



GEORGETOWN LAW
INSTITUTE FOR PUBLIC REPRESENTATION

Directors
Hope M. Babcock
Aderson Francois
Laura M. Moy
Benton Senior Counselor
Andrew Jay Schwartzman
Staff Attorneys
Yael Bromberg*
Peter DeMarco
Sarah Fox
Patrick Llewellyn
Drew T. Simshaw

600 New Jersey Avenue, NW, Suite 312
Washington, DC 20001-2075
Telephone: 202-662-9535
Fax: 202-662-9634

September 26, 2016

The Honorable Tom Wheeler
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: Enforcement of Online Public File Obligations Pertaining to Political
Advertisements Under Section 315 of the Communications Act

Dear Mr. Chairman:

The Campaign Legal Center (“CLC”), Common Cause, Sunlight Foundation (“Sunlight”) and Benton Foundation (“Benton”) (collectively, “CLC, *et al.*”), through their counsel, the Institute for Public Representation, call upon you to take immediate action to enforce the public file requirements of Section 315 of the Communications Act with respect to advertisements relating to political campaigns and political matters of public importance. Section 315 is crucial to ensuring transparency in our electoral system and protecting voters’ right to know by whom they are being persuaded.

Despite assurances about the importance of facilitating public access to broadcaster, cable and satellite public files, the Commission has done absolutely nothing to enforce these provisions. This abject failure to act is all the more egregious in light of the fact that, after having been presented with complaints showing unambiguous evidence more than two years ago, you issued a public statement which said:

We take political file complaints seriously and anticipate resolving these quickly.
Accuracy is just as important as accessibility in providing this kind of information to the

* Admitted to the bars of New York and New Jersey. Supervised by a member of the DC bar.

American public. I hope this serves as a reminder to all stations of their obligation to maintain political files in accordance with statutory provisions and our Rules.¹

As this letter will demonstrate, broadcasters have evidently drawn the accurate conclusion that they face no consequences for failing to comply with the most important element of the public file rules, which is the disclosure of information about who pays for political advertisements. Specifically, CLC, *et al.* urge you to:

- Consistent with your May 12, 2014 public statement that you “anticipate resolving these quickly...,” grant the 11 complaints filed in May, 2014 alleging widespread violations of the Commission’s online public file rules;
- Before the 2016 election, grant the complaint filed today by CLC, *et al.* against Scripps Media, Inc., licensee of WCPO-TV in Cincinnati, OH, alleging wholesale noncompliance in 16 out of 17 of the non-candidate issue ad entries in its 2016 online public file;
- Issue a Public Notice detailing the responsibilities of broadcasters in maintaining public files relating to paid political advertisements under Section 315; and
- Abandon your policy of limiting public file enforcement to instances where members of the public file complaints and, instead, conduct your own investigations when there is reason to believe that broadcasters, cable operators or DBS licensees are not complying with their public file obligations. The materials accompanying this letter give your staff numerous leads which the staff should pursue without waiting for a complaint from the public.

On May 1, 2014, CLC and Sunlight filed complaints against 11 stations for failing to maintain complete and accurate public files related to political advertisements, as required by Section 315. The Commission’s staff promptly issued letters of inquiry to each of the licensees, and on May 12, 2014, you issued your statement that you “take political file complaints seriously and anticipate resolving these quickly.” Despite your strong warning and assurance of swift action by the Commission, these complaints have still not been resolved, nearly two-and-a-half years later.² CLC, *et al.* urge you to demonstrate that you mean what you said by immediately acting on these complaints.

Your next step should be to take immediate action against Scripps Media, Inc., licensee of WCPO-TV (“WCPO”), Cincinnati, OH, for its particularly egregious noncompliance, which is outlined in the attached complaint filed today by CLC, *et al.* The complaint demonstrates that 16 of WCPO’s 17 filings pertaining to 2016 non-candidate issue ads were incomplete or inaccurate with regards to the requirements of Section 315. Moreover, the complaint also shows

¹ *Statement from FCC Chairman Tom Wheeler on Political File Letters* (May 12, 2014), available at https://apps.fcc.gov/edocs_public/attachmatch/DOC-327020A1.pdf. A copy of the statement is included in the appendix of this letter.

² A recent review of these stations’ online public files indicates that a number of these stations continue to fall short of meeting the requirements of Section 315.

that another station in the same market, WLWT(TV), easily performed the necessary due diligence to comply with the rules with respect to several of the very same ads.

After that, the task should fall to you. It would be impossible for CLC, Common Cause, Sunlight and Benton to file complaints against every station that is violating the rules. Nor is it their job to do so; it is yours. Included with this letter is a report demonstrating that station noncompliance with Section 315 remains rampant.³ The report, completed this summer by CLC with the services of a University of Southern California doctoral student, conducted an analysis of the 2016 political files of broadcast licensees in the key electoral battleground states of Florida, Ohio, Pennsylvania and Wisconsin. The report examined 1,220 non-candidate issue ad filings from 240 broadcast television stations and discovered that only 65% of those filings contained all of the information required under Section 315. These findings demonstrate that licensees are ignoring their obligations with impunity, and that guidance and enforcement by the Commission is urgently needed. There is no reason the Commission could not have compiled the same information, since it has the same access to the online files as CLC does.

With the 2016 election less than two months away, CLC, *et al.* urge you to take immediate action to address this widespread noncompliance, and to follow through on your May, 2014 statement that you “take political file complaints seriously and anticipate resolving the[m] quickly.” They also call upon you to publically renew your admonition that “[a]ccuracy is just as important as accessibility in providing this kind of information to the American public,” and to issue a Public Notice detailing the responsibilities of broadcasters in maintaining public files relating to paid political advertisements under Section 315. It is imperative that you take this action immediately in order to ensure transparency in our electoral system and to protect voters’ right to know by whom they are being persuaded.

Respectfully submitted,

/s/

Andrew Jay Schwartzman
Drew Simshaw
Institute for Public Representation
Georgetown University Law Center
600 New Jersey Ave. NW, Suite 312
Washington, DC 20001
(202) 662-9535

*Counsel for Campaign Legal Center,
Common Cause, Sunlight Foundation and
Benton Foundation*

Thomas Koh
Georgetown Law Student

³ Rachel E. Moran, *Who’s Behind That Political Ad? The FCC’s Online Political Files and Failures in Sponsorship Identification Regulation*, The Campaign Legal Center (September 2016). A copy of the report is included in the appendix of this letter.

September 26, 2016

Page 4 of 4

September 26, 2016

cc by email: Joseph M. Di Scipio
Kurt A. Wimmer
Jennifer A. Johnson
Christina H. Burrow
Mark J. Prak
John W. Zucker
Margaret L. Tobey
Anne Lucey
Kenneth C. Howard, Jr.
Jeff Brogan, Vice President and General Manager, WCPO-TV
Commissioners Clyburn, Rosenworcel, Pai and O'Reilly
William Lake, Chief, Media Bureau
Robert Baker, Assistant Division Chief, Media Bureau

Enclosed: *Statement from FCC Chairman Tom Wheeler on Political File Letters* (May 12, 2014)

Complaint by CLC, Common Cause, Sunlight and Benton against Scripps Media, Inc., licensee of WCPO-TV in Cincinnati, OH (filed September 26, 2016)

Rachel E. Moran, *Who's Behind That Political Ad? The FCC's Online Political Files and Failures in Sponsorship Identification Regulation*, The Campaign Legal Center (September 2016)



NEWS

Federal Communications Commission
445 12th Street, S.W.
Washington, D. C. 20554

News Media Information 202 / 418-0500
Internet: <http://www.fcc.gov>
TTY: 1-888-835-5322

This is an unofficial announcement of Commission action. Release of the full text of a Commission order constitutes official action.
See MCI v. FCC, 515 F 2d 385 (D.C. Circ 1974).

FOR IMMEDIATE RELEASE:
May 12, 2014

NEWS MEDIA CONTACT:
Neil Grace, 202-418-0506
Email: Neil.Grace@fcc.gov

STATEMENT FROM FCC CHAIRMAN TOM WHEELER ON POLITICAL FILE LETTERS

Washington, D.C. – Today the Media Bureau sent letters to eleven stations, seeking responses to the political file complaints filed last week by the Campaign Legal Center and the Sunlight Foundation. FCC Chairman Tom Wheeler issued the following statement:

“We take political file complaints seriously and anticipate resolving these quickly. Accuracy is just as important as accessibility in providing this kind of information to the American public. I hope this serves as a reminder to all stations of their obligation to maintain political files in accordance with statutory provisions and our Rules.”

-- FCC --

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

Complaint of)
)
Campaign Legal Center, Common Cause,)
Sunlight Foundation, and Benton)
Foundation)
)
Against)
)
)
Scripps Media, Inc. licensee of)
WCPO-TV, Cincinnati, OH)
)
For Violations of the Communications Act)
§ 315 and FCC Regulation § 73.1212)

To: Media Bureau

COMPLAINT

The Campaign Legal Center, Common Cause, Sunlight Foundation, and Benton Foundation¹ respectfully file this complaint regarding violations of the Communications Act and the Federal Communications Commission's ("FCC") regulations by Scripps Media, Inc.,² licensee of WCPO-TV, an ABC-affiliated broadcast television station in Cincinnati, Ohio.

¹ The Benton Foundation is a nonprofit organization dedicated to promoting communication in the public interest. This complaint reflects the institutional view of the Foundation and, unless obvious from the text, is not intended to reflect the views of individual Foundation officers, directors, or advisors. Full descriptions of all complainant organizations can be found in Exhibit A.

² Scripps Media Inc., is headquartered in Cincinnati, Ohio. Capital IQ, *Bloomberg Profile*, <http://www.bloomberg.com/Research/stocks/private/snapshot.asp?privcapId=113783495>. It is the subsidiary of The E.W. Scripps Company, also headquartered in Cincinnati, Ohio, which owns and operates 33 television stations in 24 markets across the U.S. The E.W. Scripps Company, *Television*, <http://www.scripps.com/tv>.

As of September 6, 2016, there were 17 entries in WCPO-TV's ("WCPO") non-candidate issue advertisement file for 2016. Of these 17 files, 16 clearly failed to fulfill the requirements of the Commission's rules, and there is some doubt about the remaining disclosure form.

I. The Communications Act and FCC regulations

When broadcasters air political advertisements, they must meet specific disclosure requirements set forth in the Communications Act and the FCC's regulations.

Section 315(e)(1) of the Communications Act requires that broadcast licensees maintain records regarding any request to purchase broadcast time that "communicates a message relating to any political matter of national importance, including (i) a legally qualified candidate; (ii) any election to Federal office; or (iii) a national legislative issue of public importance."³

For such requests, the licensee must disclose "the name of the candidate to which the communication refers and the office to which the candidate is seeking election, the election to which the communication refers, or the issue to which the communication refers (as applicable),"⁴ as well as a list of the purchaser's "chief executive officers or members of the executive committee or of the board of directors."⁵ The file must also contain information regarding "whether the request to purchase broadcast time is accepted or rejected by the licensee,"⁶ "the rate charged for the broadcast time,"⁷ "the class of time that is purchased,"⁸ and "the date and time on

³ 47 U.S.C. §315(e)(1)(B)(i)–(iii) (2014).

⁴ *Id.* §315(e)(2)(E).

⁵ *Id.* §315(e)(2)(G).

⁶ *Id.* §315(e)(2)(A).

⁷ *Id.* §315(e)(2)(B).

