

*Before the*  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

Complaint of )  
 )  
Campaign Legal Center and Sunlight )  
Foundation )  
 )  
Against )  
 )  
CBS Broadcasting, Inc., licensee of )  
WWJ-TV, Detroit, MI )  
 )  
For Violations of the Communications Act )  
§ 315 and FCC Regulation § 73.1212 )

To: Enforcement Bureau

**COMPLAINT**

The Campaign Legal Center and the Sunlight Foundation file this complaint regarding violations of the Communications Act and the Federal Communications Commission’s (“FCC”) regulations by CBS Broadcasting, Inc., licensee of WWJ-TV. In March 2014, WWJ-TV ran a political ad sponsored by the Senate Majority PAC (“SMP”). The station failed to disclose information about SMP and the ad in its online political file as required by the Communications Act and the FCC’s regulations.

**I. Facts**

**A. Parties**

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.<sup>1</sup>

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 Sunlight Foundation has built tools that empower individuals and journalists to better and more easily understand political spending across the United States, which depend on data found within broadcast stations' political files and elsewhere.<sup>2</sup>

WWJ-TV is a CBS-owned and operated broadcast station in Detroit, Michigan. Detroit is the 11th largest Designated Market Area in the country, serving more than 1.8 million households.<sup>3</sup> CBS Broadcasting, Inc., licensee of WWJ-TV, is headquartered in New York City and is a mass media creation and distribution company with audiences around the world.<sup>4</sup>

## **B. The Advertisement**

In March 2014, WWJ-TV broadcast a political ad sponsored by SMP. SMP is a Super PAC that works to expand the Democratic majority in the U.S. Senate.<sup>5</sup> The SMP ad, entitled

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<sup>1</sup> See Campaign Legal Center, [www.campaignlegalcenter.org](http://www.campaignlegalcenter.org) (last visited Apr. 3, 2014).

<sup>2</sup> For instance, Political Ad Sleuth and Ad Hawk are two such tools. See Political Ad Sleuth, <http://politicaladsleuth.com> (a searchable database created from FCC online public file documents); Ad Hawk, <http://adhawk.sunlightfoundation.com> (a mobile app allowing identification of political ads).

<sup>3</sup> *Local Television Market Universe Estimates*, The Nielsen Company, (2013), [http://www.tvb.org/media/file/TVB\\_Market\\_Profiles\\_Nielsen\\_TVHH\\_DMA\\_Ranks\\_2013-2014.pdf](http://www.tvb.org/media/file/TVB_Market_Profiles_Nielsen_TVHH_DMA_Ranks_2013-2014.pdf).

<sup>4</sup> CBS Corporation, <http://www.cbscorporation.com/ourcompany.php?id=11> (last visited Apr. 3, 2014).

<sup>5</sup> Senate Majority PAC, Our Mission, <http://www.senatemajority.com/about/> (last visited Apr. 14, 2014).

“Them” and transcribed below, refers to Terri Lynn Land.<sup>6</sup> Land served two terms as Michigan’s Secretary of State from 2003 to 2010. She is now the Republican candidate for the U.S. Senate seat for Michigan in 2014. Her opponent is U.S. Representative Gary Peters. The SMP ad accuses Land of being influenced by large donors because she takes healthcare policy positions that would hurt average Americans.<sup>7</sup>

[Narrator:] You already know that billionaires are paying for Terri Lynn Land’s Senate race. What they [billionaires] already know is that with Land, insurance companies will be able to deny you coverage when you get sick. Women’s access to preventive healthcare would be cut while their costs would increase.

Now you know what the billionaires know. They know Terri Lynn Land answers to them, and not us.

SMP spent over \$21,000 to air this ad at WWJ-TV for one week, and spent \$500,000 in total running the ad in Michigan. The ad ran for two weeks across multiple broadcast and cable channels.<sup>8</sup>

## **II. Argument**

The SMP ad triggers WWJ-TV’s political file disclosure requirements in the Communications Act and the FCC’s regulations. WWJ-TV, however, has failed to disclose the required information.

### **A. The Communications Act and the FCC’s regulation requirements.**

When broadcasters run political ads, they must meet specific disclosure requirements set forth in the Communications Act and the FCC’s regulations.

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<sup>6</sup> Exhibit A, attached, is a Detroit News article confirming that SMP aired its ad at multiple stations in Detroit during March 2014. The ad is available on SMP’s YouTube channel, at <https://www.youtube.com/watch?v=BrxbF52mH-Y>.

<sup>7</sup> See Marisa Schultz, *Democratic PAC to air \$500K in ads against Land in battle for Senate seat*, Detroit News, (Mar. 28, 2014),

<http://www.detroitnews.com/article/20140328/POLITICS02/303280095> (attached in Exhibit A).

<sup>8</sup> *Id.*

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.”<sup>9</sup>

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).”<sup>10</sup> The licensee must also disclose a list of the purchaser’s “chief executive officers or members of the executive committee or of the board of directors.”<sup>11</sup>

Similarly, FCC regulations require licensees to disclose information about paid broadcasts if those broadcasts concern a “political matter” or discuss a “controversial issue of public importance,” and the ad is paid for by “a corporation, committee, association or other unincorporated group, or other entity.”<sup>12</sup> In such cases, the FCC also requires a “list of the chief executive officers or members of the executive committee or of the board of directors, committee association or other unincorporated group or other entity.”<sup>13</sup>

**B. The SMP ad triggers the disclosure requirements of § 315(e)(2) of the Communications Act and § 73.1212(e) of the FCC’s regulations.**

The SMP ad triggers the disclosure requirements of § 315(e)(2) of the Communications Act and § 73.1212(e) of the FCC’s regulations for two reasons. First, the ad refers to Terri Lynn

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<sup>9</sup> 47 USC § 315(e)(1)(B)(i)–(iii) (2014).

