



ROTHGERBER

JOHNSON &

LYONS LLP

Thomas M. Rogers III

Attorney at Law
303.628.9506
trogers@rothgerber.com

One Tabor Center, Suite 3000
1200 Seventeenth Street
Denver, CO 80202
Telephone: 303.623.9000
Fax: 303.623.9222
www.rothgerber.com

Denver • Colorado Springs • Casper

October 15, 2010

VIA FACSIMILE

Mark Cornetta
General Manager
KUSA-TV
500 E Speer Blvd.
DenverCO 80203-4187

Re: American Action Network
Attacking Ed Perlmutter

Dear Mr. Cornetta:

This firm represents the Perlmutter for Congress Campaign. I am writing with regard to an anti-Perlmutter advertisement currently being aired by your station on behalf of the American Action Network ("AAN"). The text of the ad is attached. The ad misstates Representative Perlmutter's position on health care reform and includes claims that independent news organizations have already declared false. For the sake of FCC licensing requirements and the public interest, your station should immediately cease airing this advertisement.

The AAN ad is critical of several alleged effects of the recently-passed federal health care reform bill, the Patient Protection and Affordable Care Act (the "PPACA," P.L. 111-148, as amended by P.L. 111-152). While each of the ad's claims about the PPACA is false and misleading, one is blatantly so: its assertion that the PPACA has resulted in the "spending of billions on health insurance for illegal immigrants."

The AAN claims that, "Now we know what Pelosi and Perlmutter were hiding. A trillion dollar health care debacle...then spent our money on health insurance for illegal immigrants" is entirely unsupported and has repeatedly shown to be false by independent news organizations. The Associated Press wrote undocumented immigrants are "explicitly excluded from the legislation," according to estimates by the Congressional Budget Office. The question of whether to extend coverage to illegal immigrants was so politically contentious that, under the approved legislation,

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they will not even be able to buy health insurance in the newly created purchasing pools called exchanges if they pay entirely out of their own pocket.”¹

CBS News stated, “Illegal immigrants will not be allowed to buy health insurance in the exchanges -- even if they pay completely with their own money.”² The Pulitzer Prize winning Politifact wrote, “the bill specifically states there can be no federal payments to undocumented aliens.”³ Numerous other news organizations confirm that illegal immigrants are explicitly excluded from receiving any benefits under health care reform.⁴

Furthermore, American Action Network provides no citations on screen. And for good reason: There is no legitimate source that would support this false claim.

Unlike federal candidates, independent organizations like the AAN do not have a "right to command the use of broadcast facilities." See CBS v. DNC, 412 U.S. 94, 113 (1973). You need not air any advertisements from outside organizations, including those of the AAN. Because you are not legally required to air this advertisement, your station bears responsibility for its content when you do grant access. See Felix v. Westinghouse Radio Stations, 186 F.2d 1, 6 (3d Cir.), cert. denied, 314 U.S. 909 (1950).

You have a duty under Federal Communication Commission regulations "to protect the public from false, misleading or deceptive advertising." Licensee Responsibility With Respect to the Broadcast of False, Misleading or Deceptive Advertising, 74 F.C.C.2d 623 (1961). Failure to prevent the airing of "false and misleading advertising" may be "probative of an underlying abdication of licensee responsibility" that can be cause for the loss of a station's license. Cosmopolitan Broad. Corp. v. FCC, 581 F.2d 917, 927 (D.C. Cir. 1978).

This advertisement is false, misleading and deceptive. I ask that you refuse to continue to air it. I further ask that you address this issue as quickly as possible so that the AAN is not permitted to continue spreading its lies.

¹ Associated Press, 4/4/10, See Below for Full Article

² CBS News, 3/23/10, http://www.cbsnews.com/8301-503544_162-20000846-503544.html

³ Politifact, 1/21/10

⁴ ABC News, 9/10/09: “Do President Obama’s proposed reforms apply to those in the U.S. illegally? No.”; Pulitzer Prize Winning Politifact, “the bill specifically states there can be no federal payments to undocumented aliens.”; San Francisco Chronicle, 3/22/10: Illegal immigrants “don’t qualify for the reforms.”

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I can be reached at 303-628-9506 if you have any questions regarding this letter. Please contact me as soon as possible with your decision. Thank you for your prompt attention to this matter.

Very truly yours,

ROTHGERBER JOHNSON & LYONS LLP



Thomas M. Rogers III

TMR:tmk
Enclosures

Transcript:

v/o: Remember this?

