

Money, News and Deception in Denver

Are TV stations doing enough to offset Super PAC lies?

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Out of Balance

Denver is playing host to the first presidential debate of 2012, but for TV viewers in the Rocky Mountain State, the political mudslinging has been going on for months.

Free Press studied political advertising in Denver in August and September. We learned that since Aug. 1, campaigns, Super PACs and other groups have bought time to air more than 26,000 ads on the city's four major-network affiliate stations: KCNC (CBS), KDVR (Fox), KMGH (ABC) and KUSA (NBC).¹

Most of these ads have already aired. Others are slated to begin airing in October and will be broadcast more frequently as Election Day nears.

Many of the ads — if not most of them — contain misleading information. But that hasn't stopped these stations from continuing to do business with the groups that have purchased ad time — even groups that local newscasters called out for spreading dishonest information.

In this report, Free Press focuses on ads from the five Super PACs and outside groups spending the most in Denver: the Republican-leaning American Crossroads/Crossroads GPS,² Americans for Prosperity and Restore Our Future, and the Democratic-leaning House Majority PAC and Priorities USA Action.

Since August, these five groups alone have signed contracts with Denver's ABC, CBS, Fox and NBC affiliates to air 4,954 ads in the local market, paying more than \$6.5 million to secure the spots.³

¹ This tally is courtesy of students from the Colorado University's CU News Corps, who are conducting an ongoing survey of Denver stations' political files. The files collected by the Federal Communications Commission since Aug. 2 contain ad-spending data, including copies of the contracts between stations and political advertisers. For more, see: Mary Winter, "CU Students Probe Denver Ad Buy Records," *Columbia Journalism Review*, Sept. 21, 2012: http://www.cjr.org/swing_states_project/cu_students_probe_denver_ad_fi.php.

² Crossroads GPS is the tax-exempt affiliate of the American Crossroads Super PAC. Former George W. Bush adviser Karl Rove co-founded these groups, which have reportedly amassed a war chest of more than \$80 million. Owing to lax reporting requirements for 501(c)(4) groups, the actual number won't be known until after the election.

³ Free Press found this data in contracts in stations' political files. We collected these files both by visiting stations in person and by downloading data from the FCC's new online database at <https://stations.fcc.gov/>. These contracts include placeholders for ads that have yet to air in Denver. The \$6.5 million figure includes fees paid to stations and the buying agents that assisted outside groups in placing political ads. Other political ads aired in Denver during this time came from candidates — including President Barack Obama, Gov. Mitt Romney and a slate of congressional incumbents and their challengers — and smaller Super PACs and outside groups.

We have collected and examined the political files at these Denver stations, and pored over the transcripts and tapes of hundreds of hours of local news programming aired in August and September.

We ask the following questions:

1. What are local newscasts on these four Denver affiliates doing to debunk misinformation in political ads?
2. In instances where stations have fact-checked ads or investigated the groups behind them, how much time have they devoted to these reports?
3. How does the amount of time spent examining political ad claims compare to the amount of time spent airing these ads?
4. What liability — if any — do stations have for knowingly airing ads that are misleading, deceptive or false?

Free Press concluded that local news coverage about these political groups did not begin to address the avalanche of misinformation in political ads.

Denver stations devoted only 10 minutes and 45 seconds to local reporting on ads from these five prominent groups. Meanwhile, they aired 29 hours of ads from these groups. That's a ratio of one minute of news to every 162 minutes of ads.

In other words, in August and September, Denver's local newscasts aired just five short segments that looked into claims made by the Super PACs and outside groups most actively buying ads. Yet these stations aired 2,880 ads from these five groups during the same period.

Denver's record of fact-checking — especially at KCNC and KUSA— actually surpasses that of other major markets Free Press has studied. Yet the deluge of political ads overwhelmed the admirable efforts of a few reporters. Worse still, stations kept airing ads that their reporters found were false or misleading.

