

October 27, 2014

Dear Sir or Madam:

This letter provides notice that your station is currently airing a false and misleading advertisement against Amendment 2 proposed by People United for Medical Marijuana. I am their legal counsel. The ad, authorized and paid for by Drug Free Florida, is inaccurate, deceptive, and constitutes a deliberate, knowing misrepresentation of the facts.

Stations have a particular responsibility for false non-candidate advertisements, such as the ad in question here. While stations cannot restrict content by qualified candidates, ads by Political Action Committees are different. A station is more accountable to the public to assure there is not falsity—particularly after being on notice of the falsity.

In their spot, Drug Free Florida makes the following false and misleading claims:

AD CLAIM #1

“It’s not about compassion *it just legalizes pot smoking.*” (Emphasis added)

WHY THIS STATEMENT IS FALSE:

In a ruling handed down on January 27th, 2014, the Florida Supreme Court affirmed that the scope of Amendment 2 was unequivocal: only patients with debilitating diseases and conditions would be allowed to have access to medical marijuana under Amendment 2, including those suffering from cancer, HIV/AIDS, multiple sclerosis and Lou Gehrig’s disease among others. Moreover the amendment explicitly states: “Nothing in this section authorizes the use of medical marijuana by anyone other than a qualifying patient,” and further says that “(n)othing in this section shall affect laws relating to non-medical use, possession, production or sale of marijuana.” Finally, the title of the Amendment is: Use of Marijuana for Certain Medical Conditions. That is what the amendment does. It does not “legalize smoking pot.”

According to the amendment’s text, a physician certification for medicinal marijuana may only be given to a patient “after the physician has conducted a physical examination of the patient and a full assessment of the patient’s medical history.”

On the scope of the amendment, the Florida Supreme Court concluded, “Rather than allow the open-ended, broad use of marijuana, these multiple restrictions in the text of the amendment itself reflect a constitutional scheme that is meant to be limited in scope regarding the medical use of marijuana to treat ‘debilitating medical conditions.’”

In sum, the text of the amendment and the controlling Florida Supreme Court interpretation clearly state that Amendment 2 does not “legalize pot.”

There are proposals for legalization of marijuana. Amendment 2 is not one of those amendments. To state that Amendment 2 legalizes marijuana is clearly an intentional falsehood that is beyond fundamental free speech protections and explicitly misrepresents the question before voters. The statement that amendment 2 legalizes marijuana is not articulated as an opinion, which would be protected speech, it is declared as a fact. That statement is unambiguously and facially false. Clearly, indisputably false statements in an issue campaign are not protected speech.

AD CLAIM #2:

“...Not just for serious diseases...”

WHY THIS STATEMENT IS FALSE:

Medical marijuana opponents frequently claim that a major loophole in Amendment 2 is the provision that allows for the use of medical marijuana for “other conditions for which a physician believes that the medical use of marijuana would likely outweigh the health risks for a patient.” Yet, the Florida Supreme Court explicitly ruled that, “in order for a physician to prescribe marijuana to treat a medical condition not specifically listed in the amendment, the physician must still make a professional determination that the condition is ‘debilitating.’”

The Florida Supreme Court concluded that the definition of debilitating is “similar under both medical and lay dictionaries” and that “a physician must first make a determination that the medical condition causes impaired strength, weakness, or enfeeblement in order to consider issuing a physician certification consisted with the proposed amendment, which limits the amendment’s scope.”

AD CLAIM #3:

“Kids can legally get it without their parents’ permission.” “No parental control”

WHY THIS STATEMENT IS FALSE:

As Politifact stated in its May 20, 2014 fact check on this topic, Florida minors would not be able to get a recommendation for medical marijuana from a physician because “currently, a parent or guardian must provide consent for medical treatment for a minor, except in emergencies or other unusual circumstances, such as when the Department of Children and Family Services must get involved.” That is the law of Florida. *See Fla. Stat. ss. 743.0645-0646* (limiting to emergency situations the instances when medical treatment may be provided to minors without the consent of a parent or a legal guardian).

Nothing in the Amendment repeals or affects any existing laws regarding parental consent. To explicitly state that there is “no parental control” is simply wrong and inaccurate. The statement is more than misleading; it is a facially false statement.

As an FCC licensee, your station has a duty to the public to avoid false and misleading advertising. You are not obligated to protect intentional falsity. The proliferation of third party and PAC advertising increases the responsibility of your station to meet its public obligation in regard to these non-candidate advertisements that affect the voters’ ability to evaluate issues fairly and accurately.

We ask that you verify for yourselves that the ad in question here meets your standards of assuring that ads are not intentionally false.

I am sure you will consult with your attorney about potential liability. Your station is not obligated to broadcast non-candidate political advertisements. *See Columbia Broad. Sys., Inc. v. Democratic Nat’l Comm.*, 412 U.S. 94 (1973); The voluntary broadcast of false and misleading political advertisements by non-candidate third parties may expose your station to licensing issues. *See Cosmopolitan Broad. Corp. v. FCC*, 581 F.2d 917, 927 (D.C. Cir. 1978) (holding that the broadcasting of “false and misleading advertising” may be “probative of an underlying abdication of licensee responsibility.”).

Based on the information provided, your station should not broadcast this ad. We respectfully ask that you not allow Drug Free Florida to use your station to knowingly and recklessly deceive the electorate. Your viewers and the voters of our State deserve better. If you have any questions and to confirm you have received this notification, please contact us.

Sincerely,



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