⁸ *Id.* §315(e)(2)(D).

which the communication is aired.”⁹ Moreover, this information “shall be placed in a political file as soon as possible.”¹⁰

II. All but one of WCPO-TV’s 2016 online public file entries for non-candidate issue advertisements are in violation of the requirements of the Communications Act and the Commission’s rules

At the time of this complaint, WCPO’s online public file for non-candidate issue advertisements contained 17 entries. Of these 17 entries, 16 do not contain the information required by the Communications Act and the Commission’s rules. These incomplete and inaccurate filings undermine the transparency of the public filing system, and the Commission should take prompt action to ensure that all public files are held to a high standard of completeness, accuracy, and clarity.

A. AARP

The advertisement carried by WCPO for AARP asserts the need for a “strong” social security program and calls upon Presidential candidates to “Give us a plan.”¹¹

The script of the advertisement reads as follows:

[Background: Donkey and Elephant Noise]

[Narrator:] There’s a big difference between making noise and making sense. When it comes to social security we need more than lip service. Our next President needs a real plan to keep social security strong. Hey candidates – enough talk! Give us a plan.¹²

In its file,¹³ WCPO incorrectly lists this advertisement as NOT communicating a message “relating to a political matter of public importance.”¹⁴ It fails to identify

⁹ *Id.* §315(e)(2)(C).

¹⁰ *Id.* §315(e)(3).

¹¹ AARP, 2016 Political Ad and Schedule, Internet Archive, https://archive.org/details/PolAd_SocialSecurity_li0wz.

¹² *Id.*

¹³ See WCPO-TV, 2016 AARP Non-Candidate Issue Ad file, Federal Communications Commission, <https://publicfiles.fcc.gov/tv-profile/wcpo-tv/political-files/2016/non-candidate-issue-ads/aarp/4b110951-e7e7-7812-0ea7-bdea133b7d91/>.

the ad as discussing the Ohio presidential primary election, which was held on March 15, 2016, shortly after the AARP ads ran. The file also fails to identify the issue (“strong” Social Security); instead, it states that the issue is “AARP.” Moreover, WCPO does not, as is required, list AARP’s CEO or Board of Directors, although this information is readily available.¹⁵ In addition, WCPO fails to indicate when the advertisements actually aired. As the NAB form WCPO used states, WCPO could have fulfilled this requirement by “[a]ttaching invoices or [a] Schedule Run Summary...showing...actual air time and charges for each spot.”

B. American Chemistry Council

In its file,¹⁶ WCPO incompletely identifies the issue of this ad as simply being “Economy.”¹⁷ In fact, the ads address the issue of who should be elected as the Senator from Ohio and supports Senator Rob Portman, who, according to the ad, “has led efforts to rein in federal spending.”¹⁸ In addition to mentioning the economy and federal spending, the ad also discusses access to college for all. Even though the

¹⁴ See WCPO-TV, 2016 AARP NAB form, Federal Communications Commission, <https://publicfiles.fcc.gov/api/manager/download/e92b4486-90b0-92d7-8d2c-1b79136ed46e/78b6987c-2a97-adf1-8502-9a775e11eea8.pdf>.

¹⁵ See *AARP Board of Directors*, AARP, <http://www.aarp.org/about-aarp/board-of-directors/>; see also *AARP Executive Team*, AARP, <http://www.aarp.org/about-aarp/executive-team/> (listing Chief Executive Officer, Jo Ann Jenkins).

¹⁶ See WCPO-TV, 2016 American Chemistry Council Non-Candidate Issue Ad file, Federal Communications Commission, <https://publicfiles.fcc.gov/tv-profile/wcpo-tv/political-files/2016/non-candidate-issue-ads/american-chemistry-council/0fa1f1db-2106-425b-bf28-c5004ceec836/>.

¹⁷ See WCPO-TV, 2016 American Chemistry Council NAB form, Federal Communications Commission, <https://publicfiles.fcc.gov/api/manager/download/96b650e8-b3a2-bb9d-8105-edf70f15e7e7/2072bcaa-bb45-7bb7-b35c-c21d79cc2439.pdf>.

¹⁸ American Chemistry Council, 2016 Political Ad and Schedule, Internet Archive, https://archive.org/details/PolAd_RobPortman_5fpce.

name of the sponsor's CEO is readily ascertainable,¹⁹ WCPO does not identify him or American Chemistry Council's Board of Directors, listing only Raymond O'Bryan, its CFO and Chief Administrative Officer. WCPO also fails to indicate anywhere in its file when the ad actually aired. Page 5 of the commonly used NAB form states that stations can fulfil this requirement by "[a]ttaching invoices or [a] Schedule Run Summary...showing...actual air time and charges for each spot." This page, which also instructs stations to list the "Agreed Upon Schedule" is missing from WCPO's file for this ad.

C. American Future Fund

This sponsor ran ads attacking Presidential candidate Donald Trump, which featured a collection of Donald Trump's expletive-laden sound bites from his public campaign appearances.²⁰ However, in its file,²¹ WCPO did not list these ads as addressing *any* national issue, much less stating that the ad dealt with the question of who should win the upcoming Ohio Republican primary.²² Instead, the NAB form lists the issue as "American Future Fund." WCPO also fails to indicate when the ads actually aired, despite its legal obligation to do so.

¹⁹ See *ACC Leadership*, American Chemistry Council, https://www.americanchemistry.com/ACC_Leadership/ (listing CEO, Calvin Dooley).

²⁰ American Future Fund, 2016 Political Ad and Schedule, Internet Archive, https://archive.org/details/PolAd_DonaldTrump_ftu3i.

²¹ See WCPO-TV, 2016 American Future Fund Non-Candidate Issue Ad file, Federal Communications Commission, <https://publicfiles.fcc.gov/tv-profile/wcpo-tv/political-files/2016/non-candidate-issue-ads/american-future-fund/7c12ab08-58a3-87c8-431a-a6cf08752bb1/>.

²² See WCPO-TV, 2016 American Future Fund NAB form, Federal Communications Commission, <https://publicfiles.fcc.gov/api/manager/download/ec397e96-7d94-41ef-d864-5525d1256da5/315ede7d-fc4d-9d24-e337-35ccf3498a31.pdf>; see also WCPO-TV, 2016 American Future Fund Station Issue Advertising Request Sheet, <https://publicfiles.fcc.gov/api/manager/download/01bdee70-dd53-8c9b-fbf6-dba72a3dfc67/b68291bf-c55e-e89b-5861-c7f8467f8627.pdf>.

D. Club for Growth Action

In its file,²³ WCPO responded “yes” as to whether these ads address a national issue.²⁴ However, it left a blank on the Agreement Form where the issue should have been identified. Although the form is dated September 15, 2015, it was uploaded on February 9, 2016. The Station Request Sheet in the file lists “Warren Davidson” as the candidate mentioned, but nowhere in the file does it mention which office he is seeking and which election is at issue. The file does not indicate when the ad actually aired. In addition, it appears that WCPO actually aired two *different* Club for Growth Action ads pertaining to Warren Davidson during 2016, one praising his credentials,²⁵ and the other attacking his competitors, Tim Derickson and Bill Beagle,²⁶ although it is not at all apparent from WCPO’s file.

²³ See WCPO-TV, 2016 Club for Growth Action Non-Candidate Issue Ad file, Federal Communications Commission, <https://publicfiles.fcc.gov/tv-profile/wcpo-tv/political-files/2016/non-candidate-issue-ads/club-for-growth-action/d96fa8ea-defd-73d2-e5a4-5dc0037e2400/>.

²⁴ See Target Enterprises, 2016 Target Enterprises Agreement Form for Non-Candidate Advertising, Federal Communications Commission, <https://publicfiles.fcc.gov/api/manager/download/2de39071-a24e-f779-2d15-dd8e6af205b2/53d741a4-a282-0092-7b63-d8bdd7c3a95f.pdf>; see also WCPO-TV, 2016 Club for Growth Action Station Issue Advertising Request Sheet, Federal Communications Commission, <https://publicfiles.fcc.gov/api/manager/download/78ca5bae-c29a-f804-87c9-05f071f66613/01f4c707-085c-0b26-cd5e-ad1b48d53d66.pdf>.

²⁵ In the ad, Warren Davidson is characterized as “a conservative citizen who knows Washington won’t be fixed by career politicians” and “a breath of fresh air.” See Club for Growth Action, 2016 Political Ad and Schedule, Internet Archive, https://archive.org/details/PolAd_WarrenDavidson_tjfq3.

²⁶ Tim Derikson is described in the ad as a politician who “voted to raise his own pay” and “voted to stick” his constituents with Obamacare, and Bill Beagle is described as a politician who also “backed the Obamacare deal” and “supported raising the income tax.” See Club for Growth Action, 2016 Political Ad and Schedule, Internet Archive, https://archive.org/details/PolAd_WarrenDavidson_BillBeagle_TimDerickson_mnie6.

E. Constitutional Responsibility Project

The issue identification in this file²⁷ – “Supreme Court Vacancy” – appears marginally compliant with Commission rules, but the station’s NAB form confusingly lists the candidates mentioned as *either* “Pat Toomey *or* Rob Portman,”²⁸ leaving the public to wonder whether the ad references one of the candidates, the other, or both. In fact, Constitutional Responsibility Project produced two different ads, one regarding only Senator Toomey²⁹ and one regarding only Senator Portman,³⁰ calling on the senators to support the Supreme Court nomination of Merrick Garland. It appears that WCPO aired the Senator Rob Portman ad because a different document in the file lists “Portman” as the candidate mentioned.³¹ It is noteworthy in this regard that another Cincinnati station, WLWT(TV) (“WLWT”), ran the same commercial, but made clear in its public file which ad it was airing.³² WLWT’s

²⁷ See WCPO-TV, 2016 Constitutional Responsibility Project Non-Candidate Issue Ad file, Federal Communications Commission, <https://publicfiles.fcc.gov/tv-profile/wcpo-tv/political-files/2016/non-candidate-issue-ads/constitutional-respon-project/f4e501db-9a08-eef7-6367-3ef330768d31/>.

²⁸ See WCPO-TV, 2016 Constitutional Responsibility Project NAB form, Federal Communications Commission, <https://publicfiles.fcc.gov/api/manager/download/c504aeaf-b992-3871-d0b3-c97564d4191f/9ea55a52-ebb0-c93b-6640-89eb110e1478.pdf> (emphasis added).

²⁹ The ad encourages viewers to “[c]all Senator Toomey and tell him to put the Constitution before his politics” by confirming the Supreme Court nomination of Merrick Garland. See Constitutional Responsibility Project, *Why Won’t Sen. Toomey Do His Job*, YouTube, https://www.youtube.com/watch?v=HieGSD__sPI.

³⁰ This ad similarly urges viewers to “[c]all Senator Portman and tell him to put the Constitution before his politics” by confirming the Supreme Court nomination of Merrick Garland. See Constitutional Responsibility Project, *Why Won’t Sen. Portman Do His Job*, YouTube, https://www.youtube.com/watch?v=UIjQ_SUNdb4.

³¹ WCPO-TV, 2016 Constitutional Responsibility Project Station Issue Advertising Request Sheet, Federal Communications Commission, <https://publicfiles.fcc.gov/api/manager/download/74380d97-3441-4274-3fc3-f4a4d0be8bc4/a0f299fb-00b9-69ad-5a0f-6edcc0ff98dc.pdf>.