<sup>10</sup> *Id.* § 315(e)(2)(E).

<sup>11</sup> *Id.* § 315(e)(2)(G).

<sup>12</sup> 47 CFR § 73.1212(e). *See also id.* § 73.1943. Currently, a station in the top-50 designated market areas and affiliated with a top-four network must upload its political file to the FCC’s online database; however, all television stations will be required to do so beginning in July 2014. *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, Second Report and Order, 27 FCC Rcd 4535, 4536–37 (2012).

<sup>13</sup> 47 CFR § 73.1212(e).

Land. Land is a “legally qualified candidate” for the U.S. Senate in Michigan because she frequently updates her campaign website with information about her appearances and speeches, issues press releases, and collects donations.<sup>14</sup> She raised over \$2 million for her campaign in the fourth quarter of 2013 alone.<sup>15</sup>

Second, the ad communicates a message relating to both a “political matter of national importance” and a “controversial issue of public importance” for purposes of the Communications Act and the FCC’s regulations.<sup>16</sup> The ad discusses health care reform, including cuts to, and rising costs of, preventive care for women. Health care reform and costs of preventive care for women are national and controversial issues because they are subject to nationwide debate and media coverage, and impact citizens across the entire country.<sup>17</sup> Health care reform is the quintessential controversial issue of public importance: it was President Obama’s key initiative and has been subject to multiple court challenges, including at the Supreme Court.

**C. WWJ-TV failed to disclose the information required by law.**

WWJ-TV uploaded the following to its online political file for the sale of airtime for this ad: the contract, which discloses rates, dates, and times the ad ran, in compliance with section 315(e)(2)(A)-(D); and the National Association of Broadcasters (NAB) Form PB-18,

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<sup>14</sup> See Terri Lynn Land, *The Latest*, <http://terrylynnland.com/latest-posts/> (last visited Apr. 15, 2014).

<sup>15</sup> Fritz Klug, *U.S. Senate Update: Terri Lynn Land raises \$2 million in 3 months; new 'Pure Washington' ad attacks Gary Peters*, MLive (Oct. 7, 2013), [http://www.mlive.com/news/index.ssf/2013/10/us\\_senate\\_update\\_terri\\_lynn\\_la.html](http://www.mlive.com/news/index.ssf/2013/10/us_senate_update_terri_lynn_la.html).

<sup>16</sup> WWJ-TV’s National Association of Broadcasters form incorrectly identifies the ad as not communicating a national issue. See Exhibit B.

<sup>17</sup> See, e.g., *Women’s Preventive Services in the Affordable Care Act: Frequently Asked Questions*, <http://www.nwlc.org/resource/women%E2%80%99s-preventive-services-affordable-care-act-frequently-asked-questions> (last visited Apr. 22, 2014).

“Agreement Form for Non-Candidate/Issue Advertisements.” Copies of both are included in Exhibit B.

WWJ-TV has failed to disclose the candidate and issue addressed by the ad. The NAB form provides the space for stations to meet the disclosure requirements of § 315 of the Communications Act. The form asks whether the ad communicates a “message relating to any political matter of national importance.” If yes, then the station must, in the next section, disclose a list of the “candidate(s) the [ad] refers to, the office being sought, and the date(s) of the election.” Stations must also disclose the issue referred to by the ad. WWJ-TV, however, incorrectly checked the box “No,” despite the ad’s explicit references to Land and health care reform. The station thus neglected to fill out the necessary sections requiring disclosure of the candidate and the issue referred to. These omissions amount to a failure to comply with the disclosure laws.

Finally, WWJ-TV fails to disclose a list of SMP’s board of directors or chief executive officers. The NAB form requires this information as well, but the form for the SMP ad lists only one SMP officer, Rebecca Lambe, SMP’s treasurer. Listing merely the treasurer of the organization is insufficient. WWJ-TV’s failure to disclose all of the information described above violates the Communications Act and the FCC’s regulations.

### **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. WWJ-TV has failed to disclose this important information. Thus, the Campaign Legal Center and the Sunlight Foundation respectfully request that the FCC take prompt action to ensure that this information is made available to the public through WWJ-TV’s public file. 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 include all of the legally required disclosures in the future.

Respectfully submitted,

Of counsel:

Matthew J. Dulac  
Georgetown Law Student

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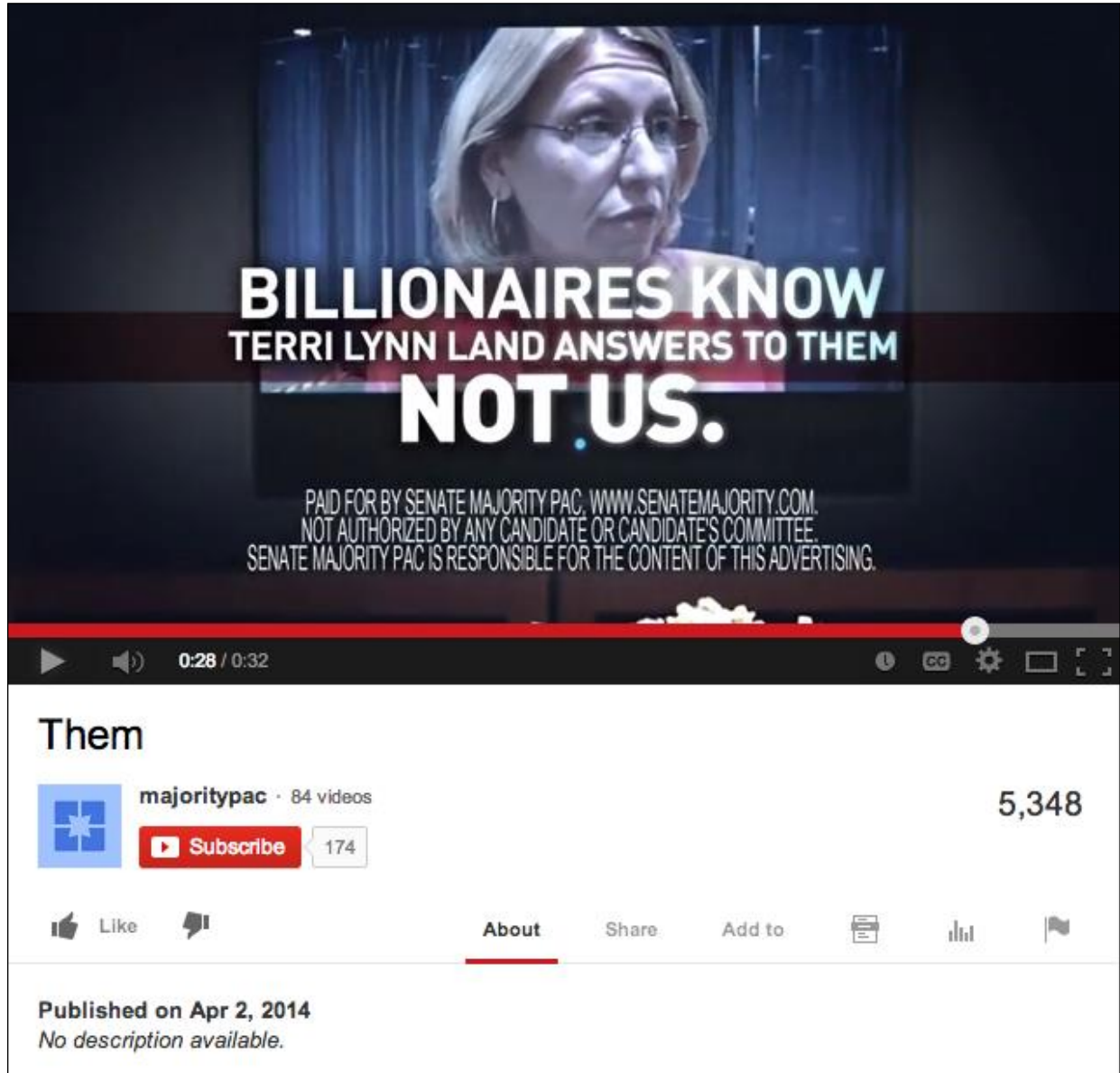
Eric G. Null  
Angela J. Campbell  
Andrew Jay Schwartzman  
Institute for Public Representation  
Georgetown University Law Center  
600 New Jersey Avenue, NW  
Suite 312  
Washington, DC 20001  
(202) 662-9535

Dated: May 1, 2014

*Counsel for Campaign Legal Center  
and Sunlight Foundation*

**Exhibit A**

This ad is available at: <https://www.youtube.com/watch?v=BrxbF52mH-Y>.



The image shows a YouTube video player interface. The video content features a woman with blonde hair and glasses, identified as Terri Lynn Land, speaking. Overlaid on the video is the text: "BILLIONAIRES KNOW TERRI LYNN LAND ANSWERS TO THEM NOT US." Below this, smaller text reads: "PAID FOR BY SENATE MAJORITY PAC. WWW.SENATEMAJORITY.COM. NOT AUTHORIZED BY ANY CANDIDATE OR CANDIDATE'S COMMITTEE. SENATE MAJORITY PAC IS RESPONSIBLE FOR THE CONTENT OF THIS ADVERTISING." The video player controls show a progress bar at 0:28 / 0:32. Below the video, the channel name "Them" is displayed, along with the "majoritypac" channel logo, which has 84 videos and 5,348 subscribers. A "Subscribe" button is visible with 174 notifications. The video was published on Apr 2, 2014, and no description is available.



## **Democratic PAC to air \$500K in ads against Land in battle for Senate seat**

Marisa Schultz, The Detroit News

March 28, 2014, at 7:33 PM

<http://www.detroitnews.com/article/20140328/POLITICS02/303280095>

A Democratic political action committee is coming to the aid of U.S. Rep. Gary Peters by launching an ad campaign in Michigan.

Senate Majority PAC bought \$500,000 in TV commercials that began airing statewide on broadcast and cable networks and will run for two weeks. The 30-second ad targets Peters' opponent in the U.S. Senate race, Republican Terri Lynn Land, and tries to link her to the billionaire industrialist Koch brothers.

This is the second boost this week for Peters, who launched his first TV ads earlier aimed at introducing the Bloomfield Township Democrat to U.S. Senate voters statewide in a \$1 million buy over seven weeks. The ads feature his wife, Colleen, and family, and emphasizes his middle-class roots, personal story and his efforts to support policies that help the middle class.