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Blanketing Denver With Ads

Denver is one of the top five markets for spending on political ads.⁴ The political advertisers that are most active nationally have invaded Denver as well. All told, these groups have spent more than \$25 million on airtime on the local ABC, CBS, Fox and NBC affiliates, according to contracts in stations' political files.

This report focuses on the five most prominent Super PACs and tax-exempt groups: American Crossroads/Crossroads GPS, Americans for Prosperity, House Majority PAC, Priorities USA Action and Restore Our Future.

These five groups have left their mark in all battleground states. Their presence in Colorado is felt not just in Denver, where they've plastered TV screens with thousands of political ads (see Table 1). Since the beginning of the year, they have also pumped more than \$1.5 million into ad buys in neighboring Colorado Springs, a broadcast market with only 335,000 TV homes (the Denver market has 1.5 million).⁵

These groups have four things in common:

1. **They're Heavy Hitters:** In August and September, they were the biggest players in Denver among the Super PACs and outside groups buying airtime. During this time period, these groups also ramped up their political ad spending in other battleground markets across the country.
2. **Their Ads Are Factually Challenged:** Investigations at FactCheck.org, PolitiFact.com, the *Washington Post* and the Associated Press have repeatedly found ads from these "third-party" or outside groups to contain falsehoods.
3. **They Take Dark Money:** These groups draw their support from a relatively small number of deep-pocketed contributors (in the case of the Super PACs) or from undisclosed sources (in the case of the 501(c)(4) groups) and have tried to conceal their donors' identities.

⁴ The other four markets are Cleveland, Las Vegas, Tampa and Washington, D.C., according to regular surveys on spending by Kantar Media's Campaign Media Analysis Group and Wells Fargo. Free Press has analyzed political ad spending and news coverage in Cleveland, Las Vegas and Tampa. For more, see Timothy Karr's *Citizens Inundated: How Big-Money Politics and Broadcast Media Are Poisoning Democratic Discourse and Undermining U.S. Elections ... and What We Can Do About It*, Free Press, January 2012: <http://www.freepress.net/resource/94410/citizens-inundated-report>.

⁵ Kantar Media's Campaign Media Analysis Group. **See also:** Ari Shapiro, "Colorado Springs Soaks in Triple the Political Ads," NPR, Sept. 28, 2012: <http://www.npr.org/2012/09/24/161687256/colorado-springs-soaks-in-triple-the-political-ads>

4. **Their Ads Can Be Rejected:** Stations can reject political ads from these “non-aligned” political groups if they contain misleading content. Stations are not allowed to do so with ads from federal candidates and their campaigns.

These groups are byproducts of the Supreme Court’s 2010 *Citizens United* decision, the most noteworthy in a series of rulings that demolished election spending limits and opened the floodgates to the big-money era of political ads.

Super PACs and other third-party groups are able to create deceptive ads precisely because they operate in relative secrecy. Lax rules enable wealthy individuals and corporations to contribute millions of dollars to these groups without restrictions. And while Super PACs are required to disclose individuals’ contributions in excess of \$200 a year, these organizations work in other ways to insulate their donors from scrutiny.⁶ Meanwhile, the (c)(4) groups — named after Section 501(c)(4) in the IRS code, which grants them tax-exempt status — are not legally required to disclose their donors’ identities.

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Most political ads this election year attack an opposing candidate. This may seem obvious to many but it wasn’t always the case — even as recently as four years ago.

Some 70 percent of the ads about the presidential campaign that aired nationally in the first half of 2012 were negative, according to the Wesleyan Media Project. In contrast, only 9 percent were negative during the first half of the 2008 presidential campaign.⁷

More importantly, the Annenberg Public Policy Center and the Center for Responsive Politics found that 85 percent of the money spent on presidential ads from the four top-spending “independent” groups financed ads containing deceptive information.⁸

⁶ At a Restore Our Future fundraiser during the GOP Convention in Tampa, a Super PAC staffer, mindful that *New York Times* correspondent Nicholas Confessore was taking notes outside, told prospective donors to hide their name tags under their jackets as they left. See: Nicholas Confessore, “Super PACs and Party Stalwarts Mix in Tampa,” *New York Times*, Aug. 29, 2012: <http://thecaucus.blogs.nytimes.com/2012/08/29/super-pacs-and-party-stalwarts-mix-in-tampa/>

⁷ “Presidential Ads 70 Percent Negative in 2012, Up from 9 Percent in 2008,” Wesleyan Media Project, May 2, 2012: <http://mediaproject.wesleyan.edu/2012/05/02/jump-in-negativity/>.

