



Chalmers, Adams, Backer & Kaufman, LLC

701 Fifth Avenue, Suite 4200
Seattle, Washington 98104

Andrew R. Stokesbary, Member
dstokesbary@chalmersadams.com
(206) 813-9322

September 10, 2024

DELIVERED ELECTRONICALLY

KOMO TV

Attention: Station Manager
140 Fourth Avenue N
Seattle, WA 98109

Re: False and Deceptive Political Advertising by Bob Ferguson

To Whom It May Concern:

This letter is in regard to yet another negative advertisement that the Bob Ferguson for Governor campaign (the “Ferguson Campaign”) is airing on your station against his opponent Dave Reichert (the “Advertisement”). Yet again, this Advertisement from the Ferguson Campaign contains more false information deliberately intended to deceive voters by not just misrepresenting but outright falsifying Mr. Reichert’s position and statements with regard to public school funding and teacher salaries. Because the Advertisement conveys messages that are plainly disproven by fact and is not required to be aired under the Communications Act of 1934, we respectfully demand that your station immediately stop airing the Advertisement and that no further airings of this false and misleading content be allowed on your station.

In addition to its generally misleading character, the Advertisement makes two false statements in particular. First, an individual appearing in the Advertisement states that “Dave Reichert sa[id] that public school teachers are *overpaid*.” This is demonstrably false, as Mr. Reichert has never said public school teachers are overpaid. A caption at the bottom of the Advertisement points to June 9, 2024, *The Seattle Times* Editorial Board interview as the “source” of this false statement. However, during that interview, Mr. Reichert never stated that teachers were “overpaid,” nor has he ever made such a claim in any other setting.¹ Instead, Mr. Reichert only noted that “we have some of the highest paid teachers,” which while true,² is entirely distinct from the normative claim that teachers are “overpaid,” a position that Mr. Reichert does not hold and has never stated.

Second, another individual appearing in the Advertisement then claims that “now [Mr. Reichert] wants to *gut* funding for public schools.” This is also demonstrably false, as Mr. Reichert has never expressed support for reducing (much less “gutting”) public school funding. In fact, *The Seattle*

¹ See Claudia Rowe, *How WA Governor Candidates Would Fix Our Schools*, THE SEATTLE TIMES, June 9, 2024, <https://www.seattletimes.com/opinion/fixing-wa-schools-an-assessment-of-gubernatorial-candidates/#Reichert>.

² See, e.g., National Education Association, *Educator Pay in America* (Apr. 18, 2024), <https://www.nea.org/resource-library/educator-pay-and-student-spending-how-does-your-state-rank> (showing that Washington ranks 3rd in the nation for average teacher starting salaries and 4th in the nation for average teacher salaries).

Times article which the Advertisement cites as the “source” of this false claim actually reveals the exact opposite—that “Reichert said he will strive to get closer to 50% [of the state’s general fund going toward K-12 education, compared to 44% currently] if elected governor and stop the trend of a declining percentage of the budget going towards education.”³ The article also notes that Mr. Reichert “is specifically passionate about funding special education first.”

Both of the above statements contained in the Advertisement are deliberately and objectively false. They are complete fabrications, not supported by any evidence whatsoever, and intentionally designed to frighten and mislead voters.

Voters in any election deserve to cast their ballot based on the true record and platforms of the candidates, and the Ferguson Campaign is willfully and knowingly attempting to fabricate Mr. Reichert’s position regarding education funding for political gain. This must be stopped.

Your station is 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 station’s valuable brand to be leveraged by the Ferguson Campaign for deliberately false and 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 station. Mr. Reichert has not stated and does not believe teachers are overpaid. Mr. Reichert wants to *increase* the portion of the state budget allocated to public education and fund special education first, not “gut” school funding. The Ferguson Campaign should not be permitted to continue to use your station to spread blatant falsehoods about Mr. Reichert’s positions.

³ Claire Bryan, *WA Gubernatorial Candidates Talk Education*, THE SEATTLE TIMES, July 29, 2024, <https://www.seattletimes.com/seattle-news/wa-gubernatorial-candidates-talk-education/>.

Based on the foregoing, we respectfully demand that your station immediately cease the airing of this false and deceptive 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 station's 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