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October 12, 2020

Broadcast Station General Managers
California TV Stations

Re: False and Misleading No on Proposition 21 TV Spot Featuring Gov. Gavin Newsom Entitled "Go Backward"

Dear Station General Manager:

We write to you in reply to the response of the No on 21 committee ("Californians for Responsible Housing" or "CFRH") to our letter dated October 8, 2020.

CFRH's letter takes seven labored pages in an effort to explain why, when considered in isolation, each of its advertisement's claims could be *technically* correct. But the advertisement itself consists of only a 76-word, 30-second voiceover, and its claims must be examined in the context in which they are made. A "statement that, in one sense, can be said to be literally true can still be materially misleading." (*Huntington Beach City Council v. Superior Court* (2002) 94 Cal.App.4th 1417, 1432.)

In those seven pages, counsel for CFRH provides no response to Yes on 21's basis for challenging the advertisement. Taken in context, the advertisement's claims ***give voters the false and misleading impression that Prop 21 would repeal and reverse the rent control protections for renters advanced by AB 1482 just last year, and confuse voters as to the effect on Proposition 21***. There is no other way to interpret the advertisement, whose text is reproduced here:

> *"That's Governor Gavin Newsom signing the strongest statewide rent control law in America just last year. Prop 21 reverses this progress and will make the housing crisis even worse. 21 repeals portions of California's rent law with no solution. It hurts renters and has no protections for seniors or veterans, and no plan to build affordable and middle-class housing we need. Affordable housing experts, veterans, and Gavin Newsom agree—don't go backwards California. No on 21."*

In its letter, CFRH refuses to acknowledge that Proposition 21 would have no effect on any provision of AB 1482. We therefore must request that you put the following questions to CFRH:

1. Does Proposition 21 propose to amend or repeal any provision of AB 1482, codified at Civ. Code, §§ 1046.2, 1947.12, and 1947.13?

2. If Proposition 21 passes, will it take away from renters any protection afforded by a provision of AB 1482?

The answer to each of these straightforward questions should be a simple "no." CFRH's admission that Prop 21 has *no effect* on *any* provision of AB 1482 will bely the fact that the claims set forth in its advertisement—that Proposition 21 "reverses [the] progress [of AB 1482]" and "repeals portions of California's rent law" are materially misleading and give voters a false impression of the effects of Proposition 21. And any other answer by CFRH will only reveal the logical gymnastics necessary to support the claims asserted by the advertisement.

CFRH's ad does not refer to AB 1482 by name. It refers only to a strong "statewide rent control law" passed last year. In other words, the ad tells the voters nothing about this newly-enacted law *except* the fact that it provides for rent control—generally understood to be a protection for renters. The ad subsequently references "California's rent law." The ad does not even attempt to make clear that this ***second*** claim refers to a wholly different law than the previously referenced "statewide rent control law," and indeed would appear to deliberately occlude that fact. This construction is the very essence of what makes the ad misleading.

CFRH's letter explains that the claim that Proposition 21 "reverses [the] progress [of AB 1482]" is true and accurate because Proposition 21 "drastically constricts the single-family home and vacancy control protections of current law that AB 1482 allowed to remain in place." (CFRH Letter, Oct. 8, 2020, p. 2.) It is preposterous that CFRH's claim of "progress" is based on stasis! The provisions that CFRH contends constitute "progress" were codified in the Costa-Hawkins Act which was enacted in 1995. Without the benefit of CFRH's tortured explication, one would never interpret the word "progress" to mean "leaving in place" an existing law – particularly in the context where the immediately preceding sentence referred to a *different* law entirely. The Legislature's decision *not* to disturb the Costa-Hawkins Act's longstanding protections for landlords can hardly be characterized as "progress" achieved *by* AB 1482. As commonly understood, the "progress" achieved by a new law refers to its innovation. In this case, AB 1482's innovations were its upper limit on annual rent increases referenced by the ad when it describes AB 1482 as the "*strongest statewide rent control law in America*."[1] These novel protections for renters *are* left in place *by Proposition 21* – a fact that CFRH fails to address.

