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February 20, 2014

Re: Illinois Freedom PAC Advertisement

Dear Station Manager:

Our firm is counsel to Illinois Freedom PAC. We understand that gubernatorial candidate Bruce Rauner has requested that you remove an advertisement sponsored by our client. Mr. Rauner's challenge is baseless. Each and every statement in the advertisement is carefully documented and supported. This advertisement is accurate in every respect, raises critical public policy issues, and should continue to air.

Mr. Rauner objects to two statements in the advertisement; neither objection has merit.

First, Mr. Rauner objects to the statement that "Rauner's company was accused of draining money from nursing homes, leaving seniors to suffer from malnutrition and dehydration." It is difficult to understand the basis for Mr. Rauner's objection. The advertisement merely points out to voters what they could have read for themselves in court filings and media reports: that Mr. Rauner's company has been accused by others, including the families of deceased patients, of draining money from nursing homes and letting patient health care suffer.

Mr. Rauner's company, a hedge fund named GTCR Golder Rauner LLC ("GTCR"), founded TransHealth Care, Inc. ("THI") and, according to court filings, held a controlling ownership share in the company; THI's subsidiary was TransHealth Management, Inc. ("THMI").¹ Juries have awarded billions of dollars in judgments against THI and THMI to families of patients that received care in their facilities. The plaintiffs in these cases are not merely alleging malfeasance by THI and THMI; they are also alleging that Mr. Rauner's company and other investors drained resources from the nursing homes in the years leading up to the deaths. As the *Tampa Bay Times* reported, "[w]hat is drawing so much outrage from juries is ***unrebutted testimony that the controlling interests behind these companies were hedge funds and banks that allegedly siphoned money out of nursing home operations by cutting staff, loading up on debt, letting care decline*** and shuffling funds between corporations to buffer them from lawsuits."²

¹ <http://www.businesswire.com/news/home/20040602005590/en/Trans-Healthcare-Names-W.-Bradley-Bennett-President%23.Uv0utYWGfSY>

² <http://www.tampabay.com/news/courts/civil/tampa-law-firm-wins-another-big-verdict-in-nursing-home-lawsuit-without-a/1214647> (emphasis added).

A television station in Florida, WTSP, reported that “[t]he case went beyond the nursing home’s extreme negligence that resulted in Townsend’s death and **revealed its investors had conspired to run the nursing home chain into insolvency without any regard to residents’ care.**”³ WTSP continued, “[e]vidence showed the investors – that included New York real estate investors; financiers General Electric Capital Corporation (a private bank) and Ventas, Inc. (a real estate investment firm); **and multi-billion dollar Chicago private equity fund GTCR Golder Rauner, LLC** – set out to build their empire through a series of mergers and acquisitions with the ultimate goal of taking the company public, cashing out and making a lot of money.”⁴

In fact, the plaintiffs have made this accusation against Mr. Rauner’s company and other investors a centerpiece of their argument to juries. In one case, “[t]he plaintiff’s forensic accounting expert opined that GTCR founded Trans Healthcare Inc. with the intent to create the largest privately owned nursing home company in the country through a series of mergers and acquisitions, with the ultimate goal of taking the company public and then cashing out.”⁵ The same expert “further testified that **more than \$800 million in assets were stripped away from Trans Healthcare Inc.** by the real estate investors and financiers.”⁶ One example of this, according to the plaintiffs in a pending federal court case against GTCR, was the practice of Mr. Rauner’s company “provid[ing] financial and management services to the THI enterprise in exchange for management and consulting fees, including a percentage of any debt or financing that occurred.”⁷ In a federal lawsuit filed against Mr. Rauner’s company and other investors, the plaintiffs have alleged that “GTCR ... deliberately used THI and THMI for the fraudulent and improper purpose of looting the assets of THI and THMI to avoid THI and THMI liabilities and debt and defraud creditors.”⁸

As these press accounts and court filings show, the statement in the advertisement is accurate: Mr. Rauner’s company has been accused of draining money from nursing homes and letting patient care suffer. Mr. Rauner and his company may disagree with these accusations and it is their prerogative to make that case to judges, juries, and the public at large. However, Mr. Rauner may not stop his critics from informing voters that the accusations have been made, as he is trying to do now.