³² See WLWT, 2016 Constitutional Responsibility Project Non-Candidate Issue Ad file, Federal Communications Commission, <https://publicfiles.fcc.gov/tv-profile/wlwt/political-files/2016/non-candidate-issue-ads/constitutional-responsibility-project/347e0265-0e6e-777a-a046-6fb6bf1c8028/>.

uploaded NAB form crossed out Pat Toomey's name, listed "US Senate – Ohio, 11/8/16" as the office and election date, and elaborates that:

In the spot it states the Constitution says the President should make nominations to the Supreme Court and the Senate votes on it. It talks about Rob Portman's refusal to bring Obama's nominee to a vote and to call Portman and tell him to put the Constitution before politics.³³

In addition, WCPO fails to identify the CEO or Board of Directors of the sponsor, listing only one name ("Kyle Herring"). WLWT, on the other hand, lists both Mr. Herring and Anita Dunn as board members. WLWT says in its file that it

Asked the agency for more names – they refused and when we Googled the PAC we could only find one more name.

WLWT's disclosure demonstrates exactly the kind of due diligence that the Commission contemplates with respect to commercials addressing national issues of public importance, and how easy it is to fulfil that obligation. This is precisely what WCPO failed to do, and why the Commission should find that it has violated the disclosure requirements.

F. "DSCC-IE"

WCPO has agreed to carry ads for what it incompletely, inaccurately, and inconsistently identifies throughout its file using only the acronyms "DSCC" or "DSCC-IE."³⁴ Most members of the public would be unable to discern the true identity of this sponsor, which is either the "Democratic Senatorial Campaign Committee" or the "Democratic Senatorial Campaign Committee – Independent Expenditures." The station's disclosure of the details of this sponsorship are wholly

³³ See WLWT, 2016 Constitutional Responsibility Project NAB form, Federal Communications Commission, <https://publicfiles.fcc.gov/api/manager/download/347e0265-0e6e-777a-a046-6fb6bf1c8028/b6f3156a-0b68-20e3-4f7c-ea88ddf2ef21.pdf>.

³⁴ See WCPO-TV, 2016 DSCC Non-Candidate Issue Ad file, Federal Communications Commission, <https://publicfiles.fcc.gov/tv-profile/wcpo-tv/political-files/2016/non-candidate-issue-ads/dsc/7b874a8b-68bb-e9d2-cabd-c861c21fc327/>.

insufficient. The national issue is listed on the NAB form as “DSCC-IE,”³⁵ an identification which is even more incomprehensible than “DSCC,” and in any event, not an “issue.” WCPO compounds the violation by leaving blank any response to the NAB form question calling for the name of any candidates referred to and/or the issues discussed. The ads undoubtedly will refer to Senator Rob Portman and candidate Ted Strickland, but even if those names were unavailable at the time that the sponsor contracted for airtime, the disclosure should have said “to be determined.” WCPO incorrectly lists on its NAB form “Mindy Myers” as (presumably) the CEO of the DSCC. In fact, it is readily ascertainable that Ms. Myers’ title is “Director of Independent Expenditures.”³⁶ The file’s Rate Request sheet lists Myers as a “Campaign Strategist.”³⁷

G. “Fighting for Ohio”

WCPO’s disclosures about “Fighting for Ohio” are egregiously inaccurate.³⁸ This organization is a SuperPAC established to support Senator Portman.³⁹ Most or all of its ads, including those which ran on WCPO, have been attacks on his opponent,

³⁵ See WCPO-TV, 2016 DSCC NAB form, Federal Communications Commission, <https://publicfiles.fcc.gov/api/manager/download/70cdba8f-ebef-2ea9-599b-2ea542924dce/9a01f3e2-c2d9-0337-1484-9084eda70693.pdf>.

³⁶ See Mindy Myers Leadership Profile, Leadership Directories, <http://www.leadershipdirectories.com/profiles/Mindy-Myers-Dir-of-Independent-Expenditures-Independent-Expe.htm>.

³⁷ WCPO-TV, 2016 DSCC Station Issue Advertising Request Sheet, Federal Communications Commission, <https://publicfiles.fcc.gov/api/manager/download/a4642ff4-9895-ed5b-9507-fc7f8ca8830c/8fb84ec9-b237-106e-1d47-684284cebccb.pdf>.

³⁸ See WCPO-TV, 2016 Fighting for Ohio Non-Candidate Issue Ad file, Federal Communications Commission, <https://publicfiles.fcc.gov/tv-profile/wcpo-tv/political-files/2016/non-candidate-issue-ads/fighting-for-ohio/75cb3559-7247-afc9-c4e4-bb38795cb4c7/>.

³⁹ See Jeremy Pelzer, *Rob Portman super PAC launches first ad campaign of the season*, Cleveland.com (May 6, 2016), http://www.cleveland.com/open/index.ssf/2016/05/rob_portman_super_pac_launches.html.

Ted Strickland.⁴⁰ The ads associate Strickland with President Barack Obama and his “War on Coal,”⁴¹ as well as with presidential candidate Hillary Clinton and what the ad characterizes as her anti-Ohio agenda.⁴² However, WCPO’s NAB form falsely identifies “Fighting for Ohio” ads as *not* addressing national issues.⁴³ Although the station’s Request Sheet mentions Strickland, it does not list the position he is seeking or the date of the election in which he is a candidate,⁴⁴ nor which specific issues are addressed.⁴⁵ Although WCPO must identify the CEO or board of directors of the sponsor, it only lists someone identified as its Treasurer.⁴⁶ Moreover, the file fails to indicate when ads actually ran.

⁴⁰ See Real-Time Federal Campaign Finance, Fighting for Ohio Fund (2016 Cycle), Influence Explorer, <http://realtime.influenceexplorer.com/committee/2016/fighting-for-ohio-fund/C00573014/>.

⁴¹ The ad states that Ted Strickland “fled to Washington” to work in a group that “lobbied for Obama’s War on Coal.” See Fighting for Ohio, *Selling Out*, YouTube, <https://www.youtube.com/watch?v=q7MnG7rcrG0>.

⁴² The ad states that Ted Strickland now “wants to join longtime friend Hillary Clinton, whose reckless agenda would put even more Ohio jobs at risk.” See Fighting for Ohio, *Out of Business*, YouTube, <https://www.youtube.com/watch?v=zSow7Xyxe-Q>.

⁴³ See WCPO-TV, 2016 Fighting for Ohio NAB form, Federal Communications Commission 3, <https://publicfiles.fcc.gov/api/manager/download/e9eb4391-fce0-7519-5d72-c77c08bdb4af/d0681eaf-f4b9-33c5-20f5-9f80f3309ee7.pdf>.

⁴⁴ WCPO-TV, 2016 Fighting for Ohio Station Issue Advertising Request Sheet, Federal Communications Commission, <https://publicfiles.fcc.gov/api/manager/download/db357414-9811-3a77-bbb1-f57d857a2e56/7ec894a9-d6ff-9f89-0af5-a1db0720c633.pdf>.

⁴⁵ Fighting for Ohio has produced at least 8 different ads attacking Strickland, addressing a wide array of issues. See Fighting for Ohio Search Results, Political TV Ad Archive, http://politicaladarchive.org/browse/?word_filter=fighting%20for%20ohio.

⁴⁶ The lack of disclosure regarding “Fighting for Ohio” is especially troublesome considering that it receives significant funds from Ohio dark-money group Freedom Vote, Inc. See Ian Vandewalker, *Ohio Senate Race Attracts Highest Outside Spending Yet*, Brennan Center for Justice, <https://www.brennancenter.org/blog/ohio-senate-race-attracts-highest-outside-spending-yet>. “Fighting for Ohio has attracted several six-figure donors, including major GOP donors from the financial industry and an Ohio dark-money group called Freedom Vote, Inc.” *Id.* Freedom Vote is also the sponsor of a separate ad aired on WCPO. See *infra* subsection H.

H. Freedom Vote

Freedom Vote, Inc. is a 501(c)(4) advocacy group that has run ads attacking Senator Ted Strickland.⁴⁷ As in so many other cases, WCPO utterly fails in its file⁴⁸ to provide the required information in its disclosure. The NAB form⁴⁹ lists “Freedom Vote” and its address as the “issue,” and although the Rate Request form⁵⁰ mentions Ted Strickland, it lists “None” as the election. Nowhere in the file is the senatorial election mentioned. By comparison, WCPO’s competitor, WLWT, discloses in its public file that the Freedom vote ad relates to “Ted Strickland, US Senate/OH General Election 11-8-16,” and describes in detail that the ad deals with the issue of job loss.⁵¹ WCPO also fails to list the proper officials from the organization, showing only the group’s treasurer even though the identity of its CEO, James Nathanson, is

⁴⁷ Although an online archive of the aired ad could not be located, a news article on Freedom Vote’s ad that “blame[d] Democrat Ted Strickland for Ohio’s economic struggles” describes what was presumably the ad referenced by WCPO. See Kim Chipman & Gregory Giroux, *U.S. ELECTION WRAP: Rubio For Senate? Democrats Are Ready*, Bloomberg (June 17, 2016), <http://www.bloomberg.com/politics/articles/2016-06-17/u-s-election-wrap-rubio-for-senate-democrats-are-ready-ipk6501z>.

⁴⁸ See WCPO-TV, 2016 Freedom Vote Non-Candidate Issue Ad file, Federal Communications Commission, <https://publicfiles.fcc.gov/tv-profile/wcpo-tv/political-files/2016/non-candidate-issue-ads/freedom-vote/05754dc8-53c2-25fb-c31b-138327b45386/>.

⁴⁹ See WCPO-TV, 2016 Freedom Vote NAB form, Federal Communications Commission 2, <https://publicfiles.fcc.gov/api/manager/download/31cc292b-ef9e-9e19-09c7-ef304fdea890/35d52c0e-970f-3f99-e781-6eef8d892d1a.pdf>.

⁵⁰ See WCPO-TV, 2016 Freedom Vote Station Issue Advertising Request Sheet, Federal Communications Commission, <https://publicfiles.fcc.gov/api/manager/download/9ebda0ec-f6cd-157f-4507-dce4ad284af0/a4743047-0fe3-f791-372c-0765fa3ba7b7.pdf>.

⁵¹ See WLWT, 2016 Freedom Vote Non-Candidate Issue Ad file, Federal Communications Commission, <https://publicfiles.fcc.gov/tv-profile/wlwt/political-files/2016/non-candidate-issue-ads/freedom-vote/435cd1e0-cb52-c42b-2739-c9742d9b028c/>.

readily ascertainable online.⁵² The file also, once again, does not indicate when the ads actually aired.

I. New Day for America

WCPO's file⁵³ for this ad again misidentified the issue covered as "New Day for America PAC" on its NAB form and left blank the section where it should have identified the affected candidates.⁵⁴ Its Rate Request form describes the ad as "Pro Kasich – brought back jobs to Ohio,"⁵⁵ but fails to list, as is required, the other candidate mentioned, Donald Trump.⁵⁶ Further, nowhere in the file does it mention the office sought by the candidates or the upcoming presidential primary. Again, by contrast, WLWT had no difficulty mentioning both John Kasich and Donald Trump, the office of the Presidency, and the primary.⁵⁷ Moreover, WCPO's file also failed to indicate when the ad actually aired.

⁵² See, e.g. Alec Goodwin, *Ohio Senate race attracts highest outside spending in Congress, big share of dark money*, OpenSecrets Blog (June 20, 2016), <http://www.opensecrets.org/news/2016/06/ohio-senate-race-attracts-highest-outside-spending-in-congress-big-share-of-dark-money/>.