⁸ The Annenberg Public Policy Center looked at ad spending for the period from Dec. 1, 2011–June 1, 2012. Ads were considered misleading if they contained at least one claim ruled deceptive by

Getting Away With It

Viewers still rely on local TV broadcasts more than any other news source for election information. Denver stations, and especially KCNC and KUSA, have fact-checked more political ads than stations in the other battleground markets surveyed by Free Press.⁹ Over the past two months, these two Denver stations have also fact-checked political ads from candidate campaigns not profiled in this report.

“Fact-checking matters,” says Kathleen Hall Jamieson, director of the Annenberg Public Policy Center at the University of Pennsylvania. “The act of fact-checking does tend to improve accuracy in political ads and it helps voters learn.”

FlackCheck.org, an Annenberg project, recently conducted a survey that found that people who visit online fact-checking services performed better on tests of their political knowledge.¹⁰ Hall Jamieson believes the same can be said for viewers of stations that fact-check political ads.

But for viewers in Denver, the sheer amount of advertising has drowned out the few attempts to evaluate the ads’ veracity. Worse yet, even after finding that ads from these groups were misleading, Denver affiliates still ran them and plan to continue airing spots from these same groups through Election Day (see Table 2).

Here are some of our findings:

- **Aug. 10, 5:10 p.m., KMGH:** A 7 News political reporter spent little more than a minute describing a spat between the Obama and Romney campaigns over what each camp claimed were falsehoods in the other’s political ads. The Obama

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FactCheck.org, PolitiFact.com, *Washington Post* or the Associated Press. For more, see: <http://www.annenbergpublicpolicycenter.org/NewsDetails.aspx?myId=491>.

⁹ Free Press looked at political news coverage in Charlotte, Cleveland, Las Vegas, Milwaukee and Tampa for the month of August. See: Timothy Karr, *Left in the Dark: Local Election Coverage in the Age of Big-Money Politics*, Free Press, September 2012: <http://www.freepress.net/sites/default/files/resources/left-in-the-dark-timothy-karr.pdf>

¹⁰ “The Public Still Has a Lot to Learn About the 2012 Presidential Race but Those Who Seek out Fact-Checking on the Internet Know More,” FlackCheck.org, Sept. 27, 2012: <http://www.flackcheck.org/press/the-public-still-has-a-lot-to-learn-about-the-2012-presidential-race-but-those-who-seek-out-fact-checking-on-the-internet-know-more/>.

campaign claimed that Romney campaign ads misrepresented the president's position on the nation's welfare-to-work program. The Romney campaign claimed that a Priorities USA Action ad attacking Romney's record at Bain Capital was misleading.

Since Aug. 1, Priorities USA Action has signed off on contracts with KMGH to run more than 500 ads through Nov. 6.

- **Aug. 31, 5:11 p.m., KUSA:** *Channel 9 News* political reporter Brandon Rittiman devoted two and a half minutes to "truth testing" an ad from the pro-Romney Super PAC Restore Our Future. He called one of the ad's claims an "overstatement" and labeled another "misleading."

In the weeks before this report aired, KUSA broadcast more than 200 Restore Our Future ads. The group spent \$853,625 on Denver ads in August alone.