CFRH suggests that it is "entitled to inform the voters" of the fact that "Proposition 21…runs the all-too-real risk of discouraging availability of affordable housing in our state." (CFRH Letter, p. 2.) But CFRH's ad does not say anything about Proposition 21 discouraging the availability of affordable housing in our state. Nor can its claim that Prop 21 "reverses [the]

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[1] As the Sacramento Superior Court held when ruling on a challenge to the ballot argument, CFRH is wholly entitled to express the opinion that the effect of Proposition 21 would "undermine[]" AB 1482. But CFRH is not entitled to tell voters that Proposition 21 "reverses [the] progress [of AB 1482]" when it has no effect on any provision of AB 1482.

progress [of AB 1482]" be understood in this way, given that the ad tells the voter nothing about AB 1482 except that it is a "rent control law." The plain implication is that Prop 21 reverses the progress of the rent control protections afforded to renters by the new law that is a focal point of the ad.

The misleading effect of the statement that Proposition 21 "reverses this progress" is only further compounded by the claims that Proposition 21 "repeals portions of California's rent law" and "hurts renters." Yes on 21 does not dispute that Proposition 21 repeals "portions of the Costa-Hawkins Rental Housing Act." (CFRH Letter, p. 3.) CFRH's letter accurately describes the relevant portions of the Costa-Hawkins Act. But a "statement that, in one sense, can be said to be literally true can still be materially misleading." (*Huntington Beach, supra*, 94 Cal.App.4th at p. 1432.) What makes the ad misleading is not what it says but what it doesn't. The ad omits any signal to the voters that the law to be amended by Proposition 21 is one other than last year's "statewide rent control law," i.e., AB 1482.[2] The obvious misleading impression given by this claim is that Proposition 21 will repeal portions of the rent control law referenced two sentences earlier.

The ad's claim that Proposition 21 "hurts renters" must be understood in the context of the misleading impression given to the voters by the previous three sentences of the ad's script. Having led voters to understand that Proposition 21 will reverse and repeal provisions of a recent statewide rent control bill, this claim suggests that Proposition 21 will hurt renters by taking away the rent control provisions afforded to renters by that bill. While the No on 21 campaign is certainly entitled to discuss the potential broader effects of Proposition 21, it may not make false and misleading claims while doing so. ***Nor is this station legally obligated to air an advertisement that makes sweeping false and misleading claims.***

CFRH cites no authority to the contrary, and the Federal Communications Act does not impose any obligations on broadcasters which apply in the context of this type of advertisement.[3] The authority cited by CFRH only underscores that false and misleading speech is not necessarily entitled to the full scope of First Amendment protection. (See *McIntyre v. Ohio Elections Comm'n* (1995) 514 U.S. 334 [recognizing that the state's interest in preventing false and misleading speech "carries special weight during election campaigns when false statements, if credited, may have serious adverse consequences for the public at large."].) CFRH's right to

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[2] CFRH claims that the Sacramento Superior Court rejected a challenge to the ballot argument against Proposition21 "on precisely this basis." (CFRH Letter, p. 3.) This is false. That lawsuit challenged language stating that Prop. 21 would "repeal[] housing law with no solution" and "undermine the strongest statewide rent control law" on entirely different grounds. The Superior Court's ruling has no bearing on whether the claim that Proposition 21 "repeals California's rent law" is misleading in the context of this advertisement. Notably, the ballot argument, in contrast to the ad script, more clearly refers to two distinct laws: a "housing law" and a "statewide rent control law."

[3] Section 315(a) of the Federal Communications Act, which CFRH cites, refers to broadcasters' obligation with respect to advertisements by *legally-qualified candidates* for office. Section 307 has no bearing on this topic, and merely provides the terms under which the FCC will grant a station applicant a license for the operation of a broadcasting station.

speak on matters of public interest does not encompass the right to make false and misleading statements to the voters during an election. Given that California is facing urgent crises of housing affordability and homelessness, we ask that you exercise your discretion responsibly to avoid gravely confusing the voters on a matter of such public importance.

If we can provide any additional information, please do not hesitate to contact us.

Sincerely,

Beverly Grossman Palmer