⁵³ See WCPO-TV, 2016 New Day for America Non-Candidate Issue Ad file, Federal Communications Commission, <https://publicfiles.fcc.gov/tv-profile/wcpo-tv/political-files/2016/non-candidate-issue-ads/new-day-for-america/fedb8eb6-bd09-955e-6513-697f0e7d8540/>.

⁵⁴ See WCPO-TV, 2016 New Day for America NAB form, Federal Communications Commission, <https://publicfiles.fcc.gov/api/manager/download/5462212e-90a2-ddd5-899f-568885769e44/99971714-cb4f-0ca5-e0c9-5ddb286e7840.pdf>.

⁵⁵ See WCPO-TV, 2016 New Day for America Station Issue Advertising Request Sheet, Federal Communications Commission, <https://publicfiles.fcc.gov/api/manager/download/6d6216ea-6738-6d6d-ea5c-8253a98d2ddb/2aadd8be-7ef2-5b03-952e-0366d719e6d9.pdf>.

⁵⁶ The ad compares Donald Trump, who according to the ad has attacked John Kasich "with unhinged, boldface lies," with John Kasich, who has "cut state spending" and brought good jobs to Ohio. See *New Day for America*, 2016 Political Ad and Schedule, Internet Archive, https://archive.org/details/PolAd_DonaldTrump_JohnKasich_am2of.

⁵⁷ See, e.g., WLWT-TV, 2016 New Day for America NAB form, Federal Communications Commission, <https://publicfiles.fcc.gov/api/manager/download/280929f8-ec39-0059-fc40-c4c2a36676fd/ba125030-1e76-9f18-fcb3-843362186a60.pdf>.

J. One Nation

One Nation is a PAC that has committed to spend \$6 million to support Senator Rob Portman.⁵⁸ Its ad states that “Senator Rob Portman is fighting to stop the Obama administration’s Medicare changes,” which it says will “likely reduce access to care and increase overall costs.”⁵⁹ However, WCPO improperly lists the issue addressed in its ads as “One Nation” on its NAB form,⁶⁰ and fails to list the office sought or election at issue. The file also does not indicate when the ad actually aired.

K. Our Principles PAC

Our Principles PAC’s ad shows an edited interview of presidential candidate Donald Trump that highlights the use of foreign manufacturing for his brand’s clothing.⁶¹ In its file,⁶² WCPO left the NAB form completely blank except for the undated signature of one Candy Wilson, who is not otherwise identified. The file’s Rate Request form⁶³ correctly identifies “Trump Outsourcing jobs” as the issue discussed, but fails to provide Donald Trump’s full name, identify the office he is seeking, or the election in which he is a candidate. Once again, the file fails to indicate when the ads actually aired.

⁵⁸ See Eli Yokely, *One Nation Tops \$6 Million to Boost Portman*, Morning Consult (June 10, 2016), <https://morningconsult.com/alert/one-nation-spending-ohio/>.

⁵⁹ One Nation, *One Nation: “Dr. Bane” OH*, YouTube, <https://www.youtube.com/watch?v=syWJkTf6dSI>.

⁶⁰ See WCPO-TV, 2016 One Nation NAB form, Federal Communications Commission, <https://publicfiles.fcc.gov/api/manager/download/c21bce49-6bf5-d758-5def-562922a1afab/4a5fd74d-119a-4fd4-b6ea-23d08b0aa889.pdf>.

⁶¹ See Our Principles PAC, 2016 Political Ad and Schedule, Internet Archive, https://archive.org/details/PolAd_DonaldTrump_73vnd.

⁶² See WCPO-TV, 2016 Our Principles PAC Non-Candidate Issue Ad file, Federal Communications Commission, <https://publicfiles.fcc.gov/tv-profile/wcpo-tv/political-files/2016/non-candidate-issue-ads/our-principals-pac/cfe7dbcc-f9e8-0502-a11a-f54f84bf8aa2/>.

⁶³ See WCPO-TV, 2016 Our Principles PAC Station Issue Advertising Request Sheet, Federal Communications Commission, <https://publicfiles.fcc.gov/api/manager/download/a1789b5f-743b-f461-3bef-dc945392fde0/307cf0ba-8cee-202e-bddb-d4cba23e5424.pdf>.

L. Priorities USA Action

WCPO's public file listings for Priorities USA Action⁶⁴ come close to compliance with the Commission's requirements. This is a large SuperPAC supporting the candidacy of Hillary Clinton for President, but neither she nor any of her opponents are listed as being mentioned in the ads. Priorities USA Action has produced and published on its YouTube channel at least 50 ads that each refers to different presidential candidates,⁶⁵ and the public may find it difficult to discern to which ad the disclosures apply. Moreover, instead of listing the CEO or Board members, WCPO provides the names of the group's Treasurer, its "Chief Strategist" and its "Executive Strategist." It is unclear if any of these individuals are the CEO, or whether they are members of the Board of Directors.

M. Priorities USA African American

WCPO has posted a separate disclosure file under the heading "Priorities USA African American."⁶⁶ This appears to be the same organization as "Priorities USA." If so, the separate listing may mislead the public as to the number and size of purchases by this organization. The submission is otherwise nearly complete; unlike the Priorities USA forms, this file identifies Hillary Clinton as the candidate mentioned in the ads. However, the disclosure does not show the CEO or board members. Unlike the other Priorities USA file, this file does not list the Treasurer (which is not, in fact, required), and lists the same two names as in the other group,

⁶⁴ See WCPO-TV, 2016 Priorities USA PAC Non-Candidate Issue Ad file, Federal Communications Commission, <https://publicfiles.fcc.gov/tv-profile/wcpo-tv/political-files/2016/non-candidate-issue-ads/priorities-usa-action/25d6103e-3fe5-9216-0db1-d77eaf312452/>.

⁶⁵ See Priorities USA Action, Uploaded Videos, YouTube, <https://www.youtube.com/user/prioritiesUSAaction/videos>.

⁶⁶ See WCPO-TV, 2016 Priorities USA African American Non-Candidate Issue Ad file, Federal Communications Commission, <https://publicfiles.fcc.gov/tv-profile/wcpo-tv/political-files/2016/non-candidate-issue-ads/priorities-usa-african-american/8181a2a5-d0d5-2253-42c3-a7d87ab8d97d/>.

although Ann Caprara is shown as the “Executive Director” of the organization.⁶⁷ In the other listing, her title is shown as “Executive Strategist.”⁶⁸

N. Senate Leadership Fund

The Senate Leadership Fund is a SuperPAC that has in the past broadcast ads supporting Rob Portman and attacking Ted Strickland.⁶⁹ Even so, WCPO’s file for an ad by this group⁷⁰ fails to identify the Senate race as the issue addressed and does not name any candidates. According to the order forms in the file, these ads are scheduled to begin running on September 27, 2016. The Commission should take swift action to ensure that these files are updated correctly.

O. Senate Majority PAC

Of all the disclosures in WCPO’s public files for non-candidate ads, the material for the Senate Majority PAC⁷¹ appears to be nearly complete, assuming that the individual listed as President is also the CEO. However, WCPO’s disclosures for

⁶⁷ See, e.g. WCPO-TV, 2016 Priorities USA African American NAB form, Federal Communications Commission, <https://publicfiles.fcc.gov/api/manager/download/7bf4254d-a474-c8b9-b8d6-99bbac76b505/10daf4b9-8b23-419f-9cb6-79779ff45c02.pdf>.

⁶⁸ See, e.g. WCPO-TV, Priorities USA Action NAB form, Federal Communications Commission, <https://publicfiles.fcc.gov/api/manager/download/e5a7254e-5707-a437-eb07-ef5918e12945/3e919fcf-675f-8012-0b1a-6978911a6ff3.pdf>.

⁶⁹ See Rebecca Ballhaus, *Super PAC Reserves \$40 Million in Air Time to Bolster GOP Senate Races*, Wall Street Journal Washington Wire (June 28, 2016), <http://blogs.wsj.com/washwire/2016/06/28/super-pac-reserves-40-million-in-air-time-to-bolster-gop-senate-races/>.

⁷⁰ See WCPO-TV, 2016 Senate Leadership Fund Non-Candidate Issue Ad file, Federal Communications Commission, <https://publicfiles.fcc.gov/tv-profile/wcpo-tv/political-files/2016/non-candidate-issue-ads/senate-leadership-fund/bd582d2d-92fc-6039-2dcb-7a32f7a118ab/>.

⁷¹ See WCPO-TV, 2016 Senate Majority PAC Non-Candidate Issue Ad file, Federal Communications Commission, <https://publicfiles.fcc.gov/tv-profile/wcpo-tv/political-files/2016/non-candidate-issue-ads/senate-majority-pac/21f8a25a-4f9f-db52-ebf6-5a7551256d25/>.

Senate Majority PAC’s ads fail to identify the issue of international trade or social security.⁷²

P. “US Chamber 16 OH” and U.S. Chamber of Commerce

WCPO separately lists these two ad campaigns, both relating to the Senatorial race, under slightly different file names: “US Chamber 16 OH”⁷³ and “U.S. Chamber of Commerce.”⁷⁴ As in the case of Priorities USA,⁷⁵ this can mislead the public as to the amount of advertising purchased by this group. U.S. Chambers of Commerce has a YouTube channel with 5 ads that address candidate Ted Strickland’s support for Obamacare, his support of “Obama’s war on coal,” a sound bite of presidential candidate Hillary Clinton related to coal miners, Senator Rob Portman’s opposition to Obamacare, and the Senate race between Strickland and Portman.⁷⁶ The “US Chamber 16 OH” file lists Ted Strickland as the affected candidate, but fails to list Hillary Clinton, who also appears in the ad, and does not specify the issues of Obamacare and who should be elected to the Senate from Ohio. Further, in the U.S.

⁷² The ads presumably aired by WCPO in 2016 state that Senator Portman “vot[ed] for NAFTA and tax breaks for companies that ship jobs overseas” and “push[ed] to privatize social security.” See Senate Majority PAC, *Cicada*, YouTube, <https://www.youtube.com/watch?v=2I12tBlaRAE>; see also Senate Majority PAC, *The Insider*, YouTube, <https://www.youtube.com/watch?v=9c1jforcpcs>.

⁷³ See WCPO-TV, 2016 US Chamber 16 OH Non-Candidate Issue Ad file, Federal Communications Commission, <https://publicfiles.fcc.gov/tv-profile/wcpo-tv/political-files/2016/non-candidate-issue-ads/us-chamber-16-oh/cc5c519b-7e21-7b25-0975-30739a1900eb/>.

⁷⁴ See WCPO-TV, 2016 U.S. Chamber of Commerce Non-Candidate Issue Ad file, Federal Communications Commission, <https://publicfiles.fcc.gov/tv-profile/wcpo-tv/political-files/2016/non-candidate-issue-ads/us-chamber-of-commerce/64bd5e13-9f74-eba2-a3bf-0e77b0103362/>.

⁷⁵ See *supra* subsections L and M.

⁷⁶ See U.S. Chamber Action YouTube Playlist, Ohio, <https://www.youtube.com/watch?v=sJ6w9nHaj0k&list=PLbTTygH-c9nfcHy-BbJkubWfKn7YFv0fo>.

Chamber of Commerce file, one of the NAB forms lists both “OH Senate race” and “AZ Senate race” in separate locations of the file.⁷⁷

Conclusion

The Communications Act and FCC rules are intended to inform the public about the amount of spending and source of funding when broadcast stations air paid programming concerning candidates, elections, and political matters of public importance. The online public files serve as an important tool in allowing for this transparency and, as such, must be held to a high standard of accuracy and clarity to ensure their utility to the public.

