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July 16, 2024

DELIVERED ELECTRONICALLY

KING TV
KONG TV
Attention: Sara Weaver
1501 1st Avenue South, Suite 300
Seattle, WA 98134

Re: False and Deceptive Political Advertising by Bob Ferguson

Dear Ms. Weaver,

This letter is in regard to the negative advertisement that the Bob Ferguson for Governor campaign (the “Ferguson Campaign”) has recently launched on your stations against Dave Reichert, the leading Republican candidate for Governor of Washington (the “Advertisement”). Without a doubt, the Advertisement contains false information deliberately intended to deceiving voters by misrepresenting Mr. Reichert’s position and voting record with respect to abortion. Because the Advertisement conveys messages that are plainly disproven by fact, we respectfully demand that your stations immediately stop airing the Advertisement and that no further airings of this false and misleading content be allowed on your stations.

The Advertisement is false and misleading in two respects. First, the Ferguson Campaign completely fabricates Mr. Reichert’s position on abortion. Mr. Reichert has publicly stated this position clearly and directly:

I want you to know where I stand on abortion: As governor I will not change Washington law on this issue, because I do not believe any politician, regardless of personal belief, has the right to make that decision for any woman.¹

Yet, unbelievably, the Advertisement proclaims that “we can’t give Dave Reichert the chance to take away our reproductive freedom.” This is a complete fabrication, intentionally designed to frighten and mislead voters, and is directly contrary to Mr. Reichert’s pledge *not* to change Washington law with respect to abortion.

¹ See Dave Reichert For Governor, *Reichert Abortion Position*, YouTube (Jun. 7, 2024), https://www.youtube.com/watch?v=Cxwbcq7_XI4; see also Fran Beyer, *Wash. Gov. Hopeful Reichert: Won’t Block Abortion Access*, NEWSMAX, Jun. 7, 2024, <https://www.newsmax.com/newsfront/dave-reichert-washington-state-abortion/2024/06/07/id/1167877/>;

Second, the Advertisement's claim that "In Congress, Reichert voted for a nationwide abortion ban" and that he "voted three times to outlaw abortion" is also totally and utterly false.

The Advertisement lists three votes on-screen to apparently support this claim: "HR 36, vote #549, 10/3/2017; HR 36, vote #223, 5/13/2015; HR 1797, vote #251, 6/18/2013." But none of those bills would "ban" or "outlaw" abortion whatsoever:

- Roll call number 251 in the 113th Congress was a vote on passage of H.R. 1797, originally introduced as the District of Columbia Pain-Capable Unborn Child Protection Act.² The bill did not "ban" or "outlaw" abortions, which would have still been permitted for any reason prior to the 20th week of pregnancy, if the abortion was necessary to save the life of a pregnant woman or if the pregnancy was the result of rape or incest. *See* H.R. 1797, 113th Cong. § 3 (as passed by House of Representatives, Jun. 18, 2013).
- Roll call number 223 in the 114th Congress was a vote on passage of a substantially similar bill, H.R. 36, the Pain-Capable Unborn Child Protection Act.³ Like the bill described above, H.R. 36 neither banned or outlawed abortions, as such procedures would have continued to be allowed prior to 20 weeks after fertilization, in cases of rape and incest, and where the life of the mother was at risk. *See* H.R. 36, 114th Cong. § 3 (as passed by House of Representatives, May 13, 2015).
- Roll call number 549 in the 115th Congress was a vote on passage of an *identical* bill, which incidentally bore both the same bill number (H.R. 36) and title (the Pain-Capable Unborn Child Protection Act),⁴ in addition to containing the same text that would have continued to permit abortions in the same circumstances. *See* H.R. 36, 115th Cong. § 3 (as passed by House of Representatives, Oct. 3, 2017).

Each of these bills *regulated* abortions, but none of them banned or outlawed the procedure any more than driver age limits outlaw driving or restricting hunting and fishing to certain seasons is a ban on hunting and fishing.

Moreover, abortions are already regulated in a substantially similar manner in Washington. Under current state law, abortions may not be performed once the fetus is viable, except to protect the health of the mother, and it is a class C felony to provide one outside of these circumstances. *See* RCW 9.02.110-.120. As of 2018, unborn children were generally considered viable at 23 weeks.⁵ Thus, the legislation that the Advertisement asserts would "ban" and "outlaw" abortion would only reduce the period when abortions are permitted by approximately three weeks in most cases.

These statements contained in the Advertisement are not based in fact; they are not just misleading but outright false. Voters in any election deserve to cast their vote based on the true record and

² *See* <https://clerk.house.gov/Votes/2013251>.

³ *See* <https://clerk.house.gov/Votes/2015223>.

⁴ *See* <https://clerk.house.gov/Votes/2017549>.

⁵ *See* Declaration of Sacheen Carr-Ellis, M.D., M.P.H. ¶ 11, *Jackson Women's Health Org. v. Currier*, 349 F. Supp. 3d 536 (S.D. Miss. 2018) (Case No. 3:18-cv-171) (expert opinion of Medical Director of Jackson Women's Health).

platforms of the candidates, and the Ferguson Campaign is willfully and knowingly attempting to fabricate Mr. Reichert's position regarding abortion for political gain. This must be stopped.

Your stations are under no obligation to provide the Ferguson Campaign with any right to access or purchase airtime. The Communications Act of 1934 only requires "reasonable access" by candidates "for *Federal* elective office." 47 U.S.C. § 312(a) (emphasis added). The FCC does not impose any specific duty on stations to make advertising time available to state and local candidates like Bob Ferguson. Instead, stations may use their own judgment in deciding which state and local elections may warrant the sale of time to candidates. In this case, we urge you to exercise your judgment and not permit your stations' valuable brand to be leveraged by the Ferguson Campaign for deliberately deceptive attacks about important policy matters.

More importantly, while Section 315 of the Communications Act of 1934 may provide immunity to broadcasters for "a legally qualified candidate for any public office to *use*" their station, 47 U.S.C. § 315 (emphasis added), the Advertisement does not actually constitute a "use." The FCC has clearly defined "use" to mean a candidate's *appearance*, such as by voice or picture. *See* 47 CFR § 73.1941(b). Yet the Advertisement does not feature Bob Ferguson's image or voice at all. Thus, because the Advertisement is not a "use" under Section 315, broadcasting stations are not immune from legal liability for continuing to air the false and deliberately deceptive Advertisement sponsored by the Ferguson campaign.

Instead, broadcast licensees have a legal responsibility to review and to eliminate any false, misleading, or deceptive materials contained in advertising, including political advertising that is not actually a "use" of the broadcasting station. Further, now more than ever, broadcasters also have a moral responsibility to refrain from airing false and deceptive advertisements.

We implore you to stand up for the truth and put a stop to these false attacks airing on your stations. Based on the foregoing, we respectfully demand that your stations immediately cease the airing of this false and misleading Advertisement and further request that you reject any attempts by the Ferguson Campaign to purchase time for the future airing of this Advertisement because of its material misstatements of fact and defamatory nature.

Please contact me at your earliest convenience at dstokesbary@chalmersadams.com, or via phone at (206) 813-9322, to advise as to your stations' actions with respect to ceasing the airing of this Advertisement by the Ferguson Campaign.

Thank you for your prompt attention to this matter; I will anticipate your immediate response.

Sincerely,

/s/ Andrew R. Stokesbary

Andrew R. Stokesbary
Counsel to We Stand With Dave Reichert