The latest push brings TV ad spending on behalf of Peters up to about \$2 million. In turn, conservative groups have spent about \$5 million attacking Peters thus far in the highly competitive race that could determine which party controls the U.S. Senate.

The Senate Majority PAC campaign aims to combat the unequal ad spending by blackballing the financiers of conservative ads. The ad tries to paint Land as being influenced by billionaires by taking healthcare policy positions that would hurt average Michigianians.

"Billionaires are paying for Terri Lynn Land's senate race," the ad says, citing a Feb. 25 Detroit News article that doesn't make that statement at all.

In reality, the Koch brothers have financially backed Americans for Prosperity, a conservative political group that has funneled more than \$5 million in TV advertising in Michigan — largely to attack Peters. By law, Americans for Prosperity is a separate entity from Land's campaign and must make advertising and fundraising decisions independent of candidates.

There's no doubt, however, AFP's emotional anti-Obamacare attack ads on Peters are a factor in the Senate race. While an earlier ad featuring cancer patient Julie Boonstra came under fire for the accuracy of its claims, AFP doubled down recently with another \$1.5 million ad buy featuring Grand Rapids mother of five Shannon Wendt, saying she lost insurance under Obamacare and the new plan is "unaffordable."

The Washington Post's fact checker Glenn Kessler rated that ad with two Pinocchios Thursday because the Wendts turned down government-funded Medicaid, which would have made their health care less expensive.

Senate Majority PAC stands by its ad claims that Land is being funded by billionaires: “Americans for Prosperity, funded by the billionaire Koch brothers, are spending millions to ensure a Land victory,” spokesman Ty Matsdorf said in an email. “They are doing this because Land has already publicly stated that she will adhere to their reckless and irresponsible agenda of repealing health care reform which would go back to the days where insurance companies wrote the rules at the expense of families and seniors.”

Land’s campaign spokeswoman, Heather Swift, called the ad campaign hypocritical. She pointed to financial reports showing the largest donor to Senate Majority PAC is billionaire former New York Mayor Michael Bloomberg. (He donated \$2.5 million to the Democratic group last year, records show.)

“It’s no surprise that Harry Reid’s super PAC, which is funded by billionaires from California and New York, are sinking to hypocrisy and lies,” Swift said in a statement. “... If Gary and Harry want to silence the ‘out of state billionaires,’ they should start with their own allies.”

## Exhibit B

NAB Form PB-17 Issues

### AGREEMENT FORM FOR NON-CANDIDATE/ISSUE ADVERTISEMENTS

<b>Station and Location:</b>	<b>Date:</b>
------------------------------	--------------

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

<u>SENATE MAJORITY PAC</u>
----------------------------

Broadcast Length	Time of Day, Rotation or Package	Days	Class	Times per Week	Number of Weeks
<u>AS ORDERED</u>					

<b>Total Charges:</b>
-----------------------

This broadcast time will be used by: SENATE MAJORITY PAC

**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.

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):



[Empty box for candidate information]

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:

SENATE MAJORITY PAC 700 15th ST NW STE 600 WASHINGTON DC 20005 202-450-3486

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): REBECCA LAMB, TREASURER

**THIS STATION DOES NOT DISCRIMINATE OR PERMIT DISCRIMINATION ON THE BASIS OF RACE OR ETHNICITY IN THE PLACMENT 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**

7/23/13 Date Signature Contact Phone Number 202-338-8700

**TO BE SIGNED BY STATION REPRESENTATIVE**

Accepted  Accepted in Part  Rejected

Signature Printed Name Title

## AGREED UPON SCHEDULE

**For All Issue Advertisements That Communicate a Message Relating to Any Political Matter of National Importance**

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

**Total Charges:**

### AFTER AIRING OF BROADCASTS:

Attach invoices or Schedule Run Summary to this Form showing:

- (1) actual air time and charges for each spot;
- (2) the date(s), exact time(s) and reason(s) for Make-Good(s), if any; and
- (3) the amount of rebates given (identify exact date, time, class of broadcast and dollar amount for each rebate), if any.

**Note: Because the FCC requires that the political file contain the actual times the spots air, that information should be included in the file as soon as possible. If that information is only generated monthly, the file should include the name of a contact person who can provide the times that specific spots aired.**



AGREEMENT MADE BETWEEN

# WWJ-TV

CONTRACT NO. REV.  
1091-60902-1  
DATE PRINTED  
03/21/14

26905 WEST ELEVEN MILE RD., . SOUTHFIELD MI 48034

WWJ-TV

AND

PAGE 1

179297	<b>AGENCY (OR SERVICE) ACTING AS AGENT FOR</b>	339947	<b>ADVERTISER (OR AGENCY AND ADVERTISER)</b>	<b>Cancellation Notice Required</b> <b>Announcement 28 days prior notice</b>
<b>NAME</b>	WATERFRONT STRATEGIES		SENATE MAJORITY PAC	
<b>AND</b>	3050 K St NW Ste 100		700 13th St NW	
<b>ADDRESS</b>	Washington DC 20007-5108	USA	Washington DC 20005-3960 USA	
<b>CONTACT</b>	Mike FURMAN		<b>PRODUCT</b> EST 2620	
<b>LOCAL SALESPERSON</b>		<b>AGENCY EST. NO.</b> 2620	<b>PRODUCT CODE</b> 1300	
<b>NATIONAL SALESPERSON</b>	Maggie McWilliams - CTS-PH			
<b>BROADCAST SCHEDULE STARTING</b> 03/24/14 <b>AND ENDING</b> 03/30/14 <b>NO. WEEKS:</b> 1				

CBS Television Stations Standard Terms and Conditions for advertising shall apply.  
 NONDISCRIMINATION POLICY: CBS Television Stations and its Stations do not discriminate in advertising contracts on the basis of race or ethnicity, and will not accept any advertising which is intended to discriminate on the basis of race or ethnicity. Advertiser represents and warrants that it is not purchasing time from CBS Television Stations or its Stations that is intended to discriminate on the basis of race or ethnicity.