By maintaining incorrect and incomplete information in its political file, WCPO-TV has failed to uphold its obligations under the Communications Act and FCC rules, and has undermined the transparency of the public file system. Thus, the Campaign Legal Center, Common Cause, Sunlight Foundation, and Benton Foundation respectfully request that the FCC take prompt action to ensure that accurate information is made available to the public through WCPO-TV’s public file. Complainants further request that the FCC take other measures, such as assessing forfeitures and issuing a Public Notice reminding broadcast stations of their obligations, in order to ensure that broadcasters include all of the legally required disclosures in the future, and especially during this presidential election season.

⁷⁷ See WCPO-TV, 2016 U.S. Chamber of Commerce NAB form, Federal Communications Commission, <https://publicfiles.fcc.gov/api/manager/download/fc809431-5d2f-cc57-28fa-870520c58818/f3490486-cff3-4e22-8f64-aa33e295573a.pdf>.

Respectfully submitted,

/s/

Thomas Koh
Georgetown Law Student

Drew Simshaw
Andrew Jay Schwartzman
Institute for Public Representation
Georgetown University Law Center
600 New Jersey Avenue NW
Suite 312
Washington, DC 20001
(202) 662-9535

*Counsel for Campaign Legal Center,
Common Cause, Sunlight Foundation,
and Benton Foundation*

September 26, 2016

cc by email: Kenneth C. Howard, Jr.
Jeff Brogan, Vice President and General Manager, WCPO-TV

Exhibit A

Description of Complainants

The Campaign Legal Center is a nonpartisan, nonprofit organization that promotes awareness and enforcement of political broadcasting laws. The Campaign Legal Center's mission is to represent the public interest in the enforcement of media and campaign laws. Through public education, advocacy for federal rulemaking proceedings, and congressional action, the Campaign Legal Center seeks to shape political broadcasting policies and promote effective enforcement of the public interest obligations of the media.

Common Cause is a nonpartisan, nonprofit advocacy organization. It was founded in 1970 as a vehicle for citizens to make their voices heard in the political process and to hold their elected leaders accountable to the public interest. Through lobbying, public education, grassroots campaigns, and press outreach at the national, state, and local level, Common Cause ensures that government is held accountable and serves the public interest.

The Sunlight Foundation is a nonpartisan nonprofit that advocates for open government globally and uses technology to make government more accountable to all. Sunlight accomplishes these goals at municipal, federal, and international levels by building tools that empower democratic participation and by working with policymakers and civil society organizations to employ a technology-centric and transparency-oriented approach to their work.

The Benton Foundation works to ensure that media and telecommunications serve the public interest and enhance our democracy. It pursues this mission by: 1) seeking policy solutions that support the values of access, diversity and equity; 2) demonstrating the value of media and telecommunications for improving the quality

of life for all; and 3) providing information resources to policymakers and advocates to inform communications policy debates.

Who's Behind That Political Ad?

The FCC's Online Political Files and Failures in
Sponsorship Identification Regulation



Meredith McGehee, Policy Director

Rachel E. Moran, *Consortium on Media Policy Studies Fellow*

September 2016

Contents

| | |
|---|-----------|
| Executive Summary | 2 |
| Background | 4 |
| History of FCC Regulation on Sponsorship Identification..... | 4 |
| Research Method | 5 |
| Correct Filing Practices for Issue Advertisements..... | 5 |
| Data..... | 5 |
| Findings - How Broadcasters Are Falling Short..... | 6 |
| Incomplete Filings | 6 |
| False Filings | 7 |
| Inconsistent Reporting of the Same Advertisements by Different Stations..... | 7 |
| Findings - How the Current Reporting System Falls Short | 8 |
| Barriers to Proper Fulfillment of Broadcasters’ Due Diligence | 8 |
| Timing Requirements on Uploads..... | 9 |
| Lack of Standardization in Filing..... | 9 |
| Why Sponsorship Identification Matters..... | 10 |
| Recommendations to the FCC | 11 |
| Low-Level Administrative Improvements..... | 11 |
| More Substantive Regulatory Changes..... | 12 |
| Overall Conclusions | 12 |
| About the Authors..... | 13 |
| Meredith McGehee, Campaign Legal Center Policy Director, and Rachel E. Moran, | 13 |
| Consortium on Media Policy Studies Fellow, Campaign Legal Center | |
| Appendices | 14 |
| Endnotes..... | 20 |

Executive summary

With November's elections looming, candidates and voters alike are becoming more and more concerned with the impact of "big money" in politics and the amplified influence it gives wealthy interests. Nowhere is this influence more visible than on television, where the airwaves are already flooded by ads. Overall, advertising is up 122 percent over cycle-to-date volume compared to this point in the 2012 contest, and an estimated \$408 million has been spent on television advertising in the presidential race so far.¹ A significant portion of this spending comes not from the candidates' campaigns but from super PACs made up of wealthy donors — the true identities of which may be hidden by misleading or generic group names.

The government agency charged with ensuring that the public knows who is behind political ads — the Federal Communications Commission (FCC) — is struggling to live up to its responsibilities. Statutes, dating from the dawn of broadcasting, which aim to ensure viewers know who is trying to influence their opinion, go unenforced.

FCC regulations require that broadcasters upload a variety of information about their operations and "service to its community of license" to an online database known as a **public file**. This file contains information about a station's most significant programming, its airing of issues of importance to its community, details of the station's ownership, and any complaints (both public and from the FCC) it has received. Part of this public file is a subcategory known as a station's **political file**. The political file contains all information about political advertising time sold or given away by the station. FCC regulations require that a broadcaster's political file contain the specifics of advertising time sold to candidates and issue advertisers, including airtimes, preceding programming and the final financial deals agreed for airtime.

In addition, political ads from non-candidates that pertain to political matter and controversial issues of public importance require further documentation, such as a list of the chief executive offices or executive members of the sponsoring entity. When providing such information, broadcasters must report whether the advertisement in question pertains to an issue of national importance, such as elections to any federal office or national legislative issues.²

In 2012, the FCC set out to bring greater sponsorship transparency to the general public by requiring broadcasters to put their political files, including details of their political advertising buys, in the online public database.³ In June 2016, the FCC extended reporting requirements to include radio, cable and satellite providers.⁴ By making such files available for public

By making files available for public inspection, individuals can find out the true source of funds for each political ad.

inspection, the public has greater access to vital information about those individuals and groups seeking to influence public opinion.

FCC regulations require broadcasters to list the executive board members, or highest-ranking officers, of the sponsoring group. If completed truthfully and fully, the online files should provide the public the information needed to accurately identify who is behind the ads.

But as the number of super PACs buying up television and radio airtime increases, the transparency of who is behind political ads is becoming increasingly murky. Furthermore, attempts by the FCC to combat this growing practice are half-hearted. As a result, broadcasters ignore existing regulations with impunity, consistently failing to follow existing FCC rules.

The Campaign Legal Center looked at whether the latest FCC’s action to illuminate sponsorship identification, the Online Public Inspection Files (OPIF), lives up to reasonable expectations of transparency, including whether the database is in fact a useful tool for public transparency.

By exploring a section of the OPIF, this paper looks at:

- Whether broadcasters are uploading all the necessary documents to fulfill FCC sponsorship identification requirements;
- Whether the OPIF in fact provides the tools needed for the viewers and listeners to access the statutorily required information about political advertising;
- How the FCC can improve the database to strengthen transparency.

Our analysis of the political files of television broadcasters in key electoral battleground states — Florida, Ohio, Wisconsin and Pennsylvania — reveals the extent to which broadcasters ignore longstanding statutory sponsorship identification and reporting requirements. Of the 1,220 filings examined, only 65 percent of forms from these battleground states uploaded to the FCC’s database contained complete sponsorship identification information. Moreover, a number of forms contain **inaccurate information**.

Of the 1,220 FCC filings examined, only 788 (65 percent) contained fully completed forms.

Our analysis found that a significant number of forms falsely claimed that their accompanying ads did not pertain to issues of “national importance,” despite referring directly to candidates for federal office or to policy issues. The analysis also uncovered significant inconsistencies in the ways in which different stations reported the same ads and in the way they uploaded political files to the FCC’s database. Such false and inconsistent filings weaken the online public file’s utility as a public tool.

The FCC should take a number of steps to standardize the files and should properly oversee broadcasters to ensure they are completing the filings accurately in order to achieve the statutorily required transparency. These include low-level administrative changes, such as eliminating the use of PDFs to make the online files more searchable and implementing a FCC-standardized database to ensure that broadcasters provide full and correct sponsorship identification information.

Changes also need to be implemented at a higher level through the redrafting of current “due diligence” definitions to clarify the responsibilities and actions that media providers under the FCC’s jurisdiction must take to comply with sponsorship identification requirements. Finally, the FCC must penalize those providers who consistently upload incomplete or inaccurate filings.

In order to quash the growing impact of moneyed groups, the commission must assert its regulatory powers and change regulations so that the burden of providing truthful sponsorship identification falls on both the broadcasters showing the ads and the groups making them.

Background

History of FCC regulation on sponsorship identification

Sponsorship identification, first required by the Radio Act of 1927, predates the FCC itself. Seven years later, Section 317 of the 1934 Communications Act required that broadcast licensees identify the person (or group) sponsoring any advertisement and disclose on-air that the ad is paid for “by such person” at the time the ad is broadcast.

In 1975, the FCC clarified its sponsorship identification requirements, ruling that broadcasters were “expected to look beyond the immediate source of payment where they have reason to know (or could have known through the exercise of reasonable diligence) that the purchaser of the advertisement is acting as an agent for another, and to identify the true sponsor.”⁵ However, in the decades since, confusion has arisen regarding what constitutes “due diligence” in naming sponsors — underscored by an unpublished 1979 FCC decision that suggested due diligence could be achieved by broadcasters merely by publishing the name of the organization that has claimed editorial control of the ad, regardless of the sources of its funds.

Apart from the confusion over “due diligence,” the FCC has moved toward making sponsorship identification more public. The creation of the online public file in 2012 forced broadcasters to upload all their political files online, thus providing the public with access to information about who is trying to persuade them. In 2016, the FCC extended filing requirements to include cable, satellite and radio

providers. While the effectiveness of the files themselves is questionable, the FCC’s decision demonstrates further attempts to increase transparency and strengthen sponsorship identification, particularly in the political context.

Research method

Correct filing practices for issues advertisements

When uploading political files, most broadcasters use an industry-standard form provided by the National Association of Broadcasters (NAB).⁶ (See figure 2.) However, a number of broadcasters use a personalized variation of the NAB form that fulfills the same requirements. This NAB form is uploaded alongside broadcasting details to the FCC’s online portal.⁷

Many of the NAB forms used by the examined stations included a printed explanation next to questions of “national importance” that explain the following:

“Programming that ‘communicates a political matter of national importance’ includes (1) references to legally qualified candidates (presidential, vice presidential or congressional); (2) any election to federal office (e.g., any references to ‘our next senator,’ ‘our person in Washington’ or ‘the President’); and (3) national legislative issues of public importance (e.g., Affordable Care Act, revising the IRS tax code, federal gun control or any federal legislation.)” (See figure 3.)

