

Measure 10 supporters say opponents' "Big Lie" TV ad campaign approaching \$750,000

YES on 10 campaign demands TV stations stop airing "demonstrably false and misleading" ads

RAPID CITY -- An attorney for South Dakotans for Open and Clean Government, the group backing a YES vote this November on Initiated Measure 10, is demanding that television stations in the state no longer air nearly \$750,000 in TV commercials opposing the measure which the group says are "demonstrably false and intentionally misleading."

The official ballot description of Initiated Measure 10 authored by the Secretary of State reads as follows: "An initiative to prohibit tax revenues from being used for lobbying or campaigning, to prohibit governmental bodies from lobbying, to prohibit government contractors from making campaign contributions, to prohibit government contracts when the contractor employs a legislator or legislative staff member, and to require contracts with government contractors to be published."

Sam Kephart, YES on 10 state co-chair and earlier this year a Republican primary candidate for the U.S. Senate, accused opponents of the proposal -- which include numerous tax-funded lobbying organizations -- of unethically spending tax dollars to intentionally mislead voters. A survey of the television stations indicates opponents of Measure 10 have bought nearly \$750,000 in television advertising between now and the November 4th general election, he said.

"The politicians, tax-funded lobbyists, and government contractors financially threatened by Measure 10 are spending nearly three quarters of a million dollars -- some of it money-laundered tax dollars -- on a 'big lie' scare tactics campaign obviously intended to deceive South Dakota voters," Kephart said.

"But just like when Sarah Palin took on the political establishment in Alaska, including her own party bosses, we aren't backing down," he said. "We're demanding that TV stations obey the law and once they're made aware, stop running ads against Measure 10 that are demonstrably false and misleading."

Kephart pointed to a letter by Stephen Wesolick of Rapid City, the YES on 10 campaign's attorney, who Tuesday by fax wrote the station managers of eight television stations in Sioux Falls and Rapid City citing case law and a Federal Communications Commission policy which requires stations not to broadcast ads that are false or misleading.

"Unless you immediately stop the broadcast of this false and misleading information, we will be compelled to take further and more formal steps...including consideration of filing

a complaint with the Federal Communications Commission against your station...and seeking civil remedies for any damages resulting from such publications," Wesolick wrote each station.

Wesolick's letter cited the FCC's web site, which states: "Broadcasters are responsible for selecting the broadcast material that airs on their stations, including advertisements. The FCC expects broadcasters to be responsible to the community they serve and act with reasonable care to ensure that advertisements aired on their stations are not false or misleading." <http://www.fcc.gov/cgb/consumerfacts/advertising.html>

Wesolick directly challenged the truthfulness of an ad paid for by the NO on 10 Committee that began airing Monday, featuring Miller public school teacher Ellen Iverson, wife of Hand County Commissioner Jim Iverson.

In the ad, Ellen Iverson falsely claims -- presumably because she's a public school employee and member of the local teachers union -- that if Measure 10 is enacted, "I won't be able to visit with our school board members, our legislators. I won't even be able to visit with my husband about county issues." (See full text of NO on 10 ad below)

"Under the clear and express language of Measure 10, it is totally, completely, and demonstrably false," Wesolick wrote, "that the measure would in any way restrict Mrs. Iverson's or any government employee's constitutionally-guaranteed right as an individual American citizen to discuss anything she wants with her school board members, her legislators, and of course, her own husband."

As proof that Iverson's claims are false, Wesolick pointed station managers to the express language of Initiated Measure 10:

* "The restrictions and prohibitions against taxpayer funded lobbying..."do not apply to...a public employee acting in an uncompensated personal capacity, undirected in any manner by, and who does not purport to represent the interests of, a public employer." (Section 3) <http://www.cleanupsd.com/content.asp?pl=2&sl=11&contentid=11>

* The proposal's restrictions on government contractors apply to government employee union contracts "but not employment contracts with individual employees" such as Mrs. Iverson. (Section 10)

Wesolick wrote station managers that under federal case law, "broadcasters may be held liable for non-candidate issue advertisements that contain false and unsubstantiated statements" which could result in court-ordered civil penalties and damages for defamation plus licensure action by the FCC.

"On that basis," Wesolick wrote, "we respectfully suggest that your responsibility to the community -- as observed by the Federal Communications Commission -- obligates you to no longer broadcast such false and intentionally misleading advertisements from those who want to continue using tax dollars for lobbying and political campaigns and continue letting government contractors financially reward politicians who award their contracts. We cannot allow your station...to continue the broadcast of false and deceptive statements with impunity."

Wesolick asked stations to provide written confirmation by 5:00 p.m. Wednesday that they would no longer broadcast the ad, in order to avoid legal and FCC action.

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FULL TEXT OF "NO ON 10" TELEVISION AD:

Video identifies speaker as Ellen Iverson of Miller, and depicts her entering a public school building and standing in a classroom.

"The first time I read Initiative Measure number 10, I thought, this is a no-brainer. Why wouldn't we vote in favor of this? After reading the fine print, this is really about stifling freedom of speech. I won't be able to visit with our school board members, our legislators. I won't even be able to visit with my husband about county issues. Don't silence me. Stop the Gag Law. Vote No on Initiative Measure number 10."