Second, Mr. Rauner objects to the statement that “his company’s nursing homes made over a billion dollars while seniors paid the ultimate price.” But this statement is supported by a 2004 press release issued by THI itself. In the release, THI described itself as a “GTCR portfolio company” and bragged that its 225 nursing home locations generated “**in excess of \$1 billion** in revenue under management.”⁹ Mr. Rauner’s “fact sheet” responds with a non-sequitur: that

³ <http://www.wtsp.com/rss/article/326546/8/Jury-awards-11B-in-Polk-nursing-home-case/> (emphasis added).

⁴ *Id.* (emphasis added).

⁵ <http://verdictsearch.com/verdict/plaintiffs-healthcare-group-sought-profits-over-patients-2/>

⁶ *Id.* (emphasis added).

⁷ In re: Case No.: 8:11-bk-22258-MGW Chapter 7 FUNDAMENTAL LONG TERM CARE, INC., Debtor.; The ESTATE OF JUANITA AMELIA JACKSON, et al vs. GTCR LLC, et al], ¶ 76.

⁸ *Id.*

⁹ <http://www.businesswire.com/news/home/20040602005590/en/Trans-Healthcare-Names-W.-Bradley-Bennett-President%23.Uv0utYWGfSY> (emphasis added).

“GTCR did not make ‘over \$1 billion’ from [THI].” But the advertisement never claimed that GTCR profited over \$1 billion from the nursing homes; it merely notes that the nursing homes themselves generated more than \$1 billion in revenue. TCI admitted as much in its 2004 press release. And though he might prefer to do so in the heat of a political campaign, Mr. Rauner cannot erase from the record public statements that THI made about its own revenue.

Mr. Rauner’s letter also objects to the latter part of the statement – that “seniors paid the ultimate price.” He does so by claiming, on page 3 of his “fact sheet,” that “no deaths occurred at the nursing homes during THI or THMI’s involvement.” That claim ignores the case of Ms. Juanita Jackson, who died in 2003 shortly after an extended stay at the Auburndale Oaks Healthcare Center. On page 7 of his “fact sheet,” Mr. Rauner concedes that “THMI provided operational support services to the [Auburndale Oaks Healthcare Center] from June 1, 2002 to October 1, 2004,” the period during which Ms. Jackson was a patient at the facility. Juries, too, have rejected Mr. Rauner’s contention that neither THI nor THMI are at fault for the deaths of the seniors. They have instead awarded billions of dollars in judgments against THI and THMI for their actions in connection with these deaths.

Mr. Rauner is welcome to purchase airtime on your station to defend his company’s record operating nursing homes. This fall, the company will have that same opportunity in federal court. But Mr. Rauner may not prevent his critics from informing voters that these accusations have been made, nor may he stop them from sharing with voters facts that THI willingly released to the public a decade ago. When he became a candidate for governor, Mr. Rauner became a public figure. The ability to criticize a candidate’s actions, and to discuss matters of public importance, lies at the heart of the First Amendment, as courts have repeatedly recognized. *See, e.g., Time, Inc. v. Hill*, 385 U.S. 374 (1967); *New York Times v. Sullivan*, 376 U.S. 254 (1964). As you know, the Federal Communications Commission has held that stations best meet their public interest obligations “by presenting contrasting views” and encouraging “robust, wide-open debate.” *In re Complaint by Hon. Ronald Reagan*, 38 F.C.C.2d 314 (1972). It has consistently rejected invitations by political figures to “judge the truth or falsity of material being broadcast on either side of a currently controversial issue.” *Id. Accord In re Complaint by Alan S. Burstein*, 43 F.C.C.2d 590 (1973); *In re Complaint by Patton Echols*, 43 F.C.C.2d 479 (1973).

There is no genuine dispute as to the accuracy of the claims in the advertisement, which have been widely reported in news media outlets. For all these reasons, your decision to accept the advertisement should remain undisturbed. Please contact us promptly at (202) 434-1669 or (202) 434-1616 before this advertisement’s schedule on your station changes in any way.

Very truly yours,



Ezra W. Reese
Jonathan S. Berkon
Counsel to Illinois Freedom PAC