Data

In an effort to gauge the degree of compliance with disclosure rules, CLC examined political files uploaded to the FCC’s Online Public Inspection File (OPIF) found online at <http://www.publicfiles.fcc.gov>. CLC looked at files from all broadcasting stations (excluding cable and satellite) operating in four of the most hotly contested battlegrounds in the 2016 presidential elections — Florida, Ohio, Pennsylvania and Wisconsin — totaling 240 stations. Each station’s files were then analyzed,⁸ with a focus on filings for 2016 and on “Non-Candidate Issues Ads.” (See figure 1.) This category of advertisements was chosen because, as one observer put it, “this is where the mystery-meat groups end up, whether they are buying ads on behalf of federal, state or local candidates.”⁹

Files for each station were accessed on the FCC database between June 1 and June 30, 2016 and were examined for their compliance with FCC regulation regarding sponsorship identification. Those failing to comply were noted for their shortcomings and emergent themes of

The analysis looked at 240 TV stations in four battleground states: Florida, Ohio, Pennsylvania and Wisconsin.

similar misfiling were explored.

A total of 1,220 filings (folders from a particular broadcaster pertaining to a particular advertisement) were examined, of which only 788 (65 percent) contained fully completed NAB forms (or the equivalent). These numbers do not include the number of filings without complete advertising buy details or NAB forms filled out incorrectly or falsely.

Findings — How broadcasters are falling short

Incomplete filings

The most common problem was the uploading of incomplete political files. Notably, NAB forms often lacked vital information about the political content of the ad. Many ad buys were uploaded without an accompanying NAB (or equivalent) form. And many completed NAB forms lacked specifics on when the advertisement aired.

In March 2016, a significant number of broadcasters, including ABC affiliates WQOW in Wisconsin and WWSB in Florida aired advertisements from Our Principles PAC, which opposed Donald Trump without uploading complete NAB forms that explicitly stated that the airtime was for ads of “national importance” and specifically related to the presidential candidate and the primary race. (See figure 4.) Moreover, some uploaded NAB forms filed under Our Principles PAC were left entirely blank.

Individuals attempting to use the FCC online portal to find out more about the advertisements running on their local station would have none of the statutorily required information about the ad from the political filings alone and so would be unable to match the ad they saw with the correct files — far from the transparency that the commission hoped open public filings would enable.

Instead, finding out the identity of the ad’s sponsor, the inadequate filing requires additional online

Does the programming (in whole or in part) communicate "a message relating to any political matter of national importance?"
 Yes No

For programming that "communicates a message relating to any political matter of national importance," list the name of the legally qualified candidate(s) the programming refers to, the offices being sought, the date(s) of the election(s) and/or the issue to which the communication refers (if applicable):

I represent that the payment for the above described broadcast time has been furnished by (name and address):

Our Principles PAC
PO Box 32046
Arlington, VA 22213

and you are authorized to announce the time as paid for by such person or entity (hereinafter referred to as the "sponsor").

List the chief executive officers or members of the executive committee or the board of directors below (or attach separately):

President: Brian Baker
Treasurer: Jamie C. Jodoin

For programming that "communicates a message relating to any political matter of national importance," attach Agreed Upon Schedule (Page 5)

Copyright © 2013 by the National Association of Broadcasters. May not be copied, reproduced or further distributed
2

An incomplete NAB form for Our Principles PAC shows the “type of ad” content is left blank.

research and confirmation from either the broadcaster or the PAC itself — wholly negating the point of publicly filing information in the first instance.

The Our Principles PAC YouTube page (see figure 5) shows how all of its television advertisements relate to Donald Trump’s presidential bid — a fact broadcasters in many states failed to include on uploaded NAB forms. While such incomplete filings may be seen as a procedural error, an inability to complete even the most basic of accountability checks retains importance. Moreover, it would be an easy fix for the FCC to put in place a standardized format for filings and to fully enforce proper filing.

False filings

A second, more deliberate, error arose when broadcasting stations allowed filings to incorrectly label advertisements as pertaining to content “not of national concern.” This was highlighted by the inconsistent reporting of the same advertisements across different broadcasters or through a further investigation into the actual advertisement shown.

In June 2015, several stations in Wisconsin, including ABC affiliate WBAY-TV, CBS affiliate WFRV, and Fox affiliate WLUK broadcast spots from the U.S. Chamber of Commerce supporting Ron Johnson’s Senate bid. (See figure 6.) The accompanying political forms, however, checked that the programming content did not communicate a “message relating to any political matter of national importance.” (See figure 7.)

It is difficult to comprehend why the advertisers filling in the form — and the broadcaster who was responsible for performing due diligence — failed to label the ad correctly. The NAB form used by the Chamber for several broadcasters contains an explanation of what constitutes matters of “national importance” plainly outlining “any election to federal office (e.g., any references to ‘our next Senator’)” as one such matter.

By mislabeling the content of the advertisement, these online political files prevent the public from using the FCC’s online portal to find information about the political advertisements shown on their local stations. The true content of the advertisement was only found by confirming with the chamber of commerce themselves, confirmation that many super PACs and dark-money groups would not agree to and are not required to do.

Inconsistent reporting of the same advertisements by different stations

Instances of mistaken labeling of ads as “not of national importance” are highlighted by a comparison of

filings of the same advertisement by different broadcasting stations.

For example, advertisements run by the AARP on several stations in Ohio were reported differently by different broadcasters. ABC syndicate WCPO-TV in Cincinnati filed an NAB form claiming the advertisement did not pertain to issues of national importance. Political filings for the same ad by NBC affiliate WLWT, however, indicate that the ad referred to presidential candidates and their lack of coverage on Social Security issues. (See figure 8.) WLWT's NAB form shows clear signs of due diligence by the station as it sought out further members of the board of the AARP for reference in the political file. The inclusion of such detail, and clear evidence of a station's due diligence, was a rarity within the broadcasters researched.

This disparity in reporting is not a trivial matter as it either betrays a lack of understanding of the FCC's sponsorship identification requirements or a lack of care in meeting the requirements. The latter is worrying as it signals that broadcasters recognize the improbability of the FCC to uphold its own requirements.

Findings — How the current reporting system falls short

Barriers to proper fulfillment of broadcasters' due diligence

Of the 240 stations researched in the four states selected, only 10 stations¹⁰ showed clear evidence of inquiring into those entities sponsoring the political advertisements the stations were broadcasting. The political files of one such station, WLWT in Cincinnati, Ohio, sheds light on the difficulty stations face if they do try to properly identify sponsors.

NAB forms from the station highlight multiple times in which those completing the files were unable to find information about the chief executive officers or the board of directors of the groups sponsoring ads on their stations. For example PAC Fighting for Ohio refused to give further names of committee members when asked by the stations, as did the Constitutional Responsibility Project. (See figure 9.)

By asking for the information, despite getting rejected, broadcasters fulfill the requirements of the FCC that they “use reasonable diligence to obtain from its employees, and from other persons with whom it deals directly in connection with [the ad] the information” to enable the broadcaster to make an on-air disclosure. Accordingly, current regulation puts the burden of disclosure on the broadcaster, making it powerless in situations where the advertiser refuses to give further information. This regulation results in incomplete filings in which PACs can pick and choose who they disclose as their chief executive officers or board directors. This loophole can be used to distort the true sponsors of ads. Previous complaints

brought in front of the FCC by the Campaign Legal Center against Independence USA PAC and Michael Bloomberg, and Next Gen Climate Action Committee and Tom Steyer, highlight why full disclosure of key figures and funders is an important requirement in political advertising.¹¹

Timing requirements on uploads

The FCC requires that advertising requests and dispositions (“deals” agreed to by the broadcaster and the advertiser) be uploaded to the online political file immediately, unless in the case of extraordinary extenuating circumstances. The FCC does not require, however, that all “reconciliation” — final details of broadcasting times and content — be uploaded immediately, but that the station identify a person or persons “capable of informing an advertiser of the details of any reconciliation information” (FCC, “About Public Inspection Files,” 2016). As a result, advertisement time purchased far in advance, particularly that time bought ahead of national elections, has its initial purchasing information uploaded with vague sponsorship information. This is done under the understanding that once advertising content has been finalized, the records will be updated to reflect the ad’s messaging. (See figure 10.)

It remains to be seen whether broadcasters will ensure that early advertising buys are updated with full sponsorship identification information once the election cycle reaches its peak in November 2016. Given the lack of FCC oversight seen in the earlier reporting, it is doubtful that broadcasters will rectify missing reporting.

Given the lack of FCC oversight seen in earlier reporting, it is highly doubtful that broadcasters will seek to properly rectify earlier missing reporting.

Lack of standardization in filing

Data collection for this paper revealed one overwhelming issue with the FCC’s online portal that greatly undermines its accessibility to the general public — a lack of uniformity in filing. Left to the devices of the broadcasters, the composition of the online folders — beyond the structured “type” and “date” pathway — is both sporadic and unstructured. While some station profiles are easy to navigate, many show no signs of organization. Moreover, political files are often labeled unclearly with systems of no use to the public. In addition, a mass uploading of advertisements, and a lack of dates on NAB forms, makes it difficult to tell which advertisements a sponsorship disclosure refers to. In a single group’s folder, there may be ad buy information for multiple months spanning the year, yet there is often only one NAB form. It is therefore unclear whether it will be the same advertisement running across the year, or whether groups

are filing one disclosure form for multiple advertisements.

For individual researchers or groups aiming to use the OPIF for data-driven projects, the barriers are substantial. The FCC’s commitment to storing files in a PDF format, cemented by advances in the PDF conversion software included in the June 24 update, makes research prohibitively time-consuming. Furthermore, files cannot be downloaded en masse, so research must be completed file by file.

Such housekeeping issues could be easily resolved by the FCC through a better structuring of its platform, one that could be implemented with the newly improved website. Instead, small inconveniences in the current filing practices render the website fairly inaccessible to the public. There remains within the public filing system a gulf between it being public and being practically accessible. Until filing is easily navigable to the average television viewer (and now radio listener) looking for more information on who is trying to persuade them, then the filing system’s use is futile. Additionally, given the stretched capacity of the FCC, an easily accessible portal for researchers would provide an additional resource to the commission in its pursuit of those attempting to circumvent sponsorship identification laws.

Why sponsorship identification matters

Research into sponsorship disclosure for broader advertising reveals that sponsorship identification can “activate dimensions of persuasion knowledge” that will alter how viewers perceive a message.¹² One study outlined five steps of persuasion knowledge that cultivate the reception of the message being broadcast, these being: (1) distinguishing commercials from programs, (2) understanding advertising intent, (3) recognizing bias and deception in advertising (skepticism), (4) using cognitive defenses against advertising, and (5) comprehending advertising tactics and appeals.¹³ These cognitive processes underscore the importance of full and clear political advertising disclaimers, since without such information, viewers are unable to recognize the type of bias inherent in the advertisement. Without recognizing the specifics of the bias included in advertising, viewers cannot use their “cognitive defenses” against its messages and will therefore be overly receptive to its content. In another study, authors argue that this constitutes a violation of the customers’ (viewers’) right to know when they are being subjected to biased persuasive content.¹⁴

The concept of “priming” is also central to understanding the impact that sponsorship identification messages have on content interpretation. A 1987 study defines priming as “changes in the standards that people use to make political evaluations.”¹⁵ In this case, the existence of sponsorship disclosure functions as a “primer” for

Research has proven that sponsorship identification shapes the considerations that people take into account when making judgments about political candidates or issues.

understanding the message of the advertisement.¹⁶ Sponsorship identification messages, therefore, are a factor that shapes the “considerations that people take into account when making judgments about political candidates or issues.”¹⁷ Moreover, research has proven that the existence of such priming increases the likelihood of counter-arguing¹⁸ and more often results in less opinion change¹⁹ — substantial reasons why sponsors resist continuing attempts to clarify sponsorship identification.

