



NICK KAHL
ATTORNEY

October 23, 2018

VIA EMAIL ONLY

RE: *Immediately Cease and Desist from Broadcasting an Advertisement on Your Network that Violates Oregon Law*

Dear Broadcaster:

I write in response to a letter sent to you on October 23, 2018, by Jill Gibson of the Gibson Law Firm, that attempts to justify the unlawful content in a television advertisement in support of Ballot Measure 103 entitled "Seniors Deserve Affordable Food." We believe that you are or soon will be broadcasting this advertisement on your network.

Ms. Gibson argues that the advertisement does not violate Oregon law because (A) the advertisement does not contain "the seal of the State of Oregon" and (B) the advertisement does not "falsely imply official indorsement" by the Oregon Department of Justice of either the advertisement's mischaracterization of its own actions or ballot measure 103 itself. ORS 186.023(2)(a). Both contentions are false.

A. *The Advertisement Does Contain the Seal of the State of Oregon.*

Oregon law defines the seal of the State of Oregon as follows:

The description of the seal of the State of Oregon shall be an escutcheon, supported by 33 stars, and divided by an ordinary, with the inscription, "The Union." In chief – mountains, an elk with branching antlers, a wagon, the Pacific Ocean, on which there are a British man-of-war departing and an American steamer arriving. The second – quartering with a sheaf, plow and a pickax. Crest – The American eagle. Legend – State of Oregon, 1859.

The advertisement contains the following graphic:





NICK KAHL
ATTORNEY

As you can see, the seal of the State of Oregon is present within the Department of Justice's seal. The Department of Justice is authorized to use the seal of the State of Oregon, the proponents of ballot measure 103 are not. Ms. Gibson is wrong when she claims otherwise.

B. *The Oregon Department of Justice Disagrees with Ms. Gibson's Characterizations.*

Yesterday, the Oregon Department of Justice sent a letter to the Elections Division within Oregon Secretary of State's Office. (Attached hereto as Exhibit A.) That letter states:

It has recently come to our attention that the proponents of ballot measure 103 are airing a campaign advertisement that uses the image of State of Oregon Department of Justice's seal **to advance their position** on the measure. The advertisement also **incorrectly states** that the opponents of the measure have made "claims proven false by the Oregon Department of Justice."

(Emphasis added.)

As you can see, the Oregon Department of Justice takes the position that the seal is being used to advance proponents position and that the advertisement "incorrectly states" the Department of Justice's position. Ms. Gibson's claims about what the advertisement says and does are directly refuted by the Oregon Department of Justice. Clearly, the Oregon Department of Justice is the only entity in a position to decide what the Oregon Department of Justice says and does.

The contentions in Ms. Gibson's letter have been clearly refuted by evidence. Consequently, Ms. Gibson's letter does not insulate you from liability should you chose to broadcast this advertisement. Be advised, if you choose to broadcast this advertisement, then you will be violating Oregon law.

Your immediate response is requested. Thank you for your time and attention to this matter.

Very Truly Yours,

NICK KAHL, LLC

Nicholas A. Kahl



DEPARTMENT OF JUSTICE

Justice Building
1162 Court Street NE
Salem, Oregon 97301-4096
Telephone: (503) 378-6002

October 22, 2018

Secretary of State's Office
Elections Division
Attn: Steve Trout
Public Service Building, Suite 501
255 Capitol St. NE
Salem, OR 97310

Dear Mr. Trout:

It has recently come to our attention that the proponents of ballot measure 103 are airing a campaign advertisement that uses the image of State of Oregon Department of Justice's seal to advance their position on the measure. The advertisement also incorrectly states that the opponents of the measure have made "claims proven false by the Oregon Department of Justice." We want to make it very clear that the Oregon Department of Justice neither supports nor opposes any statewide ballot measure, including ballot measure 103.

