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April 29, 2014

VIA EMAIL mburgess@kob.com

KOB-TV
General Manager/VP Mike Burgess
4 Broadcast Plaza SW
Albuquerque, NM, 87104

RE: Better New Mexico PAC Advertisement

Dear General Manager:

This office represents Susana Martinez for Governor.

We understand Better New Mexico PAC has purchased air-time on your station. According to documents in public files at your station, this is a political action committee run by Pat Davis who is the head of Progress Now New Mexico.

Mr. Davis and Progress Now New Mexico are notorious for launching provably false attacks against Governor Martinez. Their attacks have been so outlandishly off base that the Albuquerque Journal was forced to take the unprecedented step of writing a news story to correct one of their false op-eds. <http://www.abqjournal.com/100953/news/claims-against-governor-prove-wrong.html>

We do not know the content of this advertisement, but suspect it may be concerning the recent audio tapes leaked from Governor Martinez's 2010 campaign. The most controversial comments on those tapes were made by campaign staff of Governor Martinez and attempting to attribute comments on those tapes to Governor Martinez, or mischaracterizing her role in those comments, would be false and libelous.

General Manager
4/29/2014
Page Two

Progress Now New Mexico also recently attacked Governor Martinez on the issue of behavioral health audits and used false information on their website, which could also be the subject of their attack.

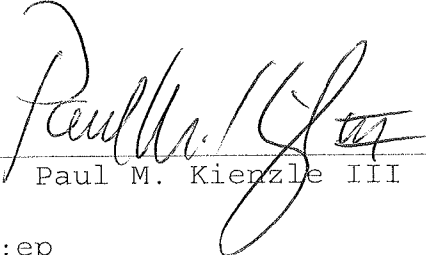
Regardless of the subject of their attack advertisement, we request that you demand substantiation of the any and all claims made in their advertisement prior to it airing. As you know, the PAC has placed a relatively small buy for only 3 days. Our concern is that this buy is for such a small period of time that it will not afford us the opportunity to challenge the contents of the advertisement before the buy has run its course and that is why we are requesting that your station require substantiation prior to the ad airing.

Under Columbia Broadcasting System, 412 U.S. 94 (1973), and its progeny, your station is not obligated to air any such advertisements from political action committees. See also National Conservative Political Action Comm., 89 FCC2d 626 (1982). These precedents hold that third-party spenders from political action committees do not have a guaranteed right of access to air their advertisements on your station. In fact, if your station does not stop airing 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).

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

Sincerely,

SCOTT & KIENZLE, P.A.

By: 
Paul M. Kienzle III

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