Furthermore, the impact of sponsorship identification on considerations of content matter is shaped by individual attitudinal factors. Researchers found that attitude importance was a key moderator on the effect of forewarning on participants’ ultimate attitude toward the advertising content.²⁰

In a political context, attitudinal factors are shaped by a variety of individualized influences, including:

- issue salience — how personally important the viewer deems the issue in question
- partisanship — whether the political leaning of the advertisement aligns with their political preference (a variation of Tajfel’s (1979) social identity theory)²¹
- source identification

The latter factor highlights the importance of truthful sponsorship identification. How can individuals assess the veracity of the source, or their alignment with the source, if they do not know the true identity of the sponsor?

Recommendations to the FCC

Low-level administrative improvements

A large proportion of the misfiling and inefficiencies can be easily remedied. Overwhelmingly, the largest impact the FCC could have in making these files truly accessible to the public is by standardizing the filing. Not only would this create a portal that is accessible to the public, but it would also ensure that missing and falsified filings could be easily traced — providing an enhanced deterrent against PACs and media outlets wishing to hide the true identity of sponsors. Strict labeling of dates would transform the portal into an easily navigable system and ensure that broadcasters upload sponsorship identification information alongside the ad buy details their sponsorship pertains to.

The FCC should move to implement an FCC-standardized database for the political file information rather than relying on PDFs of the NAB form. The current NAB form does, when properly filled, provide the reader with decently sufficient sponsorship information. However, as the data highlight, incomplete forms are uploaded with regularity, and not every broadcaster uses the NAB form. An FCC-approved database

with a standardized form would leave little room for incomplete filings and could force broadcasters to provide the required details about the content of the ad in a fashion recognizable to the public. A standardized form could also preempt issues associated with early disclosure by including full information of those who will later update the form when the advertising content is finalized.

More substantive regulatory changes

The disregard with which many broadcasters have flaunted sponsorship identification requirements highlights a more substantial issue facing the FCC. Broadcasters do not believe they will face sanctions for failing to provide full sponsorship information in the public file. Given the difficulty of navigating the quantity of files uploaded, and the new burden of files from radio, satellite and cable providers, it is unsurprising that the FCC has shown little interest in exercising oversight over the OPIF. Oversight could be dramatically improved by the administrative improvements highlighted above.

Until the FCC actively pursues cases in which broadcasters fail to provide complete sponsorship information, and until the FCC acts on complaints filed, the agency will continue to be seen for what it is: a captive agency failing to fulfill its statutory responsibilities. It is imperative for the FCC to enact substantial changes to reporting, including an extension of broadcasters' "due diligence" to include the funders of sponsoring groups. Common sense suggests that the true identity of a sponsor is best revealed by looking at who controls the purse strings of the advertiser. Yet, current practices, such as allowing stations to merely ask for the board of directors, allow broadcasters' to put profits before public service.

Until the FCC actively pursues cases in which broadcasters fail to provide substantial sponsorship information, the FCC will continue to be seen as toothless.

Moreover, while the impetus for full and correct filing falls solely on the broadcaster, sponsoring groups — particularly the rapidly expanding number of PACs and dark-money groups — will be afforded the opportunity to hide aspects of their true identity.

Overall conclusions

The inefficiencies of the OPIF render research into sponsorship identification prohibitively time-consuming. As a result, its use as a tool for public use is highly questionable. The FCC can take a number of immediate actions to increase OPIF's viability as a tool for public use. These actions in the short term should include steps toward standardizing uploading practice. In the long run, however, the commission should assert its authority to ensure that political files are correctly maintained and should alter current

regulations to bolster the importance of compliance in the eyes of broadcasters and ad sponsors. Without such measures, the online file will remain of little use to the public and to the FCC itself.

About the authors

Meredith McGehee

Policy Director, Campaign Legal Center

Meredith McGehee directs the legislative and media policy efforts of the Campaign Legal Center. She has worked on democracy issues for more than 30 years and has been named nine times as one of the top nonprofit advocates in Washington, D.C., by The Hill newspaper. She has been described as “one of the most in-the-know persons about lobbying, money in politics, media policy and the D.C. scene.” McGehee is one of the nation’s foremost experts on ethics in politics and government.

Rachel E. Moran

Consortium on Media Policy Studies Fellow, Campaign Legal Center

Rachel E. Moran is a Consortium on Media Policy Studies Fellow (COMPASS) at the Campaign Legal Center. She is currently a doctoral student at the Annenberg School for Communication and Journalism at the University of Southern California. She also holds degrees in politics, sociology and political communications from the University of Cambridge and Goldsmiths College, University of London. Moran’s research focuses on political communications, particularly the links between communications platforms and socio-political engagement and the rise of professionalization and marketization in politics. Her current research looks into the role of money in politics and the use of political advertising.

Appendices

Figure One — The OPIF Interface July 2016 (after a switchover to a new format on June 28th 2016)

TV STATION PROFILE 
WLWT CINCINNATI, OH
Virtual Channel **5** | RF Channel **35** | Facility ID **46979**

- 
- 
- 
- 
- 
- 
- 
- 
- 
- 

Political Files

Some of the files found in these folders may contain terms, abbreviations or other language that require explanation for a full understanding of the documents. If so, these explanations should be found in the *Terms and Disclosures* folder.

Browse → [Political Files](#) → [2016](#) →

| Name | Size | Date Uploaded |
|---|------|---------------|
|  Federal | 107 | -- |
|  Local | 10 | -- |
|  Non-Candidate Issue Ads | 92 | -- |
|  State | 1 | -- |
|  Terms and Disclosures | 1 | -- |

Showing 1 to 5 of 5 entries

Figure Two — An example NAB form which, when properly completed, fulfills FCC requirements for sponsorship identification

NAB Form PB-17 Issues

AGREEMENT FORM FOR NON-CANDIDATE/ISSUE ADVERTISEMENTS

Station and Location: _____ **Date:** _____

I, _____
do hereby request station time concerning the following issue:

| Broadcast Length | Time of Day, Rotation or Package | Days | Class | Times per Week | Number of Weeks |
|------------------|----------------------------------|------|-------|----------------|-----------------|
| | | | | | |

Total Charges: _____

This broadcast time will be used by: _____

Does the programming (in whole or in part) communicate "a message relating to any political matter of national importance?"

Yes No

Copyright © 2011 by the National Association of Broadcasters. May Not Be Copied, Reproduced, or Further Distributed.

NAB Form PB-17 Issues

For programming that "communicates a message relating to any political matter of national importance," list the name of the legally qualified candidate(s) the programming refers to, the office(s) being sought and the date(s) of the election(s) (if applicable):

For programming that "communicates a message relating to any political matter of national importance," attach Agreed Upon Schedule (Page 3)

I represent that the payment for the above described broadcast time has been furnished by:

and you are authorized to announce the time as paid for by such person or entity. The entity furnishing the payment, if other than an individual person, is:

a corporation; a committee; an association; or other unincorporated group.

The names, offices, and addresses of the chief executive officers, directors, and/or authorized agents of the entity are named below (may be attached separately):

THIS STATION DOES NOT DISCRIMINATE OR PERMIT DISCRIMINATION ON THE BASIS OF RACE OR ETHNICITY IN THE PLACEMENT OF ADVERTISING.

I agree to indemnify and hold harmless the station for any damages or liability, including reasonable attorney's fees, that may ensue from the broadcast of the above-requested advertisement(s). For the above-stated broadcast(s), I also agree to prepare a script, transcript, or tape, which will be delivered to the station at least _____ before the time of the scheduled broadcasts.

TO BE SIGNED BY ISSUE ADVERTISER

Date Signature Contact Phone Number

TO BE SIGNED BY STATION REPRESENTATIVE

Accepted Accepted in Part Rejected

Signature Printed Name Title

Copyright © 2011 by the National Association of Broadcasters. May Not Be Copied, Reproduced, or Further Distributed. 2

Figure Three — Explanation of "national importance" from NAB forms

Programming that "communicates a political matter of national importance" includes (1) references to legally qualified candidates (presidential, vice presidential or congressional); (2) any election to Federal office (e.g., any references to "our next senator", "our person in Washington" or "the President"); and (3) a national legislative issue of public importance (e.g., Affordable Care Act, revising the IRS tax code, federal gun control or any federal legislation).

Figure Four – Incomplete NAB form uploaded to WWSB’s political file for Our Principles PAC

Does the programming (in whole or in part) communicate "a message relating to any political matter of national importance?"
 Yes No

For programming that "communicates a message relating to any political matter of national importance," list the name of the legally qualified candidate(s) the programming refers to, the offices being sought, the date(s) of the election(s) and/or the issue to which the communication refers (if applicable):

I represent that the payment for the above described broadcast time has been furnished by (name and address):
 Our Principles PAC
 PO Box 15045
 Alexandria, VA 22313

and you are authorized to announce the time as paid for by such person or entity (hereinafter referred to as the "sponsor").

List the chief executive officers or members of the executive committee or the board of directors below (or attach separately):
 President: Brian Baker
 Treasurer: Jamie C. Jodoin

For programming that "communicates a message relating to any political matter of national importance," attach Agreed Upon Schedule (Page 5)

Copyright © 2013 by the National Association of Broadcasters. May not be copied, reproduced or further distributed
 2

Figure Five – The Our Principles YouTube page

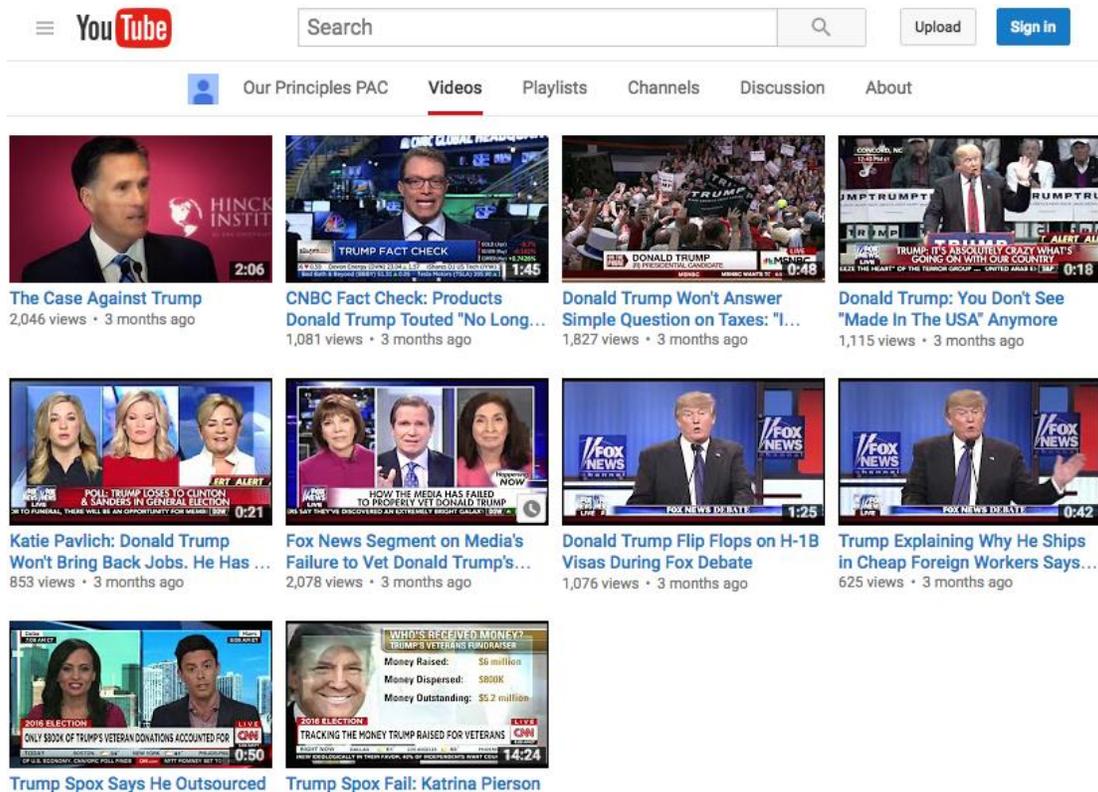


Figure Six – U.S. Chamber of Commerce ad supporting Ron Johnson that played in Wisconsin



Figure Seven – NAB form uploaded to WFRV’s political file for the U.S. Chamber of Commerce

NAB Form PB-18 Issues

**THIS PAGE MUST BE COMPLETED FOR PROGRAMMING THAT
“COMMUNICATES A POLITICAL MATTER OF NATIONAL IMPORTANCE.”
FOR ALL OTHER ISSUE ADS, PLEASE GO TO PAGE 3.**

Programming that “communicates a political matter of national importance” includes (1) references to legally qualified candidates (presidential, vice presidential or congressional); (2) any election to Federal office (e.g., any references to “our next senator”, “our person in Washington” or “the President”); and (3) a national legislative issue of public importance (e.g., Affordable Care Act, revising the IRS tax code, federal gun control or any federal legislation).

