

July 19, 2018

James E. Tyrrell III

T 202.344.4522
F 202.344.8300
jetyrrell@venable.com

ATTENTION STATION MANAGER

Re: KelliPAC's False Advertisement Against Congresswoman Martha McSally

Dear Sir or Madam:

On behalf of Congresswoman Martha McSally and McSally for Senate, Inc., we write about a demonstrably false and deceptive advertisement sponsored by KelliPAC that may currently be airing on your station. KelliPAC's ad, entitled "Oscar Winner," propagates maliciously false information to your viewing audience about Congresswoman McSally's support for President Trump's plan to secure our southern border with Mexico. The claims in the advertisement are false, and have no legitimate evidence to back them up. Because this is not a candidate advertisement, but instead sponsored by a third-party group, you have no obligation to air this advertisement. If you continue to grant access and air it, then your station bears responsibility for its content. For the sake of both FCC licensing requirements and the public interest, we request that your station immediately cease and desist airing this malicious attack ad.

FALSE STATEMENT OF FACT

False Statement No. 1

KelliPAC's ad states at :12 of the ad: "Just listen to what Never Trumper Martha said about the President's border plan." The ad then deceptively inserts an MSNBC clip of Congresswoman McSally from an interview she did with Andrea Mitchell on December 8, 2015 on a completely different topic—then-candidate Trump's so-called "Muslim ban" proposal. A complete transcript and video of the interview can be viewed, in its entirety at <https://grabien.com/story.php?id=43137>.

To be clear, not once during Congresswoman McSally's interview with Andrea Mitchell was there any discussion whatsoever about President Trump's border plan. This is not to mention the fact that the interview was from December 8, 2015, over a year before President Trump was even sworn in as President, so even if there was a discussion about the "President's border plan," it would have been commentary on President Obama's border plan.

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In reality, Congresswoman McSally has been a fervent supporter of President Trump's plan for our southern border with Mexico, and has made it abundantly clear that she supports the President's plan to build a wall. This is precisely why the Tucson Sentinel stated, after McSally's Senate campaign announcement in January:

Speaking to about 120 supporters at an airplane hanger [sic] in Tucson on Friday, **McSally drew herself even closer to the president, declaring her support for his policy of building a wall on the U.S.-Mexico border.**¹

Congresswoman McSally has explicitly articulated her support for the President's border plan countless times, and has been depicted expressing such support in numerous advertisements that have run online and on stations throughout Arizona. For example, two One Nation ads that ran over the last two months depict Congresswoman McSally stating, "we've got to build a wall...to actually secure the border."²

Of course, Congresswoman McSally doesn't just support President Trump's border plan. President Trump also supports Congresswoman McSally's plan, as the White House issued an official statement of support for the border and immigration legislation introduced by her in January of this year. The statement reads in full:

President Donald J. Trump is grateful to Chairman Goodlatte, Chairman McCaul, Congressman Labrador, and Congresswoman McSally for introducing immigration legislation that would accomplish the President's core priorities for the American people. The President looks forward to advancing legislation that secures the border, ends chain migration, cancels the visa lottery, and addresses the status of the DACA population in a responsible fashion.³

¹ Dylan Smith, *Martha McSally goes all-in with Trump as she launches Senate run*, TUCSON SENTINEL (Jan. 12, 2018), available at http://www.tucsonsentinel.com/local/report/011218_mcsally/martha-mcsally-goes-all-in-with-trump-as-she-launches-senate-run/.

² See One Nation advertisement entitled, "Exploit," published July 6, 2018, available at <https://www.youtube.com/watch?v=e7jKEsbg9ZY> (at :07); see also One Nation advertisement entitled, "Stream," published June 14, 2018, available at <https://www.youtube.com/watch?v=Z7qFjzYC0e4> (at :09).

³ Statement of White House Press Secretary Sarah Huckabee Sanders (Jan. 10, 2018), available at <https://www.whitehouse.gov/briefings-statements/statement-press-secretary-immigration-legislation/>.

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In short, Congresswoman McSally stalwartly supports President Trump's border plan, and there is nothing Kelli Ward and her misguided supporters can do to change that fact—including inserting into a deceptive attack ad extraneous video footage of an interview on an entirely unrelated topic. Such tactics are nothing short of shameful and a fraud on your viewers.

False Statement No. 2

As if KelliPAC's cutting room floor deception wasn't enough, its ad also falsely claims that the group FreedomWorks gave Congresswoman McSally an "F" rating. At the very beginning of the ad, the screen depicts the logo for FreedomWorks, and states that McSally was "RATED F" by the group. The problem here, of course, is that FreedomWorks does not issue letter grades to elected officials. To the contrary, the group rates Members of Congress on a 1 to 100 scale. FreedomWorks' website clearly states:

About Scorecards

FreedomWorks identifies the most important votes on issues of economic freedom and scores Members of Congress based on their votes. We use a scale of 100, so the higher the score the more often the Member is on our side fighting for lower taxes, less government and more freedom.⁴

If an outside group wants to put up a political ad attacking a candidate, it must be 100% accurate and supported by facts. This includes the words an outside group uses in its attack. If the group's ad contains language that is not 100% accurate, it is the legal responsibility of the station to remove it from the air. KelliPAC's ad states that Congresswoman McSally was "RATED F" by FreedomWorks. This cannot under any circumstances be true because, as clearly stated on FreedomWorks' website, the group "**use[s] a scale of 100.**"⁵ Instead of acknowledging this fact, KelliPAC would rather misrepresent Congresswoman McSally's record and trick your viewing audience into believing blatant falsehoods than legitimately informing them about real issues or true policy stances. Your station has an obligation to not broadcast such a stunningly false and intentionally deceptive attack. The voting public is entitled to the truth and deserves better.

⁴ See FreedomWorks website, available at <http://congress.freedomworks.org/>.

⁵ *Id.*

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FCC OBLIGATIONS

Importantly, this attack by KelliPAC does not constitute a “candidate use.” Under *Columbia Broadcasting Sys., Inc. v. Democratic Nat’l Comm.*, 412 U.S. 94 (1973), and *Nat’l Conservative Political Action Comm.*, 89 FCC 2d 626 (1982), your network is not obligated to air any advertisements from third parties, such as KelliPAC, as third parties have no guaranteed right of access to air their advertisements on your network. Thus, broadcasting stations are not protected from legal liability for airing a false and misleading advertisement sponsored by KelliPAC. Moreover, you have a duty “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.” *Cosmopolitan Broad. Corp. v. FCC*, 581 F.2d 917, 927 (D.C. Cir. 1978).

Arizona voters deserve to cast their vote knowing the truth about their candidates, and KelliPAC’s ad is a willful and knowing attempt to reinvent the truth. We urge you to recognize KelliPAC’s blatant disregard for the truth and we respectfully demand that your network refuse to air this false and misleading ad. We further request that you reject any attempts by KelliPAC to purchase time for the future airing of this ad because of its material misstatements of fact and blatant disregard for the truth.

Thank you in advance for your prompt attention to this matter. We would respectfully request the courtesy of a reply; and if you have questions, or believe that this ad is somehow fit for airing on your station, we ask that we have an opportunity to, as soon as possible, discuss this matter further. I can be reached directly at (202) 344-4522.

Sincerely yours,



James E. Tyrrell III
Counsel to McSally for Senate, Inc.