

# GARDNER PATE PLLC

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Government Affairs and Legal Consulting

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May 29, 2018

General Manager

Re: Tennessee Jobs Now Advertisement

To Whom it May Concern:

I represent Tennessee Jobs Now PAC. As you know, Tennessee Jobs Now recently released an advertisement on your station to shed light on Congressman Diane Black's voting record. Congressman Black, unfortunately, is attempting to rely on her time-tested tactic of intimidation and repeating mistruths, hoping those reading them will not check the facts themselves. On May 24, we responded to a letter sent on behalf of Congressman Black, which requested your station cease running this advertisement. In our response, we outlined the facts supporting the claims made in the advertisement, showing the advertisement to be accurate. Congressman Black has since sent a rebuttal response. Tennessee Jobs Now disagrees with her claims, takes offense to her attempt at intimidation, stands by its ad, and respectfully requests your station continue airing it.

### **This type of intimidation tactic is nothing new to Congressman Black**

It is our belief that Congressman Black is attempting to use her attorneys to silence Tennessee Jobs Now. That Congressman Black would use intimidation tactics to try and silence the opposition is nothing new. In 2010, when her opponent aired an advertisement critical of Congressman Black's record in the Tennessee legislature, the company Congressman Black's husband owned sued to try and stop the advertisement from running. In deciding against the company and in favor of Congressman Black's opponent, the judge held the ad in question was "not factually false, or was at least substantially true."<sup>1</sup>

Tennessee Jobs Now is engaged in constitutionally protected First Amendment speech, and is working to educate the Tennessee voting public about Congressman Black's record. While Congressman Black may not be proud of her voting record, it is her record. Despite her efforts to get the advertisement pulled, she can't run from the truth. The fact remains that (1) she voted for a bill in the Tennessee legislature that allowed illegal immigrants to obtain a Tennessee driver's license and (2) she voted against a bill that provided funding for President Trump's border wall.

Tennessee Jobs Now is airing these factually accurate ads with the knowledge that Congressman Black may turn to meritless lawsuits to stop the voting public from learning of her record. This is why Tennessee Jobs Now took pains to ensure the ads are factually accurate; this is why Tennessee Jobs Now strongly contests any assertion that

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<sup>1</sup> <http://www.tncourts.gov/sites/default/files/aegissciencescorporationopn.pdf>

the ads are not factually accurate; and this is why the voting public deserves to know the truth about Congressman Black's record.

We strongly urge your station to not pull the advertisement. Tennessee Jobs Now stands by its factually accurate advertisement. Voters in Tennessee deserve to know the types of votes Congressman Black has taken during her years in elected office.

### **Congressman Black's voted for HB 983 (2001), which allowed illegal immigrants to obtain driver's licenses**

As we previously pointed out, the advertisement's statement regarding Congressman Black's support for legislation that allowed illegal immigrants to obtain a Tennessee driver's license is clear. In her rebuttal letter, Congressman Black provided no additional authority or new arguments. For the sake of brevity, then, we will briefly restate the record:

- Prior to 2001, to get a driver's license in Tennessee, an individual needed to provide the state with his or her social security number. This effectively precluded illegal immigrants from obtaining driver's licenses.
- In 2001, the Tennessee legislature passed HB 983. This legislation allowed driver's license applicants to bypass the need to provide a social security number if they sign an affidavit affirming they do not have, and have never been issued, a social security number.
- The impact of HB 983 (2001), as noted by an independent fact checking website, is that the bill "allowed illegal immigrants to obtain driver's licenses."
- Congressman Black voted for HB 983 (2001).
- Congressman Black is therefore wrong in her assertion that she "never voted to allow illegal immigrants access to driver's licenses in Tennessee".
- THEREFORE, Congressman Black voted to give Tennessee driver's licenses to illegal immigrants.

### **Congressman Black voted against funding for President Trump's border wall**

Again, as we previously stated, HR 1625 contained approximately \$1.57 billion in border security funding. In her initial letter, Congressman Black argued that there was a limitation imposed on *all* of HR 1625 that would have precluded its use for President Trump's border wall. In our initial response, we did not, as Congressman Black claims, concede that she was correct in her reading. Instead, we pointed out that *assuming she was correct*, the limitation applied only to three of the six items funded in the \$1.57 billion, meaning her argument failed.

Congressman Black now claims that the \$1.57 billion in spending was not for President Trump's border wall because it includes funding for infrastructure like fencing and planning (raising the question of how one builds a wall without planning). Her argument, again, lacks factual merit.

Whether spending is for President Trump's border wall depends on a couple things. First, the objective test: whether the spending was actually for the border wall. Second,

the subjective test: whether President Trump says the money was for his border wall. Tennessee Jobs Now's claim survives each test.

A review by FactCheck.org finds that HR 1625 contained funding for President Trump's border wall. This is supported by President Trump's previous statements that his border wall could contain some fencing, and by his administration's plan on how to use funding in HR 1625 to build the border wall. An excerpt from the fact check follows:

In a March 30 briefing, Customs and Border Protection Acting Deputy Commissioner Ronald D. Vitiello said the spending bill will fund about 100 miles of "border wall system," though he added that "does not fully fund our needs in the most critical locations."