- **Sept. 5, 4:16 p.m., KUSA:** In a segment running two minutes and 40 seconds, *Channel 9 News* reporter Brandon Rittiman took apart a House Majority PAC ad attacking Republican congressional candidate Joe Coors. "This [ad] is a big old can of opinion," Rittiman said, adding that the ad's claims were at best "debatable."¹¹

During August and September, the House Majority PAC blanketed Denver with 387 political ads — including 96 spots on KUSA. It has booked time to air an additional 68 ads on KUSA between Oct. 1 and Election Day.

- **Sept. 11, 6:07 p.m., KCNC:** In a "Reality Check" segment, *CBS4 News* political specialist Shaun Boyd labeled as "false" an Americans for Prosperity ad that compared President Obama's health-care reforms to the Canadian system. "They are playing fast and loose with the facts to play on voter fears," Boyd said.

By the time this segment aired, Americans for Prosperity had spent \$1,384,400 to place more than 700 ads on Denver's ABC, CBS, Fox and NBC affiliates, including 209 ads on KCNC.

¹¹ This Brandon Rittiman "Truth Test" can be viewed on the *Channel 9 News* website: <http://www.9news.com/rss/story.aspx?storyid=287425>

Lies and Liability

There's a clear pattern in Denver. And it matches what we have found in other battleground markets. Stations continue to air ads from organizations like those discussed here, even after their newsrooms expose the groups for spreading misinformation.

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from Super PACs and other "non-candidate" groups like the tax-exempt 501 (c)(4)s.¹² Stations are allowed to reject inaccurate ads in the same way that they're allowed to reject consumer product ads that make false claims.

It's not entirely clear that stations can be held liable for knowingly airing false, misleading or deceptive advertising content in ads from Super PACs or other third-party groups.¹³ But they should be.

In ruling on a complaint brought by the Consumers Association of the District of Columbia in 1971, the FCC found that stations must take "reasonable steps" to satisfy themselves "as to the reliability and reputation of every prospective advertiser" and to prevent the broadcast of misleading ads.¹⁴ Failure to do that, according to a subsequent court ruling, may be "probative of an underlying abdication of licensee responsibility."¹⁵

Broadcast industry attorney Michael D. Berg writes that stations are in a "balancing act," trying to respond to the heightened demand for ad placements while remaining on the right side of the law.

"The FCC has a long history of expecting stations, as part of their overall obligation to operate in the public interest, to avoid knowingly airing false claims in commercial

¹² For a complete list of FCC guidelines on political advertising, see "Statutes and Rules on Candidate Appearances & Advertising," FCC: <http://transition.fcc.gov/mb/policy/political/candrule.htm>.

¹³ See *Felix v. Westinghouse Radio Stations*, 186 F.2d 1, 6 (3rd Cir.) cert. denied, 314 U.S. 909 (1950); see also: Licensee Responsibility with Respect to the Broadcast of False, Misleading or Deceptive Advertising, 74 F.C.C.2d 623 (1961).

¹⁴ See Complaint by Consumers Association of District of Columbia, 32 F.C.C.2d 400, 405 (1971).

¹⁵ *Cosmopolitan Broad. Corp. v. FCC*, 581 F.2d 917,927 (D.C. Cir. 1978).

advertising,” Berg writes. “That principle spills over to political ads, at least by non-candidates when a station has been made aware of the alleged falsity.”¹⁶

Conclusion

Local stations should be held responsible for what they put on the public airwaves. In fact, they deserve increased scrutiny at a time when political ads from non-candidate groups are inundating viewers in key battleground states.

It’s not enough to air a smattering of news segments that debunk third-party ads. While some Denver newscasts have attempted to counter the tidal wave of misinformation with the occasional “truth test,” they have continued airing ads from groups that they themselves found were misleading viewers.

The pattern of deception found in ads pushed by these groups could violate federal and state laws, including laws protecting viewers against false advertising. Yet few are holding TV stations to account for the falsehoods in political ads.¹⁷

Lying should be a liability not only for the groups that produce dishonest ads but also for the stations that air them. Stations must take a stronger stance against these ads, both by airing reports that investigate false claims, and by refusing to sell airtime to groups that deceive.