ITEM	DAYS	SPOTS PWK.	TIME		LENGTH	EFFECTIVE DATES	PROGRAMS	TOTAL BDCST.	UNIT RATE	TOTAL VALUE(1)
			FROM	TO						
1	M-F	2	06:00P	06:28P	30S	03/24/14-03/28/14	THE INSIDER	2	300.00	600.00
2	M-F	2	07:27P	07:57P	30S	03/24/14-03/28/14	FAMILY FEUD	2	1000.00	2000.00
3	T	1	10:00P	11:00P	30S	03/25/14-03/25/14	PERSON OF INTEREST	1	3500.00	3500.00
4	M-F	1	11:35P	12:37A	30S	03/24/14-03/28/14	DAVID LETTERMAN	1	350.00	350.00
5	Sa	1	11:00P	11:03P	30S	03/29/14-03/29/14	LATE FIRST FORECAST SPONSOR	1	1500.00	1500.00
6	M-F	2	06:00A	06:58A	30S	03/24/14-03/28/14	CBS MORNING NEWS	2	60.00	120.00
7	M-F	2	06:57A	09:00A	30S	03/24/14-03/28/14	CBS THIS MORNING	2	75.00	150.00
8	Su	1	08:58A	10:30A	30S	03/30/14-03/30/14	CBS SUNDAY MORNING	1	500.00	500.00
9	M-F	3	10:57A	12:00N	30S	03/24/14-03/28/14	THE PRICE IS RIGHT	3	400.00	1200.00
10	M-F	3	04:58P	06:00P	30S	03/24/14-03/28/14	DR. PHIL	3	450.00	1350.00
11	Su	1	09:00P	10:00P	30S	03/30/14-03/30/14	THE GOOD WIFE	1	3500.00	3500.00
12	W	1	10:00P	11:00P	30S	03/26/14-03/26/14	CSI:CRIME SCENE	1	3000.00	3000.00
13	M-F	2	11:00P	11:03P	30S	03/24/14-03/28/14	LATE FIRST FORECAST SPONSOR	2	1500.00	3000.00
14	M-F	1	11:02P	11:35P	30S	03/24/14-03/28/14	TWO AND A HALF MEN	1	500.00	500.00

(1) Less Agency commission of 15% Except on Non-Commissionable Amounts. Conditions on the reverse of this page and any attachments hereto are an integral part of this Agreement. If this contract is with an Advertiser, references to Agency apply to Advertiser, except no commission will be allowed an Advertiser.

ACCEPTED BY AGENCY

AS AGENT FOR (ADVERTISER)

ACCEPTED BY STATION



AGREEMENT MADE BETWEEN

# WWJ-TV

CONTRACT NO. REV.  
1091-60902-1  
DATE PRINTED  
03/21/14

26905 WEST ELEVEN MILE RD., . SOUTHFIELD MI 48034

WWJ-TV

AND

PAGE 2

179297	<b>AGENCY (OR SERVICE) ACTING AS AGENT FOR</b>	339947	<b>ADVERTISER (OR AGENCY AND ADVERTISER)</b>	<b>Cancellation Notice Required</b> Announcement 28 days prior notice
<b>NAME</b>	WATERFRONT STRATEGIES		SENATE MAJORITY PAC	
<b>AND</b>	3050 K St NW Ste 100		700 13th St NW	
<b>ADDRESS</b>	Washington	DC 20007-5108	Washington DC 20005-3960	
<b>CONTACT</b>	Mike FURMAN		USA	
<b>LOCAL SALESPERSON</b>		<b>AGENCY EST. NO.</b>	<b>PRODUCT CODE</b>	
		2620	1300	
<b>NATIONAL SALESPERSON</b>	Maggie McWilliams - CTS-PH			
<b>BROADCAST SCHEDULE STARTING</b> 03/24/14 <b>AND ENDING</b> 03/30/14 <b>NO. WEEKS:</b> 1				

CBS Television Stations Standard Terms and Conditions for advertising shall apply.  
 NONDISCRIMINATION POLICY: CBS Television Stations and its Stations do not discriminate in advertising contracts on the basis of race or ethnicity, and will not accept any advertising which is intended to discriminate on the basis of race or ethnicity. Advertiser represents and warrants that it is not purchasing time from CBS Television Stations or its Stations that is intended to discriminate on the basis of race or ethnicity.

ITEM	DAYS	SPOTS PWK.	TIME		LENGTH	EFFECTIVE DATES	PROGRAMS	TOTAL BDCST.	UNIT RATE	TOTAL VALUE(1)
			FROM	TO						
<b>Total Contract:</b>								23		21270.00
<b>Billing Summary</b>										
						<u>Jan</u>	<u>Feb</u>	<u>Mar</u>	<u>Total</u>	
Qtr 1 14						.00	.00	21270.00	21270.00	
								<b>GRAND TOTAL</b>		21270.00

(1) Less Agency commission of 15% Except on Non-Commissionable Amounts. Conditions on the reverse of this page and any attachments hereto are an integral part of this Agreement. If this contract is with an Advertiser, references to Agency apply to Advertiser, except no commission will be allowed an Advertiser.

