

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

Complaint of)
)
Campaign Legal Center, Common Cause, and)
Sunlight Foundation)
)
Against)
)
Sander Media, LLC, licensee of KGW,)
Portland, OR.)
)
For Violations of the Communications Act)
§317 and FCC Rule 47 CFR §73.1212)

To: Media Bureau

COMPLAINT

The Campaign Legal Center, Common Cause, and Sunlight Foundation¹ file this complaint regarding violations of the Communications Act and the Federal Communications Commission’s (“FCC’s”) regulations by KGW. KGW is an NBC-affiliated broadcast television station in Portland, OR, and is owned by Sander Media, LLC. Sander Media is a media company owned by Jack Sander, who used to be a broadcasting executive with Belo Corporation.² In 2013, Gannett Co., Inc. purchased Belo Corporation’s broadcast stations. In Portland, OR, where Gannett owned a newspaper and Belo owned a television station, Gannett agreed to relinquish the Belo license to Sander Media in exchange for entering into a variety of sharing agreements with Gannett.³ As disclosed in the Gannett-Belo application for assignment and transfer of licenses, Sander Media is responsible for “ensuring records and information

¹ Descriptions of these organizations can be found in Exhibit A.

² *Applications for Consent to Transfer of Control from Shareholders of Belo Corp. to Gannett Co., Inc.*, 28 FCC Rcd 16867, at ¶14 (MB 2013), *app. for rev. pending*.

³ *Id.* The companies struck these agreements to avoid violation of the FCC’s rules regarding common ownership of newspapers and televisions stations in the same local market.

required by the FCC rules are placed in the public inspection files of the station pertaining to the sale of political programming and advertisements, and to the sale of sponsored programming addressing political issues or controversial issues of public importance, in accordance with Section 73.1212 of the FCC rules.”⁴ In fact, this is one of Sander Media’s few responsibilities under the various sharing agreements between it and Gannett.

In May 2014, KGW aired a political advertisement paid for by the American Principles Fund Super PAC. The station did not, however, “fully and fairly disclose the true identity” of the ad’s sponsor on-air, nor did it exercise reasonable diligence to obtain that information as required by Section 317 of the Communications Act and Section 73.1212 of the FCC’s regulations.

I. On-air disclosure requirements.

Section 317 of the Communications Act requires broadcast licensees to determine the identity of the “person” sponsoring any advertisement for which money is directly or indirectly paid.⁵ The identification must be disclosed at the time the ad is broadcast and should announce that the ad is paid for “by such person.”⁶ The law requires broadcasters to use “reasonable diligence to obtain from its employees, and from *other persons* with whom it deals directly in connection with [the ad], information to enable” the broadcaster to make the on-air disclosure.⁷ The statute requires broadcasters, at a minimum, to determine the identity of the sponsor by asking its employees or employees of the advertising agency.

The FCC has implemented Section 317 with rules specifying that broadcasters must disclose when an ad is directly or indirectly paid for and “by whom . . . such consideration was

⁴ *Amended and Restated Exhibit D-2 Shared Services Agreement*, Form 314 Application, File No. BALCDT-20130619AFN (Dec. 20, 2013).

⁵ 47 USC §317(a)(1) (2014).

⁶ *Id.*

⁷ 47 USC §317(c) (emphasis added).

supplied.”⁸ Under the FCC rules, broadcasters “shall exercise reasonable diligence” to “*fully and fairly disclose the true identity* of the person or persons, or corporation, committee, association or other unincorporated group, or other entity” paying for the ad.⁹

The FCC has been particularly concerned with identification of political ad sponsors¹⁰ and has a long history of directing stations to pierce the veil of a nominal sponsor. As early as the 1940s, the FCC received numerous complaints that “some [radio] stations [were] broadcasting spot announcements [o]n behalf of various political candidates without disclosing the persons or organizations behind them.”¹¹ The FCC responded by emphasizing that Section 317 applies to such political advertisements and that the statute requires a “full and fair disclosure of the identity of the person furnishing consideration for the broadcast.”¹² In 1958, the FCC told a broadcaster that “[o]f particular significance is the requirement of *accurate and complete* identification of the person or group paying for or furnishing [the] material in connection with the discussion of political matters.”¹³ Further, the duty to investigate the true source of the funding requires the “highest degree of diligence” for political matter.¹⁴ To comply with the FCC’s rules, broadcasters must investigate the source of funds to disclose accurate and complete identification of the sponsor.

⁸ 47 CFR § 73.1212(a) (2014).

⁹ *Id.* §73.1212(e) (emphasis added).

¹⁰ A broadcaster that runs political material or material that involves “the discussion of a controversial issue of public importance” has special obligations to place identifying information (list of chief executives or board of directors) in its public file. 47 CFR §73.1212(e); *Announcement of Sponsored Programs*, 9 Fed. Reg. 14734 (Dec. 12, 1944).