We are very concerned that the use of the Oregon DOJ seal, and the reference to our legal opinions or findings, suggest that we support or endorse the assertions in the advertisement. To the contrary, we have not—and will not—take a position for or against this or any ballot measure. I am sure that you share our sense of concern that Oregonians should receive accurate information on ballot measures. For these reasons, we are referring this matter to the Elections Division for appropriate further action. We appreciate your attention to this matter, and any assistance you can provide to ensure that Oregon voters are not misled about the neutrality of the State with respect to ballot measures.

Please contact us with any additional questions or concerns you may have. Thank you for your consideration.

Sincerely,

A handwritten signature in dark ink that reads "Frederick M. Boss".

Frederick M. Boss
Deputy Attorney General



October 24, 2018

Re: YES on 103 Advertisement

To Whom it May Concern:

This letter is in response to the October 23, 2018, letter from Nick Kahl, who objects to an advertisement entitled “Seniors Deserve Affordable Food.” This is the second letter from Mr. Kahl objecting to this advertisement, but it does not change the analysis of my previous letter to you regarding the advertisement.

As I previously stated, ORS 186.023 only prohibits the use of the official state seal; it does not prohibit the use of a seal, picture, or flag that merely incorporates the state seal. For example, ORS 186.010 specifically gives the public the privilege to use the state flag, which contains the state seal.



Mr. Kahl is attempting to interpret ORS 186.023 in an expansive manner that is unsupported by Oregon laws or any case law. He states, “As you can see, the seal of the State of Oregon is present within the Department of Justice’s seal,” implying that ORS 186.023 prohibits the use of anything containing the state seal. This position is directly contradicted by ORS 186.010, which expressly allows the public to use an image that contains the state seal.

Mr. Kahl references a letter from Frederick Boss of the Department of Justice to support his allegation that the advertisement improperly uses the state seal; however, the letter from Mr. Boss does not mention ORS 186.023 or claim that the advertisement runs afoul of this statute. While Mr. Boss is concerned with the advertisement’s use of the department’s seal, this use is not prohibited and he does not state that it is.

As I also stated in my previous letter, relying on legal opinions and estimates from a state agency does not “falsely imply[] official indorsement (sic) or sponsorship by the State of Oregon.” ORS 186.023. It is common knowledge that the State of Oregon does not endorse candidates or ballot measures in elections, and it would be unreasonable for a voter to believe that the state endorses Measure 103 simply because its supporters rely on information generated by a state agency. The advertisement clearly cites to the information provided by the department when its seal is displayed (“DOJ Letter 7/26/18”). This cited letter contains information that directly contradicts statements made by opponents of Measure 103 and it is publicly available on the Secretary of State’s website: sos.oregon.gov/elections/Pages/committee-meetings.aspx. The letter is not an endorsement of Measure 103 and is not presented as such. I am unaware of any confusion resulting from the advertisement.

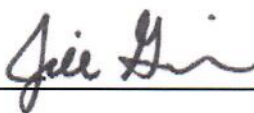
The advertisement not only is permissible under ORS 186.023, but also is protected by the Oregon Constitution. Article I, Section 8, of the Oregon Constitution states:

“No law shall be passed restraining the free expression of opinion, or restricting the right to speak, write, or print freely on any subject whatever; but every person shall be responsible for the abuse of this right.”

Oregon’s constitutional right of free expression is arguably the most protective in the nation, and is even more protective of speech than the federal Constitution. *See State v. Robertson*, 293 Or 402, 649 P.2d 569 (1982)(interpreting Article I, section 8). Oregon courts have repeatedly invalidated laws that restrict the content of speech, especially in the political arena. *In re Fadeley*, 310 Or 548, 559, 802 P2d 31 (1991). Political speech, being the most protected form of speech under the First Amendment, warrants the highest level of scrutiny against the laws that regulate it. *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010). Any attempt to prevent supporters of Measure 103 from using an agency seal to convey that the agency has issued statements that discredit claims made by opponents of the measure would violate both the state and federal right to freedom of expression.

Please let me know if you would like to discuss this further or would like additional information.

Sincerely,

A handwritten signature in dark ink, appearing to read "Jill Gibson", is written over a horizontal line.

Jill Gibson