ACCEPTED BY AGENCY

AS AGENT FOR (ADVERTISER)

ACCEPTED BY STATION

**Order Item Summary**



**WWJ-TV**

**Order#:** 60902 CF NTL-Cash-Political **Start - End:** 3/24/2014 - 3/30/2014 **HL#:** **Created:** 03/20/2014 05:41 P  
**Advertiser:** SENATE MAJORITY PAC (339947) **Alt Ord Id:** **Print Invoice Locally:** N **Updated:**  
 700 13th St NW **Do Not Mail Invoice:** N **Confirmed:** 03/21/2014 09:22 A  
 Washington, DC 20005-3960 **Apply Taxes:** N **Billing Int:** Normal  
**Agency:** WATERFRONT STRATEGIES (179297) **CPE:** 163/173/2620 **Notarize Invoice:** N **Billing Mth:** Item Rate  
 3050 K St NW Ste 100 **Product:** EST 2620 **Print Affidavit:** N **Comm Cat:** Political  
 Washington, DC 20007-5108 **Demo:** HHOLDS DMARTG **Print Sub Invoice:** N **Supress Rates:** N  
**AE:** Maggie McWilliams (CTS-PH) **Agency Commission:** 15% **Notarize Sub Invoice:** N **Schedule Code:** Z  
**Buyer:** Mike FURMAN **Self Protection Intri:** :30:00

Share: 15% WDIV: 39% WXYZ: 25% WJBK: 17% WKBD: 4%

Internal: NEW ORDER, ZRP/CTS-PH 3/20/14  
 ok sr 3.21.14  
 ok sr 3.21.14

Item	Time Class	Eligible Days	BreakType	Product Category Commission Catg.	Dur	SC	Self Pr	HHOLDS	Rate	Spots	Total	NRate	A/G	LC
001	CF EINSIDER	MTWTF**	EFG1	Airtime (Broadcast) Political	30	Z	:30:00	0.00	\$300.00	2	\$600.00	\$300.00		
	<u>Start</u>	<u>End</u>	<u>Mar 24</u>											
	03/24/14	03/28/14	2											
002	CF AFEUD730P	MTWTF**	ACC	Airtime (Broadcast) Political	30	Z	:30:00	0.00	\$1,000.00	2	\$2,000.00	\$1,000.00		
	<u>Start</u>	<u>End</u>	<u>Mar 24</u>											
	03/24/14	03/28/14	2											
003	CF PPERSONUE3	*T*****	REGP	Airtime (Broadcast) Political	30	Z	:30:00	0.00	\$3,500.00	1	\$3,500.00	\$3,500.00		
	<u>Start</u>	<u>End</u>	<u>Mar 24</u>											
	03/25/14	03/25/14	1											
004	CF LLETTER02	MTWTF**	LETT	Airtime (Broadcast) Political	30	Z	:30:00	0.00	\$350.00	1	\$350.00	\$350.00		
	<u>Start</u>	<u>End</u>	<u>Mar 24</u>											
	03/24/14	03/28/14	1											
005	CF LFORECAST	*****S*	WEA	Airtime (Broadcast) Political	30	Z	:30:00	0.00	\$1,500.00	1	\$1,500.00	\$1,500.00		
	<u>Start</u>	<u>End</u>	<u>Mar 24</u>											
	03/29/14	03/29/14	1											
006	CF MNEWS6A	MTWTF**	NEWS	Airtime (Broadcast) Political	30	Z	:30:00	0.00	\$60.00	2	\$120.00	\$60.00		
	<u>Start</u>	<u>End</u>	<u>Mar 24</u>											
	03/24/14	03/28/14	2											
007	CF MEARLY	MTWTF**	MORN	Airtime (Broadcast) Political	30	Z	:30:00	0.00	\$75.00	2	\$150.00	\$75.00		
	<u>Start</u>	<u>End</u>	<u>Mar 24</u>											
	03/24/14	03/28/14	2											



**Order Item Summary**



**WWJ-TV**

Item	Time Class	Eligible Days	BreakType	Product Category Commission Catg.	Dur	SC	Self Pr	HHOLDS	Rate	Spots	Total	NRate A/G	LC
008	CF WCBSSUN01	*****S	MORN	Airtime (Broadcast) Political	30	Z	:30:00	0.00	\$500.00	1	\$500.00	\$500.00	
	<u>Start</u>	<u>End</u>	<u>Mar 24</u>										
	03/30/14	03/30/14	1										
009	CF DPRICE	MTWTF**	DAY	Airtime (Broadcast) Political	30	Z	:30:00	0.00	\$400.00	3	\$1,200.00	\$400.00	
	<u>Start</u>	<u>End</u>	<u>Mar 24</u>										
	03/24/14	03/28/14	3										
010	CF EPHIL5P	MTWTF**	EFG1	Airtime (Broadcast) Political	30	Z	:30:00	0.00	\$450.00	3	\$1,350.00	\$450.00	
	<u>Start</u>	<u>End</u>	<u>Mar 24</u>										
	03/24/14	03/28/14	3										
011	CF PWIFESUN2	*****S	REGP	Airtime (Broadcast) Political	30	Z	:30:00	0.00	\$3,500.00	1	\$3,500.00	\$3,500.00	
	<u>Start</u>	<u>End</u>	<u>Mar 24</u>										
	03/30/14	03/30/14	1										
012	CF PCSIW3	**W****	REGP	Airtime (Broadcast) Political	30	Z	:30:00	0.00	\$3,000.00	1	\$3,000.00	\$3,000.00	
	<u>Start</u>	<u>End</u>	<u>Mar 24</u>										
	03/26/14	03/26/14	1										
013	CF LFORECAST	MTWTF**	WEA	Airtime (Broadcast) Political	30	Z	:30:00	0.00	\$1,500.00	2	\$3,000.00	\$1,500.00	
	<u>Start</u>	<u>End</u>	<u>Mar 24</u>										
	03/24/14	03/28/14	2										
014	CF L2.5MEN	MTWTF**	LFG	Airtime (Broadcast) Political	30	Z	:30:00	0.00	\$500.00	1	\$500.00	\$500.00	
	<u>Start</u>	<u>End</u>	<u>Mar 24</u>										
	03/24/14	03/28/14	1										