Does the programming (in whole or in part) communicate “a message relating to any political matter of national importance?”

Yes No

Figure Eight — WLWT's (left) and WCPO's (right) political filing for the same AARP advertisement shown in Ohio, June 2015

NAB Form PB-18 Issues

THIS PAGE MUST BE COMPLETED FOR PROGRAMMING THAT "COMMUNICATES A POLITICAL MATTER OF NATIONAL IMPORTANCE." FOR ALL OTHER ISSUE ADS, PLEASE GO TO PAGE 3.

Programming that "communicates a political matter of national importance" includes (1) references to legally qualified candidates (presidential, vice presidential or congressional); (2) any election to Federal office (e.g., any references to "our next senator", "our person in Washington" or "the President"); and (3) a national legislative issue of public importance (e.g., Affordable Care Act, revising the IRS tax code, federal gun control or any federal legislation).

Does the programming (in whole or in part) communicate "a message relating to any political matter of national importance?"

Yes No

For programming that "communicates a message relating to any political matter of national importance," list the name of the legally qualified candidate(s) the programming refers to, the offices being sought, the date(s) of the election(s) and/or the issue to which the communication refers (if applicable):

THE SPOT TALKS ABOUT HOW PRESIDENTIAL CANDIDATE AARP IS WORKING SOCIAL SECURITY, IT DRIVES VIEWERS TO 2016 TAKEASTAND.ORG

I represent that the payment for the above described broadcast time has been furnished by (name and address):

AARP - 601 E ST NW WASHINGTON DC 20049

and you are authorized to announce the time as paid for by such person or entity (hereinafter referred to as the "sponsor").

List the chief executive officers or members of the executive committee or the board of directors below (or attach separately):

DAVID RISSENBERG - DIRECTOR & DIRECT ADVERTISING
JUDY SAKO - DIRECTOR STATE OUTREACH
CAROL RAPHAEL - BOARD CHAIR

For programming that "communicates a message relating to any political matter of national importance," attach Agreed Upon Schedule (Page 5)

Copyright © 2013 by the National Association of Broadcasters. May not be copied, reproduced or further distributed.

THIS PAGE MUST BE COMPLETED FOR PROGRAMMING THAT "COMMUNICATES A POLITICAL MATTER OF NATIONAL IMPORTANCE." FOR ALL OTHER ISSUE ADS, PLEASE GO TO PAGE 3.

Programming that "communicates a political matter of national importance" includes (1) references to legally qualified candidates (presidential, vice presidential or congressional); (2) any election to Federal office (e.g., any references to "our next senator", "our person in Washington" or "the President"); and (3) a national legislative issue of public importance (e.g., Affordable Care Act, revising the IRS tax code, federal gun control or any federal legislation).

Does the programming (in whole or in part) communicate "a message relating to any political matter of national importance?"

Yes No

For programming that "communicates a message relating to any political matter of national importance," list the name of the legally qualified candidate(s) the programming refers to, the offices being sought, the date(s) of the election(s) and/or the issue to which the communication refers (if applicable):

I represent that the payment for the above described broadcast time has been furnished by (name and address):

and you are authorized to announce the time as paid for by such person or entity (hereinafter referred to as the "sponsor").

List the chief executive officers or members of the executive committee or the board of directors below (or attach separately):

For programming that "communicates a message relating to any political matter of national importance," attach Agreed Upon Schedule (Page 5)

Copyright © 2013 by the National Association of Broadcasters. May not be copied, reproduced or further distributed.

Figure Nine — NAB forms for Fighting for Ohio (top) and the Constitutional Responsibility Project (bottom)

List the chief executive officers or members of the executive committee or the board of directors below (or attach separately):

Chris Marston (Treasurer) WE ASKED THE AGENCY FOR MORE COMMITTEE NAMES, THEY REFUSED, WE GOOGLED THE PAC AND COULDN'T FIND ANY OTHER NAMES.

List the chief executive officers or members of the executive committee or the board of directors below (or attach separately):

Kyle Herrig, Board of Directors
ANITA JUVIN - BOARD MEMBER
ASKED THE AGENCY FOR MORE NAMES - THEY REFUSED AND WHEN WE GOOGLED THE PAC WE COULDN'T FIND ONE MORE NAME.

Figure Ten – The Democratic Senatorial Campaign Committee (DSCC) has purchased numerous advertising slots in Ohio for fall 2016 with the accompanying NAB form. The form shown is tied to over \$175,000 worth of advertising slots on the WHIO channel.

**THIS PAGE MUST BE COMPLETED FOR PROGRAMMING THAT
"COMMUNICATES A POLITICAL MATTER OF NATIONAL IMPORTANCE."
FOR ALL OTHER ISSUE ADS, PLEASE GO TO PAGE 3.**

Programming that "communicates a political matter of national importance" includes (1) references to legally qualified candidates (presidential, vice presidential or congressional); (2) any election to Federal office (e.g., any references to "our next senator", "our person in Washington" or "the President"); and (3) a national legislative issue of public importance (e.g., Affordable Care Act, revising the IRS tax code, federal gun control or any federal legislation).

Does the programming (in whole or in part) communicate "a message relating to any political matter of national importance?"

Yes No

For programming that "communicates a message relating to any political matter of national importance," list the name of the legally qualified candidate(s) the programming refers to, the offices being sought, the date(s) of the election(s) and/or the issue to which the communication refers (if applicable):

I represent that the payment for the above described broadcast time has been furnished by (name and address):

DSCC

and you are authorized to announce the time as paid for by such person or entity (hereinafter referred to as the "sponsor").

List the chief executive officers or members of the executive committee or the board of directors below (or attach separately):

Mindy Myers
120 Maryland Ave NE
Washington, DC 20003

For programming that "communicates a message relating to any political matter of national importance," attach Agreed Upon Schedule (Page 5)

Endnotes

- ¹ WESLEYAN MEDIA PROJECT, ADVERTISING VOLUME UP 122% OVER 2012 LEVELS; SPENDING IN PRESIDENTIAL RACE OVER \$400 MILLION (2016), *available at* <http://mediaproject.wesleyan.edu/releases/ad-spending-over-400-million/>.
- ² FED. COMM'NS COMM'N, *About Public Inspection Files*, <https://publicfiles.fcc.gov/about-station-profiles>.
- ³ 47 C.F.R. §§ 73.3526–73.3527 (2012).
- ⁴ Press Release, Fed. Comm'ns Comm'n, FCC Expands Online Public File Requirement to Move Cable, Radio and Satellite Public Files Online (Jan. 28, 2016), *available at* https://apps.fcc.gov/edocs_public/attachmatch/DOC-337474A1.pdf.
- ⁵ U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-13-237, BROADCAST AND CABLE TELEVISION: REQUIREMENTS FOR IDENTIFYING SPONSORED PROGRAMMING SHOULD BE CLARIFIED 5 (2013).
- ⁶ NAT'L ASS'N OF BROADCASTERS (NAB), POLITICAL BROADCAST AGREEMENT FORMS, PB-18 (2013), *available at* http://flradiogroup.com/Stations-Media/NAB%20PB_17_Forms.pdf.
- ⁷ One industry expert estimates that U.S. broadcast licensees use as many as 80 different forms to report the required information to the FCC.
- ⁸ Political files were accessed on the FCC online file between June 1 and June 30, 2016.
- ⁹ Kathy Kiely, *Dark Money: How You Can See More of It, Thanks to the FCC*, MOYERS & CO., June 27, 2016, <http://billmoyers.com/story/dark-money-can-see-thanks-fcc/>.
- ¹⁰ WLWT (Ohio), WLIO (Ohio), WMFG (Ohio), WESH (Florida), WKCF (Florida), WTSP (Florida), WMOR-TV (Florida), WTA-TV (Pennsylvania), WISN (Wisconsin), and WPBF (Florida).
- ¹¹ Unlike a candidate ad, the stations could have refused to air the ad. Notably, they did not—an example of how the station's desire for ad revenue from outside groups that are not subject to lowest unit rate requirements is the deciding factor in accepting ads.
- ¹² Sophie C. Boerman, E.A. van Reijmersdal & Peter C. Neijens, *Effects of Sponsorship Disclosure on the Processing of Sponsored Content: A Study on the Effectiveness of European Disclosure Regulations*, 31(3) PSYCHOL. & MKTG. 214 (2014).
- ¹³ *Id.* at 215.
- ¹⁴ Israel D. Nebenzahl & Eugene D. Jaffe, *Ethical Dimensions of Advertising Executions*, 17 J. BUS. ETHICS 805 (1998).
- ¹⁵ SHANTO IYENGAR & DONALD R. KINDER, NEWS THAT MATTERS 63 (1987).

-
- ¹⁶ Michelle Bennett, Anthony Pecotich & Sanjay Putrevu, *The Influence of Warnings on Product Placements*, in 4 EUROPEAN ADVANCES IN CONSUMER RESEARCH 193–200 (Bernard Dubois et al. eds. 1999).
- ¹⁷ Dietram A. Scheufele, & David Tewksbury, *Framing, Agenda Setting, and Priming: The Evolution of Three Media Effects Models*, 57 J. COMM. 9 (2007).
- ¹⁸ Loes Janssen, Bob M. Fennis & Ad Th.H. Pruyn, *Forewarned is Forearmed: Conserving Self-control Strength to Resist Influence*, 46 J. EXPERIMENTAL SOC. PSYCHOL. 911 (2010).
- ¹⁹ Richard E. Petty & John T. Cacioppo, *Forewarning, Cognitive Responding, and Resistance to Persuasion*, 35 J. PERSONALITY & SOC. PSYCHOL. 645 (1977).
- ²⁰ Julia Z. Jacks & Patricia G. Devine, *Attitude Importance, Forewarning of Message Content, and Resistance to Persuasion*, 22 BASIC & APPLIED SOC. PSYCHOL. 19 (2000).
- ²¹ Henri Tajfel & John C. Turner, *An Integrative Theory of Intergroup Conflict*, in WILLIAM G. AUSTIN & STEPHEN WORCHEL, THE SOCIAL PSYCHOLOGY OF INTERGROUP RELATIONS 33–47 (1979).