

October 4, 2019

Jonathan S. Berkon
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Dear Station Manager:

We write on behalf of the John Bel Edwards Campaign (the “*Campaign*”) regarding an advertisement sponsored by RGA Right Direction PAC (the “*RGA*”) that is currently running on your station.¹ The RGA advertisement details a sexual harassment complaint by former state employee Juanita Washington against Governor Edwards’ former aide, Johnny Anderson.² We do not take issue with the recitation of Ms. Washington’s claims. However, the advertisement then veers into utter falsity by stating that Governor Edwards responded to the complaint by “spen[ding] \$100,000 taxpayer dollars *to keep it quiet.*” This claim is blatantly untrue.³ Accordingly, your station must cease airing the ad until the RGA removes the false statement.

The Governor made no effort whatsoever to keep this matter “quiet.” To the contrary, the settlement agreement signed by Ms. Washington did *not* include the nondisclosure agreement language that is often used to prevent complainants from discussing their stories with the public. For example, when the Secretary of State’s office resolved a sexual harassment claim against former Secretary of State Tom Schedler, the settlement agreement provided that “[n]o participant in the mediation shall initiate or respond to inquiries from the media relative to the settlement or terms of the settlement.”⁴ The settlement agreement signed by Ms. Washington purposefully *omitted* such language, evincing the strong intent of the Governor’s office to allow Ms. Washington to speak publicly about her experience.

At the insistence of Mr. Anderson’s attorneys, the agreement did include a provision that bars Ms. Washington from making disparaging statements.⁵ But the Governor’s own legal counsel publicly stated that this clause “did not prevent Washington from publicly speaking about the

¹ The ad is available here: <https://youtu.be/PjcOU0scVwQ>.

² Julia O’Donoghue, *Woman Who Accused Gov. Edwards’ Aide Johnny Anderson of Sexual Harassment Speaks Out*, The Times-Picayune (Aug. 24, 2018), https://www.nola.com/archive/article_7fef222c-d78d-5c27-af7f-121351d2fe48.html; O’Donoghue, *supra* note 2; Julia O’Donoghue, *Louisiana Settles Sexual Harassment Case Against Governor’s Staffer for \$85,000*, The Times-Picayune (Mar. 29, 2018), https://www.nola.com/news/politics/article_6c0ba194-1c1b-5c81-bd2c-689259a8a911.html.

³ Julia O’Donoghue, *Ban Proposed on Gag Orders in Louisiana’s Sexual Harassment Settlements*, The Times-Picayune (Apr. 3, 2019), https://www.nola.com/news/article_d87d099c-54d9-5ad8-98f4-a418e928d3f5.html.

⁴ Julia O’Donoghue, *Tom Schedler Sexual Harassment Settlement Requires Silence from Parties*, The Times-Picayune (Oct. 17, 2018), https://www.nola.com/news/politics/article_a9d76c4f-0809-59fd-ae66-a77ff455966c.html.

⁵ O’Donoghue, *supra* note 3.

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facts of her case.”⁶ Indeed, the Governor’s counsel submitted an affidavit, attached here, which confirms that (i) he told the media that Ms. Washington was free to share her story publicly, (ii) there was never an attempt by the Governor’s office to stop Ms. Washington from telling her story, and (iii) the non-disparagement language in the agreement “would not stop any of the parties from making statements about the underlying facts or the settlement.”⁷

As a result, Ms. Washington has repeatedly provided detailed accounts of her story and the settlement process to multiple news sources.⁸ There has been no effort to “keep [Ms. Washington] quiet”; she has been, and remains, free to talk about her story.⁹ In fact, Ms. Washington currently appears in a television advertisement where she publicly discusses her story.¹⁰ Your station cannot credibly air *this* advertisement – which tells your viewers that Ms. Washington has been silenced – and then accept an advertisement in which Ms. Washington speaks directly to those same viewers about what happened to her.

Unlike candidates, independent political organizations like the RGA do not have a “right to command the use of broadcast facilities.”¹¹ Because you need not air this advertisement, your station bears responsibility for its content when you do grant access.¹² You have a duty “to protect the public from false, misleading or deceptive advertising.”¹³ 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.¹⁴ Your station should not be a medium for political organizations to lie with impunity.

This advertisement is false and should be removed immediately until the untrue statement is removed. Thank you for your attention to this matter, and please contact us immediately at 202-

⁶ *Id.*

⁷ Affidavit from Matthew F. Block, Executive Counsel to the Governor (signed Oct. 3, 2019).

⁸ O’Donoghue, *supra* note 2 (“During what was supposed to be a follow-up interview, Washington said, Anderson locked the door to his office in the Capitol, grabbed her breasts and vagina and demanded she give him oral sex. While she worked at the governor’s office under Anderson’s supervision, Washington said Anderson regularly sent her sexually explicit text messages, requested naked photos of her, masturbated in front of her and fondled her during private meetings he scheduled during the work day.”); *see also* Jim Engster, *Tuesday, September 4: Julia O’Donoghue, Juanita Washington, Ed Cullen*, Talk Louisiana (Sep. 4, 2018), <https://www.wrkf.org/post/tuesday-september-4th-julia-o-donoghue-juanita-washington-ed-cullen>; O’Donoghue, *supra* note 3 (“In an interview, Washington said the hardest part about signing her settlement documents was that they contained language saying she couldn’t ‘disparage’ Anderson. ‘It delayed the signing of the agreement for about a week.’”).

⁹ The ad also misstates the value of the settlement agreement – it is \$85,000 not \$100,000. *See* Settlement Agreement at 1. While the state may have paid additional funds for other investigative services or legal fees, those funds were not part of the settlement agreement and did not go to Ms. Washington or her lawyer.

¹⁰ The advertisement featuring Ms. Washington is available here: <https://youtu.be/KfleSPKL3FY>.

¹¹ *See CBS v. DNC*, 412 U.S. 94, 113 (1973).

¹² *See Felix v. Westinghouse Radio Stations*, 186 F.2d 1, 6 (3rd Cir.), cert. denied, 314 U.S. 909 (1950).

¹³ Licensee Responsibility With Respect to the Broadcast of False, Misleading or Deceptive Advertising, 74 F.C.C.2d 623 (1961).

¹⁴ *Cosmopolitan Broad. Corp. v. FCC*, 581 F.2d 917, 927 (D.C. Cir. 1978).

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654-1730 to confirm that this ad is no longer appearing on your station. Thank you for your attention to this matter.

Very truly yours,

A handwritten signature in black ink that reads "Jonathan S. Berkon". The signature is written in a cursive, flowing style.

Jonathan S. Berkon
Courtney T. Weisman
Counsel to John Bel Edwards Campaign