

# Elections, LLC

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July 14, 2022

**VIA E-MAIL ONLY**

ATTENTION STATION MANAGER

**Re: VoteVets' False Advertisement Defaming Herschel Walker**

Dear Station Manager:

Our firm represents Team Herschel, Inc., the principal campaign committee of U.S. Senate candidate Herschel Walker. It has come to our attention that VoteVets is airing a flagrantly false advertisement on your station targeting Herschel Walker (the "Advertisement").

The Advertisement, entitled "Purple Heart" features an individual making a categorical allegation that Herschel Walker "lied to us" when he advised veterans that he was associated with a program designed to assist them. The Advertisement shows zero evidence to substantiate the claim that Herschel Walker lied to veterans. In reality, through this organization, Herschel Walker "shared his personal journey to raise awareness and encourage others to seek help" with mental health struggles. Official U.S. military installations have said that Herschel Walker brought with him "a message of supporting mental wellness through the Patriot Support Program." To construe this as lying to veterans is defamation in its clearest form.

In an attempt to support this defamatory statement, the advertisement running on your station makes the unfounded claim that the group, Patriot Support, misdiagnosed patients and pushed veterans into mental health facilities just to collect the insurance money.<sup>1</sup> Specifically, the allegations in the advertisement are derived directly from a May 21, 2022 Associated Press Press article which, in reality, affirmatively states that "**there's no indication [Herschel Walker] was directly involved in any wrongdoing . . .**".[emphasis added]<sup>2</sup> Indeed, the "support" relied upon to justify these defamatory falsehoods proves the opposite of what is claimed.

**These claims are false and based entirely on faulty substantiation.**

Here, your station has actual knowledge that this allegation is false. It is undisputed that Herschel Walker was associated with with numerous groups, including Patriot Support, which indisputably assisted numerous veterans. Further support for this undisputed fact is attached with this letter.

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<sup>1</sup> "Purple Heart" (30 seconds), VoteVets, <https://www.youtube.com/watch?v=DHP85pFlb4c>

<sup>2</sup> Slodysko, Brian and Amy, Jeff. "Herschel Walker's ties to veterans program face scrutiny." Associated Press, May 21, 2022, available at: <https://apnews.com/article/2022-midterm-elections-college-football-entertainment-sports-bb1ef7d866ab99302974cce1816efb65>.

Accordingly, hereafter, any effort by your station to air any false allegations by VoteVets, after your station's actual knowledge of the falsity of such statements, is not protected speech and would be, in and of itself, per se defamatory as a matter of law. Moreover, republication of a false statement that Herschel Walker had "lied", after actual knowledge of the falsity of that statement, would be defamation per se and would be responded to as such by Herschel Walker.

Unlike candidate committees, VoteVets does not have a "right to command the use of broadcast facilities." *CBS v. DNC*, 412 U.S. 94, 113 (1973). Your station therefore bears responsibility for the ad's content. See *Felix v. Westinghouse Radio Stations*, 186 F.2d 1, 6 (3d Cir. 1950). In addition, your station has a responsibility to "protect the public from false, misleading or deceptive advertising," Licensee Responsibility With Respect to the Broadcast of False, Misleading or Deceptive Advertising, 74 F.C.C.2d 623 (1961), and your failure to remove this deceptive ad may be "probative of an underlying abdication of licensee responsibility" that could put your station's license in jeopardy. *Cosmopolitan Broadcasting Corporation v. FCC*, 581 F.2d 917, 927 (1978).

The Advertisement uses television footage – according to sourcing the footage is from WAGA on May 22, 2022 and KCOP on May 23, 2022 – reporting on an Associate Press article, "Herschel Walker's ties to veterans program face scrutiny" released on May 21, 2022.<sup>3</sup> The footage from KCOP included in the Advertisement alleges Patriot Support was "accused of taking advantage of military veterans" and "has been charged by prosecutors with defrauding the federal government." These claims are false and based entirely on faulty substantiation. The Advertisement footage specifically states Patriot Support was charged by prosecutors – it was not. All charges, and subsequent settlements, were related to Universal Health Services, Inc., UHS of Delaware, Inc. and Turning Point Care Center, LLC, not Patriot Support.<sup>4</sup>

In fact, Mr. Walker served as a national spokesperson for Patriot Support and its Anti-Stigma campaign from 2010 to 2021, sharing his personal journey to raise awareness and encourage others to seek help when needed.<sup>5</sup> Indeed, before Herschel Walker became a football star, he wanted to be a Marine. Though life took him down a different path, Herschel's love and desire to serve our great military has not wavered. Herschel has dedicated the past fourteen years to traveling to more than four hundred bases around the world sharing his story with men and women in uniform to encourage them to seek treatment and find healing.

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<sup>3</sup> Slodysko, Brian and Amy, Jeff. "Herschel Walker's ties to veterans program face scrutiny." Associated Press, May 21, 2022, available at: <https://apnews.com/article/2022-midterm-elections-college-football-entertainment-sports-bb1ef7d866ab99302974cce1816efb65>.

<sup>4</sup> "Universal Health Services, Inc. And Related Entities To Pay \$122 Million To Settle False Claims Act Allegations Relating To Medically Unnecessary Inpatient Behavioral Health Services And Illegal Kickbacks." United States Department of Justice. Friday, June 10, 2020, available at: <https://www.justice.gov/opa/pr/universal-health-services-inc-and-related-entities-pay-122-million-settle-false-claims-act>.

<sup>5</sup> Id.

Re: VoteVets' False Advertisement  
Page 3

The Advertisement falsely claims Patriot Support was charged by the DOJ and uses faulty substantiation for such claim. The news reports by WAGA and KCOP, used visually and as substantiation, in the Advertisement are false and the substantiation for the claims is also false. Accordingly, we demand the Advertisement be removed from your airwaves immediately.

Should such false and defamatory publication occur after receiving information in advance of publication of its falsehood, it can only be undertaken with actual malice and reckless disregard for the truth. In that instance, we will act accordingly to protect our clients' interests.

Sincerely,

A handwritten signature in dark ink, appearing to read "Stefan Passantino". The signature is fluid and cursive, with a large initial "S" and a long, sweeping underline.

Stefan Passantino