¹¹ *Identification of Sponsors*, 9 Fed. Reg. 12817 (Oct. 25, 1944)

¹² *Id.*

¹³ *Violation of Section 317 of the Commc’ns Act, KTSP, Inc.*, 40 FCC 12, 14 (1958) (emphasis added).

¹⁴ *Id.* At the very least, in 1946, the FCC said stations should “take all reasonable measures” to identify sponsors, specifying that “a licensee should make an investigation of the source of the funds to be used for payment.” *Albuquerque Broadcasting Co.*, 40 FCC 1 (1946).

The purpose of requiring public disclosure of the identity of political message sponsors is that “listeners are entitled to know by whom they are being persuaded.”¹⁵ Listeners should also be “clearly informed that [they are] hearing and viewing matter which has been paid for” and should be informed of the identity of the sponsor.¹⁶ Efforts to obscure the true funding of political messages have recently proliferated as individuals increasingly turn to political action committees with opaque or misleading names to hide funders’ identities.¹⁷

Disclosure also promotes transparency and accountability in political advertising. Indeed, the Supreme Court recently embraced disclosure as “justified based on a governmental interest in provid[ing] the electorate with information about the sources of election-related spending.”¹⁸ Moreover, the Court has said that in light of “modern technology,” disclosure is “a particularly effective means of arming the voting public with information.”¹⁹ It is the purpose of the on-air disclosure to inform the public of the person paying for the advertisement. The statute and the rules place the burden of investigation on the licensee.

II. American Principles Fund and its Oregon ad.

The American Principles Fund (“APF”) is a Super PAC founded by Sean Fieler, a New York-based hedge fund manager.²⁰ APF lists two other individuals on its “Leadership Team,”²¹

¹⁵ *Applicability of Sponsorship Identification Rules*, 40 FCC 141, 141 (1963).

¹⁶ *Advertising Council*, 17 FCC Rcd 22616, 22620-21 (2002).

¹⁷ Alison Fitzgerald & Jonathan Salant, *Hiding the Identities of Mega-Donors*, Business Week (Oct. 18, 2012) <http://www.businessweek.com/articles/2012-10-18/hiding-the-identities-of-mega-donors>. For instance, “Americans for Progressive Action” was a conservative PAC, despite the use of the word “progressive” in its name. Summary of Americans for Progressive Action, Open Secrets <http://www.opensecrets.org/pacs/lookup2.php?cycle=2014&strID=C00545590> (last visited July 15, 2014).

¹⁸ *McCutcheon v. FEC*, 134 S. Ct. 1434, 1460 (2014) (quoting *Citizens United v. FEC*, 558 U.S. 310, 367 (2010), and *Buckley v. Valeo*, 424 U.S. 1, 66 (1976)) (internal quotation marks removed).

¹⁹ *Id.*

²⁰ Jeff Mapes, *Another Super PAC Enters Oregon GOP Senate Race, This Time Backing Jason*

but they are political operatives and mere employees, not donors to the group.²² APF's stated mission is to advance an integrated conservatism platform, combining conservative social values with an economic message it believes addresses voters' most urgent concerns.²³ APF was active in, among other races, the 2014 Oregon Senator race.²⁴

Between May 5 and May 19, 2014, APF paid for multiple airings of a political advertisement on KGW called "Repeal."²⁵ The ad attacked Monica Wehby and supported Jason Conger, a Republican running for the United States Senate in Oregon.²⁶ According to Federal Election Commission ("FEC") disclosures, APF spent \$295,000 on this ad campaign.²⁷

"Repeal" suggests Monica Wehby is not conservative enough for Republicans, attacking her stances on abortion and Obamacare. It also praises Jason Conger for being "conservative and pro-life," and for his vow to repeal Obamacare. The full transcript of the ad follows:

For Senate, you have a choice between two candidates with two very different views on Obamacare. Pro-abortion Monica Wehby

Conger, Oregonian (May 6, 2014), http://www.oregonlive.com/mapes/index.ssf/2014/05/another_super-pac_enters_orego.html.

²¹ About, American Principles Fund, <http://www.americanprinciplesfund.com/about/> (last visited July 15, 2014).

²² All three are listed on the NAB form. American Principles Fund (2014), *NAB Form*, [https://stations.fcc.gov/collect/files/34874/Political%20File/2014/Non-Candidate%20Issue%20Ads/American%20Principles%20Fund/American%20Principles%20Fund%20NAB%20Form%205-7-14%20\(13995088248492\).pdf](https://stations.fcc.gov/collect/files/34874/Political%20File/2014/Non-Candidate%20Issue%20Ads/American%20Principles%20Fund/American%20Principles%20Fund%20NAB%20Form%205-7-14%20(13995088248492).pdf).

