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July 15, 2014

VIA EMAIL

Re: America's PAC's Advertisement Regarding Senator Dick Durbin

Dear Station Manager:

We are counsel to Senator Dick Durbin and his authorized campaign committee, Friends of Dick Durbin. We write concerning an advertisement by America's PAC regarding Senator Durbin that we understand is currently airing on your station. The text of this advertisement is attached as Exhibit A. As other major media outlets have acknowledged by retracting stories containing similar allegations, the advertisement is false and misleading. Women in Senator Durbin's office are not subject to unfair pay disparity, and, furthermore, the advertisement misleads voters by taking a completely unrelated quotation from Senator Durbin and misapplying it to fit America PAC's partisan political objectives. For the sake of both FCC licensing requirements and the public interest, your station should immediately cease airing these advertisements.

The advertisement is misleading and false because Senator Durbin's statement used in the ad that "women earn 77 cents for every dollar earned by men" was not in any way related to salaries in Senator Durbin's office. That statistic relates to the average pay disparity nationwide, and was first distributed by the U.S. Census Bureau.¹ Senator Durbin cares deeply about achieving standards for equal pay for equal work, and is a co-sponsor of the Paycheck Fairness Act.² Senator Durbin actually said the phrase quoted in the advertisement during a speech on the Senate floor promoting the Paycheck Fairness Act, not during an interview about salaries in his office.³

Furthermore, the statement that women who work for Senator Durbin earn 77 cents for every dollar earned by men is simply not true. Women employed by the office generally make the same or more than their male counterparts doing the same work. For example, the average

¹ See http://www.census.gov/newsroom/releases/archives/income_wealth/cb11-157.html.

² See <https://beta.congress.gov/bill/113th-congress/senate-bill/84/cosponsors>.

³ 160 Cong. Rec. 57 (Apr. 8, 2014) (statement of Sen. Durbin), available at <http://www.gpo.gov/fdsys/pkg/CREC-2014-04-08/html/CREC-2014-04-08-pt1-PgS2205.htm>.

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ANCHORAGE · BEIJING · BELLEVUE · BOISE · CHICAGO · DALLAS · DENVER · LOS ANGELES · MADISON · NEW YORK
PALO ALTO · PHOENIX · PORTLAND · SAN DIEGO · SAN FRANCISCO · SEATTLE · SHANGHAI · TAIPEI · WASHINGTON, D.C.

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female legislative assistant in the Senator's office makes \$6,700 more than her average male counterpart; female legislative correspondents make an average of \$7,400 more than male counterparts; female Senate aides make an average \$1,650 more; and male and female legislative aides are paid equally.⁴ Women who work for Senator Durbin also hold many of the top leadership roles, including Legislative Director, Director of Scheduling, Floor Director, Director of Operations, Office Counsel/Director of Correspondence, Illinois Communications Director and Chicago Director.⁵ Of the top ten wage earners in Senator Durbin's Washington office, five are men and five are women; of the top ten wage earners in his Illinois offices, four are men and six are women.⁶

The misstatements that provide the sole basis for the advertisement originated in the Washington Free Beacon.⁷ While the Free Beacon holds itself out as a legitimate news organization, it is actually a project of the 501(c)(4) organization Center for American Freedom and is allowed to conduct political campaign activity under federal law.⁸ The founder of the Free Beacon has admitted that it is "standard practice" for the website to use Republican operatives and other outside consultants as the basis for its stories.⁹ Legitimate news organizations such as the Chicago Sun-Times, originally picked up the story from the Free Beacon, but then immediately retracted their articles or ceased their reporting after realizing that there was no truth to the allegations.¹⁰

Unlike federal candidates, independent organizations like Americas PAC 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 America's PAC. Because you are not legally required to air these advertisements, your station bears responsibility for their content when you do grant access. *See Felix v. Westinghouse Radio Stations*, 186 F.2d 1, 6 (3rd Cir.), *cert. denied*, 314 U.S. 909 (1950).

⁴ *See* www.legistorm.com (accessed July 15, 2014).

⁵ *See id.*

⁶ *See id.*

⁷ *See* Washington Free Beacon Staff, *Men Average \$11,505 Higher Salary than Women in Dick Durbin's Office* (Apr. 8, 2014), available at <http://freebeacon.com/politics/men-average-11505-higher-salary-than-women-in-dick-durbins-senate-office>.

⁸ *See* <http://freebeacon.com/about>.

⁹ Emily Arrowood, *Free Beacon Admits Failure to Disclose Paid Partisan Origins of its Reporting is "Standard Practice"*, MediaMatters.org (June 23, 2014), available at <http://mediamatters.org/blog/2014/06/23/free-beacon-admits-failure-to-disclose-paid-par/199851>.

¹⁰ *See* Natasha Korecki, *In Dick Durbin's Office, Average Man Makes \$11k More Than a Woman*, Sun-Times Politics Early & Often Blog (Apr. 9, 2014), <http://politics.suntimes.com/article/washington/dick-durbins-office-average-man-makes-11k-more-woman/wed-04092014-1147am> (article no longer online).

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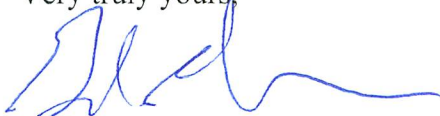
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You have a duty under Federal Communications Commission regulations "to protect the public from false, misleading or deceptive advertising." *Licensee Responsibility With Respect to the Broadcast of False, Misleading or Deceptive Advertising*, 74 F.C.C.2d 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).

America's PAC's advertisement is false, misleading, and deceptive and we demand that you refuse to continue to air it. We can be reached at (202) 654-6200 if you have any questions regarding this letter. Please contact us to inform us of your decision. Thank you for your attention to this matter.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'Graham M. Wilson', with a long horizontal flourish extending to the right.

Graham M. Wilson
Tyler J. Hagenbuch
Counsel to Friends of Dick Durbin