



GEORGETOWN LAW
INSTITUTE FOR PUBLIC REPRESENTATION

Directors
Hope M. Babcock
Angela J. Campbell
Michael T. Kirkpatrick
Benton Senior Counselor
Andrew Jay Schwartzman
Staff Attorneys
Meghan M. Boone
Sarah Fox*
Patrick Llewellyn***
Daniel H. Lutz**
Drew T. Simshaw*

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

October 29, 2015

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

Re: Political Broadcasting & Sponsorship Identification

Dear Mr. Chairman:

We call upon the FCC to take immediate action to enforce the public file and sponsorship identification requirements of Sections 315 and 317 of the Communications Act with respect to advertisements relating to political campaigns and political matters of public importance. The matter is urgent because the 2016 election campaign is already underway, and state and local primary elections will begin in a few months.

Sections 315 and 317 are crucial to protecting voters' right to know by whom they are being persuaded. Specifically, we urge the Commission to:

- Grant, consistent with your May 12, 2014 public statement that you "anticipate resolving these quickly...", the 11 complaints filed in May, 2014 alleging widespread violations of the Commission's online public file rules;

* DC bar membership pending. Practice supervised by members of the DC bar.

** Admitted to bars of Washington State, the United States Court of Appeals for the District of Columbia Circuit, and the United States District Court of the District of Columbia.

*** Admitted in Georgia.

- Act on the Petition for Rulemaking filed by the Media Access Project in March, 2011 calling for amendments to the Commission's rules to conform them to the text of Section 317 by requiring licensees to fully and fairly inform viewers and listeners about the true sponsorship of political advertisements;
- Grant the October 2, 2014 Application for Review of the Media Bureau's dismissal of complaints filed against WJLA-TV and KGW addressing violations of Section 317;
- Grant complaints filed in October and November of 2014 against KDVR, WJLA-TV, and WLS-TV addressing violations of Section 317; and
- Issue a Public Notice detailing the responsibilities of broadcasters in maintaining public files relating to paid political advertisements under Section 315.

In March, 2011, Media Access Project filed a petition for rulemaking requesting the Commission to amend its sponsorship identification rules to require stations to provide meaningful disclosure of the sponsors of political advertisements as contemplated by the Section 317. The petition remains pending.

In May, 2014, the Campaign Legal Center and the Sunlight Foundation 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 rapidly issued letters of inquiry to each of the stations and you issued a public statement promising that "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." Even so, the Commission has taken no further action on the complaints.

In July 2014, the Campaign Legal Center (CLC), Common Cause (CC), and the Sunlight Foundation (Sunlight) filed complaints against WJLA-TV in Washington, DC and KGW in Portland, OR for failing to disclose on-air the true identity of the sponsors of political advertisements, in violation of Section 317 and 47 C.F.R. §73.1212. WJLA failed to disclose Tom Steyer as the true sponsor of advertisements purchased by NextGen Climate Action Committee, of which Steyer was a 95% funder. KGW failed to disclose Sean Fieler as the true sponsor of advertisements purchased by American Principles Fund, of which Fieler was a 98.6% funder. The Media Bureau dismissed these complaints in September, 2014 and held for the first time that complainants must first notify stations regarding the true sponsor before the Commission will take action. This decision contradicts explicit language in Section 317 and the Commission's rules which requires that licensees, not complainants, "shall exercise reasonable diligence to obtain...information to enable such licensee to make the announcement required by this

section.” CLC, CC, and Sunlight filed an Application for Review of that decision in October, 2014, asking that it act prior to election day that year, but the Commission took no action. The full Commission should address the Application for Review immediately in order to improve sponsor identification during the 2016 election season.

Notwithstanding their belief that the Media Bureau improperly placed the burden on complainants, CLC, CC, and Sunlight filed complaints in October and November, 2014 against WLS-TV and KDVR after providing them with evidence of the true sponsors of commercials they were carrying. In the former case, they demonstrated that 100% of the funding for commercials identified as being sponsored by “Independence USA PAC” was in fact provided by an individual, Michael Bloomberg. The Commission has taken no action on these complaints. By far, our greatest concern is the issue of on-air sponsor identification, and we will not consider any response to be satisfactory if it does not address that issue.

The Supreme Court has held that

With the advent of the Internet, prompt disclosure of expenditures can provide shareholders and citizens with the information needed to hold corporations and elected officials accountable for their positions and supporters. Shareholders can determine whether their corporation’s political speech advances the corporation’s interest in making profits, and citizens can see whether elected officials are “ ‘in the pocket’ of so-called moneyed interests.” The First Amendment protects political speech; and disclosure permits citizens and shareholders to react to the speech of corporate entities in a proper way. This transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages.

Citizens United v. FEC, 558 U.S. 310, 484 (2010). The Commission’s apparent indifference to this admonition represents an abandonment of its core mission to serve the public. We therefore call upon you to take immediate action to address these matters.

Respectfully submitted,

Kimberly Miller
Georgetown Law Student

Andrew Jay Schwartzman
Angela J. Campbell
Drew Simshaw
Institute for Public
Representation
Georgetown University Law

October 29, 2015
Page 4 of 4

cc: Opposing Counsel

Center
600 New Jersey Avenue, NW
Suite 312
Washington, DC 20001
(202) 662-9535

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