²³ About, American Principles Fund, <http://www.americanprinciplesfund.com/about/> (last visited June 20, 2014).

²⁴ Mapes, *Another Super Pac...*, Oregonian (May 6, 2014), http://www.oregonlive.com/mapes/index.ssf/2014/05/another_super-pac_enters_orego.html.

²⁵ "Repeal," Youtube, http://www.youtube.com/watch?v=KM_A_W4VCSM (first aired May 5th, 2014).

²⁶ *Republicans Face Down Tea Party Threat With Key Primary Victories*, Newsmax (May 21, 2014), <http://www.newsmax.com/Newsfront/republicans-primaries-tea-party/2014/05/21/id/572491/>.

²⁷ American Principles Fund (2014), *24/48 Hour Reports of Independent Expenditures*, <http://docquery.fec.gov/pdf/690/14941194690/14941194690.pdf> and <http://docquery.fec.gov/pdf/090/14941207090/14941207090.pdf>.

says she won't vote to repeal Obamacare, calling a repeal impractical. Wehby even supports Democrat Ron Wyden's plan to force Americans to buy government-approved health insurance. The candidate we can trust to repeal Obamacare: Jason Conger. Conservative and pro-life, Jason Conger strongly opposes Obamacare and will fight to repeal it.²⁸

The ad's on-air disclosure says "American Principles Fund Is Responsible For The Content Of This Advertising. Paid For By American Principles Fund. Not Authorized By Any Candidate Or Candidate's Committee" (see *Figure 1*).



Figure 1: On-air disclosure of APF ad, "Repeal"

III. KGW has not "fully and fairly disclosed the true identity" of the sponsor of the APF ad.

A. Sean Fieler is the "true identity" of the sponsor of the ad.

A plain language reading of the Communications Act and the FCC's rules, along with the purpose of the disclosure laws, requires broadcasters to go beyond simply naming the Super PAC that paid for the ad. KGW has failed to "fully and fairly disclose the true identity" of the

²⁸ "Repeal," http://www.youtube.com/watch?v=KM_A_W4VCSM (first aired May 5, 2014).

sponsor of this ad: it disclosed only the name of the Super PAC, “American Principles Fund,” and failed to disclose Sean Fieler as the true identity of the sponsor of the ad.

Sean Fieler was, in effect, APF’s sole donor through April 2014, the last monthly filing KGW would have seen on May 5.²⁹ Between April 2013 and April 2014, Fieler invested nearly \$700,000 of his own wealth into APF (see *Figure 2*). This amount represents 98.6% of APF’s total receipts until that point.

Contributor Name	Receipt Date	Amount
FIELER, SEAN	04/26/2013	\$54,107
FIELER, SEAN M.	08/20/2013	\$40,000
FIELER, SEAN M.	09/25/2013	\$100,000
FIELER, SEAN M.	10/08/2013	\$100,000
FIELER, SEAN M.	10/10/2013	\$100,000
FIELER, SEAN M.	02/14/2014	\$100,000
BROWN, DOUGLAS J.	03/03/2014	\$10,000
FIELER, SEAN M.	04/28/2014	\$205,338

Figure 2: Excerpt from APF’s FEC Disclosure Filings

When an organization has a single donor, that organization represents the will and opinion of only that single donor because that person controls the purse strings. In this case, APF owes its existence to Sean Fieler’s contributions—in other words, APF would not be running any ads without Fieler’s money, and he remains free to stop supporting APF if it ran ads contrary to his interests. APF, in effect, acts as Fieler’s political advertising arm. Therefore, the true identity of the sponsor of the ad is Sean Fieler.

Further, the name “American Principles Fund” does not fully and fairly inform the public about who paid for the ad. Disclosing only “American Principles Fund” leaves the public

²⁹ The \$10,000 donation from Douglas Brown on March 3, 2014, is inconsequential. Fieler was the sole donor before March 3, and even afterwards has been responsible for substantially all of APF’s receipts.

clueless that the group is furthering Sean Fieler's political agenda and that he controls the message. It is misleading to claim that APF is the only relevant name that must be disclosed.

B. KGW failed to use reasonable diligence to obtain sponsorship information.

It is completely reasonable as a matter of due diligence to require some effort on KGW's part to examine who funds APF. The law requires stations to ask "other persons with whom it deals directly in connection with" the ad if there is confusion about the true identity of the sponsor.³⁰ KGW employees should have consulted with the buyer or APF itself. This is a basic undertaking required by law.

If for some reason the buyer or purchaser did not cooperate, KGW employees could have looked at APF's FEC filings, which are freely available online and filed monthly, to see that Sean Fieler was the sole donor. Failing that, a simple Google search for information regarding APF's funding would have turned up the answer: far in advance of May 5, it was widely reported and readily discernible from the Internet and public filings that Sean Fieler was the principal donor to APF.³¹ "Reasonable diligence" must require, at a minimum, a broadcaster to make a

³⁰ 47 USC §317(c).

