :

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OCTOBER 19, 2010

For Immediate Release

Tuesday, October 19

MANCHESTER – Attorneys for New Hampshire for John Lynch today called on television stations to immediately cease broadcasting ads created by Cornerstone Action/National Organization for Marriage because of factual and legal inaccuracies.

“The ad, which was created by Cornerstone Action and is currently airing on Comcast cable channels, is **littered with factual and legal inaccuracies** that require its prompt removal from the air in order to avoid the possibility of legal action. To underscore this demand, even Michael Gilmore, the gentleman featured in the ad, has now **disavowed certain of his criticisms of the parole law that is at the heart of the advertisement,**” wrote James Rosenberg, an attorney for the Lynch campaign.

**Inaccuracies - elaborate**

**disavowed ... - blatantly FALSE**

“**The "Michael Gilmore" ad** that is now running is a deliberate attempt to convey **false factual and legal information** to the voting public. This conduct runs afoul of your established duties "to protect the public from false, misleading or deceptive advertising." Licensee Responsibility With Respect to the Broadcast of False, Misleading or Deceptive Advertising, F.C.C. 2d 623 (1961),” Rosenberg wrote. “Please immediately withdraw this ad from any public display. Your failure to do so may result in legal action.”

**The "Michael Gilmore" ad - WRONG: it's the "90 Days" ad**  
**false ... - elaborate**

The ad refers to the prosecution of Michael Seibel and claims that he will serve “just 90 days” under recently enacted changes to New Hampshire’s parole law for committing the offenses of “stalking” and “sexual assault.”

ad refers to the prosecution of Michael Seibel: WRONG - the parole violations committing ... - WRONG: “For violating parole” is what I said.

Both the facts of this particular case and the law that applies belie these false claims. Suggestion: listen carefully to the dialogue. A law student can see I made no such connection.

“The information in the “Michael Gilmore Ad” flies in the face of these facts. Without any explanation that the Defendant in that case will actually serve two years in jail for the same conduct that forms the basis of the parole violation, the ad wrongly complains that he will be released in “just 90 days.” The ad is factually inaccurate for this reason,” Rosenberg wrote.

the “Michael Gilmore Ad” - WRONG: it’s the “90 Days” Ad

Defendant in that case ... - Suggest you talk to the parole officer. Seibel had multiple other parole violations which earned him the 5+ years reward.

basis of the parole violation - Law 101: the crime carries its punishment, the parole violation(s) carries its punishment. You made that incorrect connection, we did not.

“In addition to this factual inaccuracy, the ad is wrong about the law. The ad falsely suggests that a parolee will face 90 days of incarceration for crimes committed while on parole. However, nothing about the parole law prohibits the criminal prosecution of the parolee for new criminal offenses committed while on parole,” Rosenberg wrote.

this factual inaccuracy - WRONG: not proven/shown

The ad falsely suggests that a parolee ... - blatantly FALSE

The full letter follows.

James D. Rosenberg

*Attorney at Law*

October 19, 2010

**VIA FACSIMILIE, EMAIL & OVERNIGHT MAIL**

Keith Festa

Senior Director of Sales New England Regional/National

Comcast Spotlight New England

139 Lewis Wharf

Boston, MA 02110

Re: Demand to discontinue the "Michael Gilmore Ad"

To whom it may concern:

Our office represents New Hampshire for John Lynch 2010 and the purpose of this correspondence is to demand that you immediately cease from further broadcast of the advertisement known as the "Michael Gilmore Ad" (<http://www.youtube.com/watch?v=I23bea1o8UI>). The ad, which was created by Cornerstone Action and is currently airing on Comcast cable channels, is littered with factual and legal inaccuracies that require its prompt removal from the air in order to avoid the possibility of legal action. To underscore this demand, even Michael Gilmore, the gentleman featured in the ad, has now disavowed certain of his criticisms of the parole law that is at the heart of the advertisement, stating: "I apologize for my part in this and can only say that in the haste to get information out we were unable to get all the scattered facts correct and verified." Yet, Kevin Smith of Cornerstone Action stated that the ad will continue to run "as-is" unless Mr. Gilmore "comes to me" to make a specific request that the ad come down -- a position that fails to account for the legal obligation to refrain from false and misleading political advertising.