Pelosi: We have to pass the bill so that you can find out what is in it.

v/o: Now we know what Pelosi and Perlmutter were hiding: a trillion dollar healthcare debacle, billions in new job-killing taxes. They cut \$500 billion from Medicare for seniors, then spent our money on health insurance for illegal immigrants. In November, tell Congressman Ed Perlmutter to vote for repeal. American Action Network is responsible for the content of this advertising.

Health care reform leaves out illegal immigrants

Published: Sunday, April 04, 2010, 6:14 PM Updated:
Sunday, April 04, 2010, 6:29 PM



Associated Press

JULIANA BARBASSA, Associated Press Writer

FRESNO, California - Paula Medrano shifts uncomfortably on the doctor's examination table, holding out a wrist inflamed and swollen by arthritis. The 78-year-old has no health insurance, lives below the federal poverty level, and can't pay for the medication she needs.

Just days before her appointment, President Barack Obama signed, with much fanfare, a historic bill to extend health care access to 32 million currently uninsured people. But Medrano and her daughter, Juana Aguirre, barely paid attention.

"It's a great thing, but it's not for us," said Aguirre.

Medrano is an undocumented immigrant -- one of the 7 million uninsured people living in the United States who were explicitly excluded from the legislation, according to estimates by the Congressional Budget Office.

The question of whether to extend coverage to illegal immigrants was so politically contentious that, under the approved legislation, they will not even be able to buy health insurance in the newly created purchasing pools called exchanges if they pay entirely out of their own pocket.

Proponents of reducing immigration believe that allowing illegal immigrants access to health care is an incentive for them to come, and an unfair tax burden on Americans.

Although the approved legislation explicitly excludes undocumented immigrants from participating in the exchanges, there is no foolproof way of verifying their documentation to keep them out, said Yeh Ling-Ling, executive director of Alliance for a Sustainable USA.

They will also continue to have access to emergency medical assistance.

"It is not fair on struggling Americans," said Yeh.

What is clear is that as the ranks of the uninsured diminish, immigrants like Medrano will continue to patch together health care as they can -- at health centers such as Fresno's Clinica Sierra Vista, at hospital emergency rooms, or through programs like Healthy San Francisco, which offers universal health care to all who live in the city.

"We have to be very creative -- not asking for labs unless it's really essential, working with generics, working with drug companies, giving them samples," said Juan Carlos Ruvalcaba, the doctor seeing Medrano at Clinica, which charges on a sliding scale of \$40 to \$70, depending on the patient's ability to pay.

Once an undocumented immigrant himself, Ruvalcaba was able to become a citizen and attend medical school because of an amnesty program in 1986. He remains committed to serving all patients, no matter their insurance or immigration status, but there is only so much he can do, he said.

He was able to give Medrano the drugs she needed, but he asked, "What happens when they need a specialist? What if they end up in the emergency room, and end up with a big bill?"

Some who work with this population are afraid that with the focus shifting onto providing care for the newly insured, those shut out of the system will be forgotten, left to fend for themselves with even fewer resources.

"It may make things worse -- if you say 32 million are covered, there may be less done for these large groups who are here, who are working, who are such a large part of our agriculture industry," said Norma Forbes, executive director of Fresno Healthy Communities Access Partners, a nonprofit network of eleven health care organizations in California's rural Central Valley.

Illegal immigrant won't be the only uninsured left: about 16 million Americans are estimated to remain outside the health care system even after access is expanded over the next few years, according to the Congressional Budget Office.

This includes those who opt out, who don't know how to enroll, or who are exempted from the health insurance requirement because they can't afford the premiums, even with a subsidy.

For these patients, there will indeed be fewer options as doctors, hospitals and other providers increase their caseload to take in new patients bearing insurance, said Dan Hawkins, who is charged with policy and research at the National Association of Community Health Centers.

"There will be greater concentration of care for the uninsured in fewer places," Hawkins said.

Community health centers, the lynchpin of the safety net system now caring for the medically underserved, whether they are immigrants or citizens, will remain one of the places where people like Medrano will be able to see a doctor at an affordable cost.

Federally qualified clinics got a substantial funding boost through the health reform package.

They will get \$11 billion in new funding over the next five years, which will allow them to double the number of patients they see, from 20 million a year now to 40 million people a year by 2015.

Most of these new patients will come bearing new insurance cards, or be part of the larger pool qualifying for Medicaid. But among them will be illegal immigrants, said Hawkins.

"Health centers will continue to be open to everyone regardless of their ability to pay, undocumented immigrants and everyone else," he said. "We don't know how many of the uninsured we serve right now are undocumented. But we do know a health center is a better, and less expensive, place for them to get that care."