³¹ See, e.g., Sean Sullivan, *Conservative Super PAC Targets Liz Cheney On Gay Marriage*, Washington Post (Oct. 7, 2013), 2013 WLNR 25085874. See also Max Brantley, *The Bad Huckabee; Like Father Like Daughter on Gay Marriage*, Arkansas Times (Oct. 7, 2013), 2013 WLNR 25102916; Igor Volsky, *Hedge Fund Manager Runs Anti-Gay Attack Ad Against Liz Cheney*, Think Progress (Oct 7, 2013), <http://thinkprogress.org/lgbt/2013/10/07/2740241/hedge-fund-manager-runs-anti-gay-attack-ads-against-liz-cheney/>; *Outside TV Ad Calls Cheney Pro-Gay Marriage*, Hotline (Oct. 7, 2013), <http://www.nationaljournal.com/hotline/latest-edition/outside-tv-ad-calls-cheney-pro-gay-marriage-20131007>; Kenneth Vogel, *Social Conservatives Make Big Money Plans*, Politico (Jan. 2, 2014), http://www.politico.com/story/2014/01/social-conservatives-fundraising-101666_Page2.html; Byron Tau, *Wallets To Watch in 2014 Races*, Politico, (Jan. 5, 2014), <http://www.politico.com/story/2014/01/wallets-to-watch-in-2014-races-101746.html>; Julie Bykowicz, *Super-PAC Targets Religious Voters On Abortion In 2014*, Bloomberg (Feb. 4, 2014), <http://www.bloomberg.com/news/2014-02-04/fieler-finances-return-of-abortion-issue-to-2014-election.html>; Shane Goldmacher, *Wanted: A Sugar Daddy To Fund My 2016 Presidential Campaign*, National Journal Daily (Feb. 13, 2014), 2014 WLNR 4089096; Jeff Mapes, *Another Super-PAC Enters Oregon GOP Senate Race, This Time Backing Jason Conger*, Oregonian

simple routine inquiry about the true source of funds from every customer. In this case, Sander had access to contact information for both the purchasing agent and the group itself on the NAB form.³² In fact, it seems that Sander undertook no investigation whatsoever.

In sum, KGW failed to exercise reasonable diligence to determine that APF had a single donor. As a result, KGW failed to fully and fairly disclose the true identity of the sponsor of the ad. KGW has, therefore, violated Section 317 of the Communications Act and Section 73.1212 of the FCC's rules.

Conclusion

The Communications Act and FCC rules are intended to inform the public about the true source of funding when broadcast stations air paid political programming. KGW has failed to disclose this important information. Thus, the Campaign Legal Center, Common Cause, and the Sunlight Foundation respectfully request that the FCC declare that KGW was not in compliance with the Communications Act and the FCC's rules and to require KGW to comply in the future. We further request that the FCC take other measures, such as assessing forfeitures and issuing a Public Notice reminding broadcast stations of their obligations, to ensure that this and other broadcast stations fully and fairly identify on-air the source of funding for political advertisements, and make all the legally required disclosures in the future.

(May 6, 2014), 2014 WLNR 12165391; Jonathan Cooper, *Senate Primary Gets Big Support Three Super PACs Reported Spending \$956,000 To Back, Oppose Candidates*, Charleston Daily Mail (May 12, 2014), 2014 WLNR 12858772; American Principles Fund (2013), *FEC Mid-Year Filing*, <http://docquery.fec.gov/pdf/821/13964459821/13964459821.pdf>; American Principles Fund (2013), *FEC Year-End Filing*, <http://docquery.fec.gov/pdf/457/14960300457/14960300457.pdf>.

³² American Principles Fund (2014), *NAB Form*, [https://stations.fcc.gov/collect/files/34874/Political%20File/2014/Non-Candidate%20Issue%20Ads/American%20Principles%20Fund/American%20Principles%20Fund%20NAB%20Form%205-7-14%20\(13995088248492\)_.pdf](https://stations.fcc.gov/collect/files/34874/Political%20File/2014/Non-Candidate%20Issue%20Ads/American%20Principles%20Fund/American%20Principles%20Fund%20NAB%20Form%205-7-14%20(13995088248492)_.pdf).

Respectfully submitted,

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Dated: July 17, 2014

*Counsel for Campaign Legal Center, Common
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Exhibit A

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.

CERTIFICATE OF SERVICE

I, Eric Null, hereby certify that copies of the Complaint of Campaign Legal Center, Common Cause, and Sunlight Foundation, through its attorneys, the Institute for Public Representation, have been served by e-mail, this 17th of July, 2014, on the following persons at the addresses shown below.

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Counsel for Sander Operating Co.

Eric Null
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