



ASHBY

September 12, 2018

Via E-Mail

WLEX
Attn: Monte Costes

WKYT/EKYT
Attn: Jeff Anderson

WTVQ
Attn: Chris Aldridge

WDKY
Attn: Jennifer Rieffer

DEMAND TO PULL FALSE ADVERTISEMENT "WE RESPECT OUR TROOPS"

Ladies and Gentlemen:

I write on behalf of Congressman Andy Barr, who is a candidate for United States Representative from the State of Kentucky's Sixth Congressional District.

Right now, your station is broadcasting [an advertisement](#) from With Honor Fund entitled "We Respect Our Troops." The ad falsely accuses Rep. Barr of letting "shady payday lenders take advantage of" our troops. In light of your station's legal obligation not to broadcast false, deceptive or misleading advertisements, I demand on Rep. Barr's behalf that you pull the ad from rotation immediately and refuse to broadcast it again.

With Honor Fund's False Advertisement

With Honor Fund's false ad claims, at the 0:04 mark, that Rep. Barr "would let shady payday lenders take advantage of" American military personnel by "sticking them with outrageous fees." To the contrary, prior to his service in Congress, Rep. Barr worked for Missouri Senator Jim Talent, one of the authors of the Military Lending Act of 2006 (H.R. 122 (109th Congress)). That law caps the maximum rate of interest small dollar lenders can charge on loans to military personnel. 10 U.S.C. § 987(b). It also requires such lenders to make special disclosures to military borrowers, and prohibits certain loan terms such as prepayment penalties, mandatory arbitration and unreasonable notice requirements. 10 U.S.C. § 987(c), (e).

More recently, as a Member of Congress himself, Rep. Barr supported the Financial CHOICE Act (H.R. 10 (115th Congress)). With Honor Fund's ad cites Rep. Barr's vote for this legislation as



evidence for its claim that Rep. Barr "would let shady payday lenders take advantage of" American military personnel by "sticking them with outrageous fees," but that is wrong. **The Financial CHOICE Act would not have removed the interest rate cap on small dollar loans to military personnel, or eliminated or in any other way affected the protections of the Military Lending Act of 2006, such as its prohibition against prepayment penalties.** The Military Lending Act was the law of the land prior to the introduction of the Financial CHOICE Act, and would remain so if the Financial CHOICE Act were to become law.

This fact is important because the Military Lending Act of 2006 actually "preempts any State or Federal law, rule, or regulation, including any State usury law, to the extent that such law, rule or regulation is inconsistent with" the Military Lending Act. 10 U.S.C. § 987(d). Thus, even if the Financial CHOICE Act were to become law, no state could permit a lender to charge an interest rate higher than that permitted under the Military Lending Act, or reinstate prepayment penalties. Contrary to With Honor Fund's false claim that Rep. Barr's vote for the Financial CHOICE Act "would let shady payday lenders take advantage of" American military personnel by "sticking them with outrageous fees," Rep. Barr's vote actually would have continued the protections of the Military Lending Act which—again—the Financial CHOICE Act did not, and consistent with 10 U.S.C. § 987(d) could not, weaken.

Your Station's Legal Obligations

With Honor Fund is not a candidate or candidate's committee, and "We Respect Our Troops" does not constitute a candidate use under 47 U.S.C. § 312. Therefore, your station is under no obligation to broadcast it. *Columbia Broadcasting Sys., Inc. v. Democratic Nat'l Comm.*, 412 U.S. 94 (1973) (no obligation to air political advertisements from non-candidate third parties); *In re National Conservative Political Action Comm.*, 89 F.C.C. 2d 626 (1982) (same).

Moreover, as a broadcast licensee, your station has a legal obligation to review all advertisements prior to airing them, and to refuse to air any—like "We Support Our Troops"—that are false, deceptive or misleading. *In re Complaint by Consumers Association of District of Columbia*, 32 F.C.C. 2d 400, 405 (1971) (broadcast licensee must take "reasonable steps" to satisfy itself "as to the reliability and reputation of every prospective advertiser"); *Licensee Responsibility With Respect to the Broadcast of False, Misleading or Deceptive Advertising*, 74 F.C.C. 2d 623 (1961) (broadcast licensees have a duty a duty "to protect the public from false, misleading or deceptive advertising").

Indeed, broadcast stations are not protected from legal liability for airing false, deceptive or misleading advertisements sponsored by third parties. Indeed, allowing false, deceptive or misleading advertising to air may be "probative of" a station's "underlying abdication of licensee responsibility." *Cosmopolitan Broadcasting Corp. v. FCC*, 581 F.2d 917, 927 (D.C. Cir. 1971).

Conclusion

"We Respect Our Troops" is a deeply dishonorable ad from a group that should, given the name it has assumed, hold itself to a higher standard. It misrepresents the effect of Rep. Barr's vote for the Financial CHOICE Act, and misleads your viewers. Your station should—and, under the terms of its license and applicable law, must—pull this false advertising from the air immediately.



On behalf of Rep. Barr, thank you in advance for your prompt attention to this matter and for your consideration of our demand. At your earliest convenience, please let me know whether your station will remove "We Respect Our Troops" from rotation, or whether we will need to take further action to ensure that With Honor Fund does not continue airing false advertising and misleading the voters of Kentucky's Sixth Congressional District. If you seek substantiation from With Honor Fund for the claim at issue, I request the opportunity to review and respond to whatever "proof" With Honor Fund offers.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Chris Ashby", with a long horizontal flourish extending to the right.

Chris Ashby