

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.