



YES ON 1

www.NDChooseLife.com
701.388.4966

The Inalienable right to life of every human being at any stage of development must be recognized and protected.

October 28, 2014

Re: Cease and Desist Demand Regarding NDAM1 Television Commercial “Becky.”

To Whom It May Concern:

Your station is currently airing a television commercial called “Becky” sponsored by North Dakotans Against Measure 1 (NDAM1) that knowingly makes demonstrably false statements intended to mislead the public. As a licensee in the state of North Dakota subject to both FCC regulations and state statutes governing the airing of false statements, you have a duty to remove these false ads from the air. We therefore demand that you cease and desist airing the commercial in question.

At the outset we acknowledge that NDAM1 has a right to advocate for its position on Measure 1 and that television station general managers should not generally be in the position of substituting their judgment on a contentious issue for that of voters. This is why we have not demanded any previous NDAM1 ad be pulled from the air even though each of those ads also contained false statements.

The “Becky” ad, however, falls into a unique category in that the central contention of the ad – that Measure 1 would ban abortion in every case – is categorically false, and has been demonstrated by both sides of Measure 1 to be false.

Accordingly, as we set forth below, there is no material dispute of the falsity of the advertisement, which must be pulled immediately.

Falsity of the Advertisement

The advertisement in question shares the tragic story of “Becky” who reportedly lives in Bismarck, ND and who apparently suffered a miscarriage of the twins she was carrying in her womb. The advertisement cynically plays on the emotion of her loss to switch topics away from her miscarriage to the claim that “Measure 1 would ban all abortion.” This is categorically false for at least three reasons.

First, Measure 1 will not and cannot ban abortions because, by its clear terms, the measure is not self-executing. According to the North Dakota Supreme Court a constitutional provision is self-executing only “if it establishes a sufficient rule by which its purpose can be accomplished without the need of legislation to give it effect.” A constitutional provision is non-self-executing “wherein it merely establishes general objectives, without setting forth

rules by which those objectives can be accomplished . . .”¹ Measure 1 is clearly a statement of general objectives and not self-executing.

Second, it would be impossible for any constitutional measure to ban abortion unless it defined human life as beginning at some point prior to natural birth. It is patently clear from the language of Measure 1, however, that it does not provide any definition for when life begins.

Finally, Measure 1 cannot ban abortion because the right to abortion is protected by U.S. Supreme Court decisions based on the U.S. Constitution. Indeed, this fact is so indisputably true that there is no need to further consider the other two points.

NDAM1’s own position paper acknowledges that “Measure 1 cannot nullify the landmark abortion cases *Roe v. Wade* and *Planned Parenthood v. Casey* . . .”²

NDAM1’s legal advisor, Steven Morrison, made the same representations to in a legal analysis he distributed to members of the North Dakota Long Term Care Association, writing: “Any state law that has been or will be passed that restricts abortion rights beyond the constitutional floor set by the federal cases will be invalid pursuant to the Supremacy clause.”³ On another occasion Morrison stated that Measure 1 would not “stop” abortion because federal law, which trumps state law, protects a woman’s right to an abortion in her first trimester.”⁴

Thus, it is clear that NDAM1 has previously conceded that Measure 1 does not ban abortion, let alone ban abortion in all cases, because as Mr. Morrison has repeatedly made clear, ***it cannot do so*** under federal jurisprudence governing access to abortion.

Given the above, there is no disputing that the ad in question is false. Both sides have conceded this point and independent analysts have called it “false.”⁵ This leaves only your responsibility under federal and state law to allow a demonstrably false and misleading ad to continue to run on your station.

FCC Requirements

Unlike candidates for federal office, you are under no obligation to accept advertising from NDAM1. See *CBS v DNC*, 412 U.S. 94, 113 (1973). However, after having accepted their advertising you were not required to accept, you have a duty “to protect the public from false, misleading or deceptive advertising” which the ad “Becky” unquestionably is.

North Dakota Requirements

¹ *State, ex rel. Vogel v. Garaas*, 261 N.W.2d 914, 918 (N.D. 1978).

² “Potential Legal Ramifications of Measure 1, September 2014: <http://ndam1.org/wp-content/uploads/sites/11/2014/09/NDAM1-White-Paper-signed.pdf>

³ “Legal Analysis of Senate Concurrent Resolution No. 4009.” Although Mr. Morrison originally prepared this document for the North Dakota Coalition for Privacy in Health Care, he has distributed as part of his activities with NDAM1.

⁴ <http://www.grandforksherald.com/content/panel-says-nd-measure-1-could-affect-care-elderly-ill>

⁵ <http://sayanythingblog.com/entry/anti-measure-1-ad-claims-ban-abortions-experts-disagree/>

In addition to responsibilities under federal law, your station also has responsibilities under the laws of the state of North Dakota. For example, under North Dakota's Corrupt Practices Act (North Dakota Century Code 16.1-10-04) it is a misdemeanor offense to knowingly and with reckless disregard for the truth publish false or misleading campaign information. The statute exempts television stations from penalties, but the station may have liability under other legal theories including republication of false statements once the falsity of the statements have been made known to you.

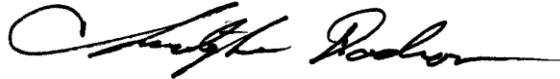
Conclusion

The advertisement in question sponsored by NDAM1, "Becky," is demonstrably false. Its major contention – that Measure 1 bans all abortions – is at odds with legal analyses published by NDAM1 itself. It is vigorously contested by ND Choose Life. Thus, there is not disagreement that the statement in the ad is false.

Accordingly, for the reasons stated above, we demand that you immediately remove the advertisement in question from the air and cease and desist from any future broadcasting of this advertisement. If you fail to do so, please provide us, in writing, the legal basis for your refusal so that we may assess your position before proceeding with other legal remedies.

Thank you for your prompt attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Christopher Dodson". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Christopher Dodson
General Counsel and Member of the Executive Committee
North Dakotans Choose Life