
To: **Jerry Ryan**

Company: Univision Radio - Chicago, IL

Fax Number: 312-981-1840

Phone Number: 312-981-1800

Total Pages
Including Cover: **5**

From: **William J. McGinley**

Sender's Direct Line: 202-457-6000

Date: September 2, 2009

Client Number: .

Comments:

Please see attached.

WASHINGTON DC
NORTHERN VIRGINIA
NEW JERSEY
NEW YORK
DALLAS
DENVER
ANCHORAGE
DOHA, QATAR
ABU DHABI, UAE

Confidentiality Note The documents accompanying this facsimile contain information from the law firm of Patton Boggs LLP which is confidential and/or privileged. The information is intended only for the use of the individual or entity named on this transmission sheet. If you are not the intended recipient you are hereby notified that any disclosure, copying, distribution or the taking of any action in reliance on the content of this facsimile is strictly prohibited, and that the documents should be returned to this Firm immediately. If you have received this facsimile in error, please notify us by telephone immediately so that we can arrange for the return of the original documents to us at no cost to you.

If you did not receive all of the pages or find that they are illegible, please call 202-457-6561.

September 2, 2009

William J. McGinley
202-457-6000
wmcginley@pattonboggs.com

VIA FACSIMILE

Illinois Radio Station
Station Manager

Re: Illinois Coalition of Immigrant and Refugee Rights Advertisement

Dear Station Manager:

We represent Kirk for Senate. We understand that your station is scheduled to air an advertisement sponsored by the Illinois Coalition of Immigrant and Refugee Rights ("ICIRR") concerning Congressman Mark Kirk, candidate for U.S. Senate from the State of Illinois. Your station must fulfill its responsibility to operate in the public interest and not air this advertisement.

As reported by today's Chicago Sun-Times, this advertisement falsely claims that Congressman Kirk advocated "condoms" as a solution to illegal immigration. The advertisement states:

"I wonder what goes on inside the mind of a Congressman when he states that the solution for immigration is to send condoms to Mexico," a voice says in Spanish. "Yes, he said that! I know it is hard to believe but Congressman Mark Kirk has suggested on the floor of the US Congress that the solution to illegal immigration is sending birth control to Mexico!"

Mark Brown, *Immigrant Group's Attack on Mark Kirk Off the Mark*, Chicago Sun-Times (September 2, 2009). The claim is patently false. As stated in the article, "It's dirty pool to put words in Kirk's mouth. . . . Kirk's complete remarks from 2007, as reported in the Congressional Record, make no mention of condoms." *Id.* There is no record of Mr. Kirk ever mentioning the words "condom" or "birth control" in connection with immigration or Mexico. A copy of the Chicago Sun-Times article is attached for your review and convenience.

We also note that Cong. Kirk is a fluent Spanish speaker who went to school in Mexico. As a Congressman, he worked to improve the lives of Latino constituents by sponsoring a family reunification program (Project Abuelita) and securing a grant to teach English to young Latina mothers to boost their ability to help their kids with schoolwork.

Under Columbia Broadcasting System, 412 U.S. 94 (1973) and its progeny, and Federal Communication Commission precedents, your station is not obligated to air any advertisements

PATTON BOGGS LLP
ATTORNEYS AT LAW

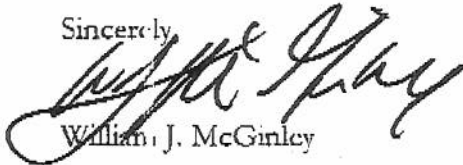
Illinois Television Station
September 2, 2009
Page 2

from soft money, special interest groups such as ICIRR. See National Conservative Political Action Comm., 89 FCC2d 626 (1982). These precedents hold that third-party spenders such as ICIRR do not have a guaranteed right of access to air their advertisements on your station. In fact, if your station airs this advertisement after gaining knowledge that it contains false and misleading statements, you are subjecting your station to potential liability. See 47 U.S.C. § 315 (providing immunity to stations for statements made in legally qualified candidate ads, but not extending such protections to third-party ads).