**Confirmed Broadcast Buyline Summary**

Q1 2014	Mar	
	Spots	Revenue
<b>Total</b>	23	\$21,270.00
<b>Credited</b>	0	\$0.00

Order Item Summary



WWJ-TV

Order Summary

	Confirmed		
	Quantity	Gross Amount	Net Amount
Broadcast Buy Lines	23	\$21,270.00	\$18,079.50
Ancillary Buy Lines	0	\$0.00	\$0.00
Installment Schedule	0	\$0.00	\$0.00
<b>Total</b>	23	\$21,270.00	\$18,079.50



Federal Communications Commission  
Washington, D.C. 20554

May 12, 2014

Anne Lucey, Senior Vice President, Regulatory Policy  
CBS Inc.  
601 Pennsylvania Avenue, NW, Suite 540  
Washington, DC 20004

Eric Null  
Institute for Public Representation  
Georgetown University Law Center  
600 New Jersey Avenue, NW, Suite 312  
Washington, DC 20001

RE: Complaint against CBS Station WWJ-TV, Detroit, MI

Dear Ms. Lucey and Mr. Null:

This email refers to the complaint filed by the Institute for Public Representation on behalf of the Campaign Legal Center and the Sunlight Foundation on May 1, 2014, against the above-referenced station. The complaint, which was served on the licensee on May 1, 2014, alleges violations of Sections 315(e) of the Communications Act of 1934, as amended, 47 U.S.C. § 315(e), and Section 73.1212(e) of the Commission's Rules, 47 U.S.C. § 73.1212(e), with respect to certain documents in the station's online political file. These documents are included as an attachment to the complaint.

Having reviewed the complaint, the Media Bureau has concluded that further information is necessary to resolve this matter. Accordingly, the licensee of the above-referenced station must file an Answer responding to the allegations in the complaint by May 27, 2014. In addition, by the same date the licensee must indicate whether the referenced documents comply in all other respects with the Commission's statutes and rules and, if not, explain why. The licensee should send its Answer via email to me, copying counsel for the Campaign Legal Center and the Sunlight Foundation.

The Campaign Legal Center and the Sunlight Foundation may file a reply to the licensee's Answer by June 3, 2014, via email to me, copying counsel for the licensee.

Sincerely,

A handwritten signature in cursive script that reads "Robert L. Baker".

Robert L. Baker  
Assistant Chief, Policy Division  
Media Bureau  
Federal Communications Commission

**CBS TELEVISION STATIONS**  
524 WEST 57 STREET  
NEW YORK, NEW YORK 10019-2985

**VIA EMAIL**

Robert L. Baker  
Assistant Chief, Policy Division  
Media Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Dear Mr. Baker:

May 27, 2014

This Answer is submitted in response to your letter of May 12, 2014 to CBS Inc., seeking information relating to a complaint filed by the Campaign Legal Center and the Sunlight Foundation (the “Complaint”) against CBS Broadcasting Inc., as the licensee of WWJ-TV, Detroit, MI (“WWJ”). The Complaint relates to WWJ’s political file disclosures in connection with a political advertisement broadcast by the station in March 2014 (the “Advertisement”), which was sponsored by the Senate Majority PAC (“SMP”).

The Complaint alleges that the station failed to place all of the information in its political file that must be disclosed for a message relating to a “political matter of national importance” as required by certain subsections §315(e)(2) of the Communications Act in connection with its broadcast of the Advertisement. Specifically, the Complaint alleges that the station failed to disclose: (i) the candidate referred to in the Advertisement, (ii) the issue referred to in the Advertisement, and (iii) a list of SMP’s board of directors or chief executive officers as required by the Communications Act and FCC regulations. The alleged deficiencies all relate to the disclosures contained in an NAB Agreement form received from SMP that had been uploaded to the political file of WWJ’s public inspection files on the Commission’s website.

Immediately upon receiving the Complaint on May 1, and well before the date of your letter, CBS staff reviewed WWJ’s online political file and discovered that an incorrect NAB form relating to a previous SMP advertising buy in 2013 had been inadvertently uploaded to the station’s online political file. Upon this discovery, the CBS staff uploaded the correct SMP NAB form related to the Advertisement to its political file.

That NAB form correctly disclosed that the programming communicates a message relating to a political matter of national importance. It also identified the candidate (Terry Lynn Land), and the relevant information regarding the office being sought (US Senate Republican primary) and the date of the election (August 5, 2014), as required by §315(e)(2)(E).<sup>1</sup>

After uploading the NAB form that related to the Advertisement, the station quickly realized that only the SMP Treasurer, not a list of its executive committee or board of directors, had been listed in that NAB form. Within hours the station obtained additional information and uploaded an updated form, which remains in the station's political file.