Stations that ignore these concerns and continue to profit from political lies should be held accountable to their viewers — and the law.

¹⁶ Michael D. Berg, “FCC Political Ad Rules Call for Balancing Act,” TVNewsCheck, Sept. 28, 2012: <http://www.tvnewscheck.com/article/62490/fcc-political-ad-rules-call-for-balancing-act/page/1>.

¹⁷ FlackCheck.org, a project of the Annenberg Public Policy Center, has generated thousands of viewer letters urging local stations to “insist on the accuracy of any third-party ads [they] air and make fact-checking to prevent political deception a regular feature of [their] news programming.”

Table 1. Electoral Coverage vs. The Flood of Political Ads¹⁸

American Crossroads/Crossroads GPS			
Stations	Spots Bought	Cost of Ads	Fact-Checked
KCNC	185	\$344,250	No
KDVR	383	\$188,175	No
KMGH	123	\$146,650	No
KUSA	523	\$920,305	No
Total	1,214	\$1,599,380	No
Americans for Prosperity			
Stations	Spots Bought	Cost of Ads	Fact-Checked
KCNC	209	\$416,650	1 segment
KDVR	69	\$62,600	No
KMGH	222	\$320,050	No
KUSA	206	\$585,100	No
Total	706	\$ 1,384,400	1 segment
House Majority PAC			
Stations	Spots Bought	Cost of Ads	Fact-Checked
KCNC	109	\$161,950	No
KDVR	111	\$69,250	No
KMGH	130	\$166,025	No
KUSA	164	\$308,000	1 segment
Total	514	\$705,225	1 segment
Priorities USA Action			
Stations	Spots Bought	Cost of Ads	Fact-Checked
KCNC	495	\$528,600	No
KDVR	542	\$261,825	No
KMGH	519	\$500,450	1 segment
KUSA	451	\$672,550	No
Total	2,007	\$1,963,425	1 segment
Restore Our Future			
Stations	Spots Bought	Cost of Ads	Fact-Checked
KCNC	99	\$217,950	No
KDVR	56	\$41,300	No
KMGH	149	\$152,375	No
KUSA	209	\$442,000	2 segments
Total	513	\$853,625	2 segments

¹⁸ Ads featured in Table 2 include those that aired in August and September and those that have been contracted to air between Oct. 1 and Election Day. Ad costs include amounts paid to stations and fees to media buyers who book ads.

Table 2. On-Air Mentions in Denver (August–September)

	KCNC (CBS)	KDVR (Fox)	KMGH (ABC)	KUSA (NBC)	National Story	Local Story	Mention of Local Ads	Ads Aired from Aug. 1–Sept. 28	Ads Scheduled to Air from Oct. 1–Nov. 6
American Crossroads/Crossroads GPS	1	0	3	0	4	0	0	572	642
Americans for Prosperity	1	0	1	0	1	1	1 ¹⁹	706	0
House Majority PAC	0	0	0	1	0	1	1 ²⁰	387	127
Priorities USA Action	1	0	3	0	3	1	1 ²¹	702	1,305
Restore Our Future	0	0	1	3	1	2	2 ²²	513	0
TOTAL								2,880	2,072

¹⁹ In a Sept. 11 “Reality Check” segment, *CBS4 News* political specialist Shaun Boyd labeled as “false” an Americans for Prosperity ad that compared President Obama’s health-care reforms to the Canadian system. “They are playing fast and loose with the facts to play on voter fears,” Boyd said.

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²² On Aug. 10, *Channel 9 News* political reporter Brandon Rittiman took a look at a Restore Our Future ad praising Mitt Romney’s leadership at the helm of the 2002 Salt Lake City Olympics. Rittiman said the facts were true but questioned whether it’s appropriate to draw an analogy between managing the Olympics and leading the country. On Aug. 31, Rittiman devoted two and a half minutes to “truth testing” an ad from the pro-Romney Super PAC Restore Our Future. He called one ad’s claim “an overstatement.” He labeled another claim as “false” and called another “misleading.”