According to Vitiello, the construction near San Diego will include 14 miles of "new border wall," replacing "old, dilapidated [Vietnam War-era helicopter] landing mats in favor of a steel bollard wall" and replacing 14 miles of secondary barriers.

In Calexico, California, the federal government will replace two miles of pedestrian barrier with "a new 30-foot border wall," he said. In Santa Teresa, New Mexico, the government will build 20 miles of border wall, he said. According to the *Washington Examiner*, the new barriers in Santa Teresa will replace "three-foot-tall posts and a taller mesh fence."

Vitiello said the government will build four miles of new border wall in El Paso, Texas, and 35 gates along a 55-mile stretch of existing border wall in the Rio Grande Valley.

Finally, Vitiello said, the Department of Homeland Security will replace 47 miles of "dilapidated border fencing with new border wall system in various locations along the southwest border." Also in the Rio Grande Valley, he said, it plans to build 25 miles of new levee wall in Hidalgo County, and eight miles of "new border wall system" in Starr County, Texas. All of that is made possible by funding in the 2018 spending bill, he said. [emphasis added]<sup>2</sup>

This review also pointed readers to an interview President Trump had with *60 Minutes*, in which this exchange took place:<sup>3</sup>

**Lesley Stahl:** So let's go through very quickly some of the promises you made and tell us if you're going to do what you said or you're going to change it in any way. Are you really going to build a wall?

**President Trump:** Yes.

**Stahl:** They're talking about a fence in the Republican Congress, would you accept a fence?

**Trump:** For certain areas I would, but certain areas, a wall is more appropriate. I'm very good at this, it's called construction.

<sup>2</sup> <https://www.factcheck.org/2018/04/has-the-border-wall-begun/>

<sup>3</sup> <https://www.cbsnews.com/video/trumps-wall-to-include-fencing/>

**Stahl:** So part wall, part fence?

**Trump:** Yeah it could be—it could be some fencing.

The article ends with this statement: “The spending bill funds nearly \$1.6 billion worth of what it refers to as “fencing.” Trump now calls that “wall.” Thus, an independent fact check found what President Trump, the White House, the Trump administration, and observers know to be true: the spending in HR 1625 included funding for President Trump’s border wall.

Finally, Congressman Black questions whether the image of an individual working on a concrete structure with the words “Diane Black voted against funding Trump’s border wall” is misleading; to this allegation, we shake our collective heads. We believe that if we had shown pictures of almost anything else, Congressman Black would similarly complain. Possibly it would have been better to show an image of no border wall, which would show what Congressman Black voted for when she voted against HR 1625. Perhaps an image of the “dilapidated” infrastructure Congressman Black thought was acceptable to use to continue policing the nation’s southern border would have passed muster. Luckily, because enough members of Congress who are not named Diane Black voted to pass HR 1625, we do not need to show images of workers sitting idly by, waiting for money that Congress should be spending to protect the southern borders. Regardless, Tennessee Jobs Now stands by the stock image used in the advertisement.

**Don’t allow Congressman Black’s intimidation tactics obscure the fact that the ad is accurate**

Again, we strongly urge you to see past the intimidation tactics employed by Congressman Black. Congressman Black’s intimidation tactics are meant to serve one purpose: to confuse the Tennessee voting public into thinking she supports President Trump’s key legislative priority—building the border wall—when she is actually an obstructionist. This activity is indicative of why the public holds politicians and Washington, DC swamp-dwellers like Congressman Black in low esteem, and precisely why you should allow Tennessee Jobs Now to continue airing its advertisement about her record. Tennessee Jobs Now has taken pains to ensure it is providing voters factual information. Congressman Black, on the other hand, has repeatedly misread and misrepresented facts, and wants to use fear and intimidation to keep this information from the public. Tennessee voters deserve to know that she not only voted on these matters, but that, apparently, she continues to fail to understand what she voted on.

Attached to this letter is backup documentation for all statements made in the advertisement.

Sincerely,



Gardner Pate  
For the Firm

## BACKUP DOCUMENTATION

### FUNDING OF PRESIDENT TRUMP'S BORDER WALL

Congressman Black voted against HR 1625:

<http://clerk.house.gov/evs/2018/roll127.xml>

HR 1625 contained \$1,571,000,000 in funding for U.S. Customs and Border Protection:

<https://www.congress.gov/bill/115th-congress/house-bill/1625/text>

*See Sec. 230*

#### **SEC. 230.**

(a) Of the amount made available in this Act under “U.S. Customs and Border Protection—Procurement, Construction, and Improvements”, \$1,571,000,000 shall be available only as follows:

(1) \$251,000,000 for approximately 14 miles of secondary fencing, all of which provides for cross-barrier visual situational awareness, along the southwest border in the San Diego Sector;

(2) \$445,000,000 for 25 miles of primary pedestrian levee fencing along the southwest border in the Rio Grande Valley Sector;

(3) \$196,000,000 for primary pedestrian fencing along the southwest border in the Rio Grande Valley Sector;

(4) \$445,000,000 for replacement of existing primary pedestrian fencing along the southwest border;

(5) \$38,000,000 for border barrier planning and design; and

(6) \$196,000,000 for acquisition and deployment of border security technology.