"I apologize for my part ... - DELIBERATE: quote out of context. This was referring to the cost shifting by the state to the county in a previous letter (Do the Math) to the editor at the Conway Sun - not this ad. Also note I was deliberately misquoted: I said "scattered details"

the rest in red is a repeat from above - See same in above section

The ad refers to the prosecution of Michael Seibel and claims that he will serve "just 90 days" under recently enacted changes to New Hampshire's parole law for committing the offenses of "stalking" and "sexual assault."

See same in above section

Both the facts of this particular case and the law that applies belie these false claims. Specifically, the Defendant in that case was initially convicted in 2003 of Aggravated Felonious Sexual Assault and sentenced to a term in the New Hampshire State Prison of 5-15 years. The Parole Board granted him parole in June of 2009. Thereafter, he committed new misdemeanor offenses for Sexual Assault and Simple Assault. This new conduct formed the basis of BOTH a violation of parole and a separate prosecution. In his criminal prosecution for this new conduct, he was convicted in July of 2010 and the Carroll County Superior Court sentenced him to two, separate 12 month sentences at the House of Corrections, sentences which run consecutive to one another. In sum, this means that the Defendant will serve an additional stand committed jail term of 24 months for the conduct complained of in the commercial, jail time that is separate and apart from any period of incarceration that he will serve based on his parole violation for the same conduct.

formed the basis - check again, there were numerous parole violations. This is not the sole violation.

Carroll County Superior Court - WRONG Conway District Court

House of Corrections - WRONG: Carroll County Jail, Ossipee, NH

The information in the "Michael Gilmore Ad" flies in the face of these facts. Without any explanation that the Defendant in that case will actually serve two years in jail for the same conduct that forms the basis of the parole violation, the ad wrongly complains that he will be released in "just 90 days." The ad is factually inaccurate for this reason.

Michael Gilmore Ad - See same in above section

these facts - WRONG they are fabrications

The remainder convolutes the two sentences: 2 years County + 90 days parole violation into “actually serve two years in jail”. Suggest you get the facts straight.

The ad is factually inaccurate for this reason. - The basis is flawed hence the conclusion is invalid  
(Introduction to Law 101)

In addition to this **factual inaccuracy**, the ad is wrong about the law. The ad falsely suggests that a parolee will face 90 days of incarceration for crimes committed while on parole. However, nothing about the parole law prohibits the criminal prosecution of the parolee for new criminal offenses committed while on parole. See NH RSA 651-A:19. The United State’s Supreme Court has specifically explained that the same conduct may form the basis of a parole violation and a separate criminal prosecution and that punishment for both does not offend constitutional concerns for Double Jeopardy. See Johnson v. United States, 529 U.S. 694, 700 (2000) (explaining that where the “acts of the violation are criminal in their own right they may be the basis for a separate prosecution”).

**factual inaccuracy - NOT shown**

suggests that ... - NOT

Statement of the obvious which has nothing to do with the issue. (filler)

This **legal concept** reflects precisely what occurred in the case of Michael Seibel where the Defendant was both prosecuted for his new criminal conduct and that same conduct formed the basis of a separate parole violation for which he will be punished. The “Michael Gilmore” ad that is now running is a **deliberate attempt to convey false factual and legal information to the voting public**. This conduct runs afoul of your established duties “to protect the public from false, misleading or deceptive advertising.” Licensee Responsibility With Respect to the Broadcast of False, Misleading or Deceptive Advertising, F.C.C. 2d 623 (1961).

**legal concept - WRONG: basis is not established, hence conclusion invalid.**

See same in above section

NOT - nothing false, nothing illegal, nothing deliberate other than satating the contents of the bill (See above section)

Please immediately withdraw this ad from any public display. Your failure to do so may result in legal action.

Bring it on.

Sincerely yours,

James D. Rosenberg

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JDR