

May 16, 2022

RE: False Advertisement Sponsored by RGA – “Rough Road”

Dear Station Manager,

We write on behalf of Laura Kelly for Kansas regarding a false advertisement sponsored by the Republican Governors Association Kansas 2022 PAC (“**RGA**”) currently airing on your station.¹ The advertisement – called “Rough Road” – lies about Governor Laura Kelly’s record as Governor, intentionally deceiving your viewers into thinking that she changed the state’s eligibility rules for its welfare program **when in fact she never did**. This claim is false and baseless; your station must cease airing this advertisement immediately.

The facts here are straightforward. When Governor Kelly took office in 2019, Kansas law “require[d] able-bodied adults receiving both food stamps and cash assistance to work at least 20 hours a week, look for work or enroll in job training.”² Nearly four years later, as Governor Kelly seeks her second term, Kansas law *still* requires able-bodied adults receiving both food stamps and cash assistance to work at least 20 hours a week, look for work or enroll in job training. In other words, the law has not changed; nor has any change to any implementing regulation gone into effect.

Despite this, the RGA ad claims that Governor Kelly “**stopped** requiring healthy adults to look for work while receiving welfare checks.” Of course, that is false. When Governor Kelly took office, healthy adults in Kansas were required to look for work while receiving welfare checks. At all times since Governor Kelly took office – including right now – Kansas law has required healthy adults to look for work while receiving welfare checks. Rather than **stop** this policy, Governor Kelly has **continued** it.

The RGA’s “proof” for its claim underscores its falsity. The RGA cites to an *Associated Press* article from December 4, 2018, **even though Laura Kelly was not sworn in as Governor until January 14, 2019**.³ Putting aside the obvious fact that a Governor-elect simply has no authority to “stop” or change any existing policy or program, the cited article still says the opposite of what the ad claims. Let’s start with the article’s headline, which reads: “*New Kansas governor **wants** to roll back cash assistance rules.*” Referring to work requirement welfare rules put in place by her Republican predecessor, the article explains that while the Governor-Elect may *want* to change work requirements for welfare recipients as Governor, Republicans in the legislature disagreed and considered any such proposal “**dead on arrival**.” At no point does the article say Governor-Elect Kelly “stopped” anything. Instead, the cited article confirms the realities of the political process while the RGA ad ignores them; an officeholder may want to

¹ Rough Road, RGA Kansas 2022 PAC, YouTube.com (May 23, 2022), <https://youtu.be/0c3DaCWMb5o>.

² John Hanna, *New Kansas Governor Wants to Roll Back Cash Assistance Rules*, Associated Press (Dec. 14, 2018), <https://apnews.com/article/5ed9e505a3494c8ca04ced9257c3023>.

³ *Id.*; see also AP News, *Democrat Laura Kelly sworn in as 48th governor of Kansas* (Jan. 14, 2019), <https://apnews.com/article/1d8bdeb743f54794adb113a757e33b07>.

change a policy, but simply *wanting* to make that change does not mean the change will occur.

The fact that Governor-elect Kelly proposed changes to the welfare work rules does not mean that, as governor, she **stopped** them. As the *Associated Press* article correctly predicted, Republicans opposed any change to the welfare work rules and so no such change was made.⁴ In fact, when the Kelly Administration proposed changes to the work eligibility requirements for the state's welfare program "Republicans relentlessly attacked the program" and "Republican Attorney General Derek Schmidt...threatened legal action if Kelly didn't drop the plan."⁵ While Governor Kelly could have pursued the change further, her Administration chose to withdraw the plan and so the welfare rules remained the same.⁶ **To claim that Governor Kelly "stopped" requiring healthy adults to look for work while receiving welfare benefits is simply false.** No media outlet has reported that Governor Kelly has stopped these policies and your station should not be the first to air such a false claim.

Unlike candidates, independent organizations like the RGA do not have a "right to command the use of broadcast facilities."⁷ Because you need not air this advertisement, your station bears responsibility for its content when you do grant access.⁸ Moreover, you have a duty "to protect the public from false, misleading or deceptive advertising."⁹

All broadcast television stations in the state of Kansas must apply for license renewal with the Federal Communications Commission ("**FCC**") by June 1, 2022.¹⁰ At that time, the FCC will consider whether your station has "served the public interest" such that its license should be renewed.¹¹ A station that fails to correct clear falsehoods is at risk of having its license renewal denied by failing to serve the public interest. **Failure to prevent the airing of "false and misleading advertising" and failure to serve the public interest may both be "probative of an underlying abdication of licensee responsibility" that can be cause for the loss of a station's license.**¹²

The claim at issue is false. The ad should be removed immediately. Please contact us immediately at 813-787-5384 to confirm that this ad is no longer appearing on your station.

Sincerely,

Courtney Weisman

Courtney T. Weisman

Jonathan S. Berkon

Counsel to Laura Kelly for Kansas

⁴ Jonathan Shorman, *Kansas Gov. Kelly Drops Welfare Plan Slammed by Republicans to Avoid Legal Fight*, The Wichita Eagle (Jul. 11, 2019), <https://www.kansas.com/news/politics-government/article232539247.html>.

⁵ *Id.*

⁶ EES Policy No. 19-07-05 Policy Memo (Jul. 11, 2019), http://content.dcf.ks.gov/Ees/keesm/policy_memo/19-07-05abawd15percentexemptionwithdrawal.html.

⁷ See *CBS v. DNC*, 412 U.S. 94, 113 (1973).

⁸ See *Felix v. Westinghouse Radio Stations*, 186 F.2d 1, 6 (3rd Cir.), cert. denied, 314 U.S. 909 (1950).

⁹ *Licensee Responsibility With Respect to the Broadcast of False, Misleading or Deceptive Advertising*, 74 F.C.C.2d 623 (1961).

¹⁰ See 47 C.F.R. § 73.3539; FCC, *Broadcast Television License Renewals by State*, <https://www.fcc.gov/media/television/broadcast-television-license-renewal-dates-by-state>.

¹¹ 47 U.S.C. § 309(k)(1), (2).

¹² *Cosmopolitan Broad. Corp. v. FCC*, 581 F.2d 917, 927 (D.C. Cir. 1978).