(b) The amounts designated in subsection (a)(2) through (a)(4) shall only be available for operationally effective designs deployed as of the date of the Consolidated Appropriations Act, 2017, (Public Law 115–31), such as currently deployed steel bollard designs, that prioritize agent safety.

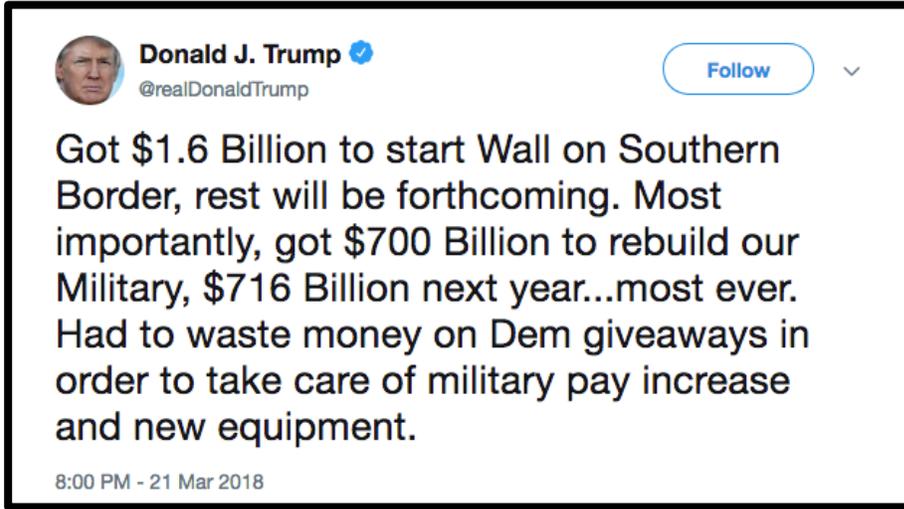
(c) None of the funds provided in this or any other Act shall be obligated for construction of a border barrier in the Santa Ana National Wildlife Refuge.

The White House claims HR 1625 includes \$1.57 billion for border wall construction over six months (bullet point four): <https://www.whitehouse.gov/briefings-statements/american-people-win-president-donald-j-trumps-priorities-funded/>

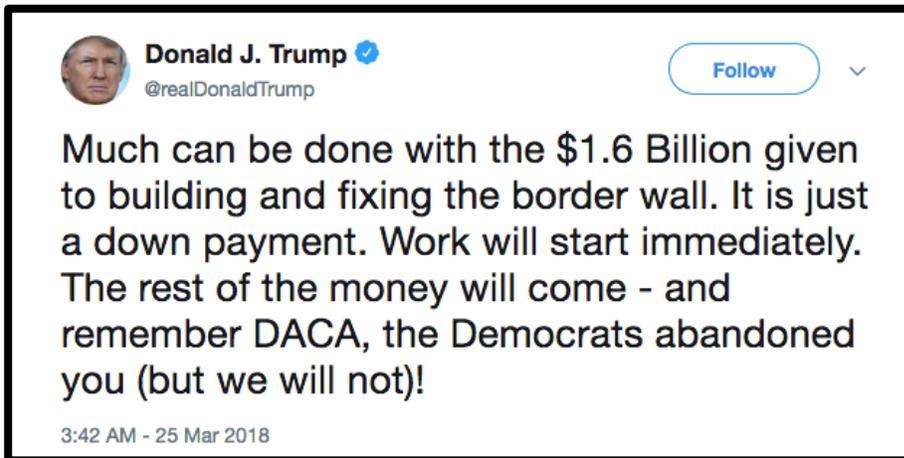
FactCheck.org fact check regarding HR 1625 funding President Trump's border wall: <https://www.factcheck.org/2018/04/has-the-border-wall-begun/>

President Trump's interview with *60 Minutes* where he states that his border wall would include some fencing: <https://www.cbsnews.com/video/trumps-wall-to-include-fencing/>

President Trump tweets that HR 1625 includes “\$1.6 billion to start Wall on Southern Border, rest will be forthcoming”:



President Trump tweets that HR 1625 contained \$1.6 billion to building and fixing the border wall:



### **DRIVER'S LICENSES**

Congressman Black voted for HB 983 (see pages 921-922):

<http://www.capitol.tn.gov/house/archives/102GA/Publications/web%20journ%202001/42301d30.pdf>

HB 983 allowed individuals to obtain a driver's license even if they do not have a social security number:

Original legislation: <http://www.capitol.tn.gov/Bills/102/Bill/HB0983.pdf>

Amendment: <http://www.capitol.tn.gov/Bills/102/Amend/HA0213.pdf>

Truth Test regarding illegal immigrants obtaining driver's licenses under HB 983:

<http://www.wsmv.com/story/14802856/congressional-attack-ads-put-to-truth-test-7-29-2010>