Since the ICIRR advertisement contains false and misleading statements, your station must fulfill its public interest obligations and not air this advertisement. If you insist on airing this advertisement, we request an explanation of the basis of your decision in law or station policy.

Thank you in advance for your prompt attention to this request.

Sincerely,



William J. McGinley

Attachments

SUN TIMES: Immigrant group's attack on Mark Kirk off the mark

Ads that have him pushing birth control in Mexico not fair

BY MARIE BROWN

An Illinois immigrant rights group plans Thursday to launch an ad campaign in Spanish language media to try to discredit U.S. Rep. Mark Kirk for a remark he made two years ago endorsing birth control in Mexico as a partial solution to illegal immigration in the U.S.

The attack on Kirk, a front-running Republican candidate for the Senate, is said to be the first salvo in a new national effort by immigrant advocates to exact political punishment on those seen as antagonistic to their cause. The campaign exploits a loophole in federal law that allows nonprofit groups to operate separate "voter education" efforts.

The print ads will picture Kirk's face on a condom package, with a condom circling his head like a bull's-eye, while the radio ad begins with a narrator saying: "I wonder what goes on inside the mind of a congressman when he states that the solution for immigration is to send condoms to Mexico."

Actually, Kirk never said anything about condoms, nor did he specifically use the words "birth control," although I think the latter at least is a fair inference to draw from what he actually did say.

Kirk was speaking on the House floor in June 2007 in favor of U.S. financial support for international family planning agencies when he made these comments:

"A slower rate of growth of Mexico's population would improve the economy of Mexico," Kirk said. "It would also reduce the environmental pressure on Mexico's ecosystem. But a slower rate of growth would also reduce the long-term illegal immigration pressure on America's borders."

While that doesn't strike me as particularly objectionable, I'm told I would feel differently if I were of Mexican descent.

Josh Hoyt, executive director of the Illinois Coalition of Immigrant and Refugee Rights, said Kirk's statement was "deeply offensive" to Mexican Americans and in keeping with other tough-talking immigration rhetoric the congressman has employed over the years to shore up support within his own party -- despite his moderate image.

"It's part of a pattern of mean-spirited statements and political posturing" by Kirk, Hoyt said, accusing the five-term incumbent of "immigrant scapegoating," most recently in public statements promising his opposition to "federally subsidized health care to illegal aliens."

In defense of Kirk, his spokesman Eric Elk noted the congressman is fluent in Spanish, attended college in Mexico and that his congressional office has devoted considerable effort to helping Latino families in his district, none of which quite speaks to the point.

Illinois Immigrant Action, a sister agency of the immigrant coalition but organized as a so-called 501(c)(4) to allow for nonpartisan voter education and registration, says it will spend \$5,000 to place the ads in seven Spanish-language newspapers and on three Spanish radio stations. That's not much money for a media campaign, even in a targeted market. Hoyt says that's because it's a "warning shot" intended to give Kirk and others a taste of what they can expect if they don't "evolve" their immigration position beyond get-tough deportation strategies.

Hoyt knows me to be a supporter of his cause -- a workable immigration solution that provides a path to citizenship for illegal (he would prefer I say undocumented) immigrants -- which doesn't preclude me from questioning his methods.

It's dirty pool to put words in Kirk's mouth. If they want to portray him as the next Jim Oberweis, they should have started with some better material for their ad campaign.

Kirk's complete remarks from 2007, as reported in the Congressional Record, make no mention of condoms.

"Women in developing countries consistently report that they would like to have two to three children rather than five to seven," Kirk said. "As population pressures rise, so does the move to enter the United States, legally or illegally. To reduce the illegal immigration pressure on our borders, we need short-term solutions like border enforcement, and long-term solutions like backing voluntary family planning to help women in developing countries have the smaller family that they want."

Hoyt would argue that population pressures in Mexico are not a significant issue in the current U.S. immigration mess, but that's a less provocative discussion than making it about condoms.

In response to my concern that this nonpartisan voter education effort not become a stalking horse for the Democratic Party, Hoyt assured me that if Rep. Dan Lipinski, a Democrat, had a serious re-election opponent this year, then he'd be getting the same treatment.

Too bad we can't put that to the test.