As background, it should be noted that CBS-owned stations broadcast tens of thousands of political advertisements over the course of a year. In the period January to April 2014 alone, CBS stations broadcast more than 11,000 political ads. Of course, the inflow of documents from buyers of these advertisements is constant and voluminous.

CBS appreciates the importance of complying with the relevant disclosure requirements and has established procedures that are designed to ensure that all of its broadcast stations comply with those requirements. However, CBS acknowledges that in this instance, it had inadvertently uploaded an incorrect disclosure form for the Advertisement and that the correct disclosure form included only one of the sponsor's officers. As soon as CBS became aware of the issue, it acted promptly to address the issue.

As a result of the Complaint, CBS has reviewed and enhanced its procedures related to political advertisements. It has also accelerated the hiring of additional staff to assist with the political advertising disclosure process. In addition, CBS is

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<sup>1</sup> The Complaint's allegation that the failure to list the candidate and the issue referenced in the Advertisement constitute separate violations ignores the relevant statutory language. The Communications Act provides, in part, that the information to be disclosed includes: "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)". 47 U.S.C. §315(e)(2)(E) (emphasis added). The use of the word "or" in the statute leads to the conclusion that the obligation can be satisfied by disclosing the relevant candidate and office, the election referred to in the advertisement, *or* the issue referred to in the advertisement. WWJ fulfilled this obligation by disclosing the candidate and the office being sought, as well as the date of the election, in the correct NAB form related to the Advertisement.

Page 3  
May 27, 2014

reviewing all of the political files for its television stations to confirm they contain the necessary disclosures.

Sincerely,

A handwritten signature in black ink, appearing to read "MP Messinger". The signature is fluid and cursive, with a long horizontal stroke at the end.

CBS Television Stations, a wholly owned Division of CBS Corporation  
By Martin P. Messinger, its Chief Legal Officer

cc: Eric Null, Institute for Public Representation (**VIA EMAIL**)

*Before the*  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of )  
 )  
Campaign Legal Center and Sunlight )  
Foundation )  
 )  
Against )  
 )  
Eleven Broadcast Television Stations )  
 )  
For Violations of 47 USC §315 and 47 CFR )  
§73.1212 )  
 )

**CONSOLIDATED REPLY OF CAMPAIGN LEGAL  
CENTER AND SUNLIGHT FOUNDATION**

Eric G. Null  
Angela J. Campbell  
Andrew Jay Schwartzman  
Institute for Public Representation  
Georgetown University Law Center  
600 New Jersey Avenue, NW  
Suite 312  
Washington, DC 20001  
(202) 662-9535

Dated: June 3, 2014

*Counsel for Campaign Legal Center and  
Sunlight Foundation*

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## Summary

The Campaign Legal Center and the Sunlight Foundation (“Complainants”) filed complaints against eleven broadcast television stations alleging violations of the disclosure requirements of the Communications Act and the FCC’s rules. The stations filed responses presenting multiple common and individual issues. This reply responds to those issues.

The stations responses demonstrated that there is widespread non-compliance with the disclosure laws. Most stations conceded violations and corrected their files. For those that argued that certain information was not required to be disclosed, Complainants disagree.

The disclosure requirements enacted by Congress are broad and, for the most part, unambiguous. Many stations argued that, in the case of commercials addressing an issue of national importance and mentioning a candidate, the statute requires disclosure of only one of the following: the candidate, election, or issue referred to. The statute is broader than that, and requires the station to disclose all three “as applicable” to the ad in question. Stations also must disclose the purchasing group’s chief executive officer, or a list of the board of directors or executive committee. Simply disclosing the treasurer is not sufficient.

An advertisement triggers the statute when it “communicates a message relating to any political matter of national importance.” This language is necessarily broad, but specifically includes the reference to any legally qualified candidate, any election, or any national legislative issue of public importance. Many ads will trigger the disclosure requirements by virtue of the broad language and list of specific subjects.

Stations are not entitled to rely on inferences made by the public to excuse noncompliance and nondisclosure. The obligation to disclose is on the broadcaster. Further, Complainants are under no obligation to allege harm resulting from the lack of disclosure. Even if it were, the FCC has made clear that the primary benefactor of the disclosure laws is the public, and failure to disclose harms the entire viewing public.

*Before the*  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of )  
)  
Campaign Legal Center and Sunlight )  
Foundation )  
)  
Against )  
)  
Eleven Broadcast Television Stations )  
)  
For Violations of 47 USC §315 and 47 CFR. )  
§73.1212 )  
)

**CONSOLIDATED REPLY OF CAMPAIGN LEGAL  
CENTER AND SUNLIGHT FOUNDATION**

The Campaign Legal Center and the Sunlight Foundation (Complainants), on May 1, 2014, filed complaints against eleven broadcast television stations alleging violations of the political advertising disclosure requirements in Section 315 of the Communications Act and Section 73.1212(e) of the Federal Communications Commission’s (FCC) regulations. On May 12, FCC staff sent the stations individual letters of inquiry requiring them to respond to the allegations in the complaints by May 27 and requiring Complainants to reply by June 3. The stations filed timely responses. Because the stations’ responses raise common issues, Complainants timely file this consolidated reply.

Compliance with the requirements to disclose information about political commercials is extremely important, as it contributes to democratic self-governance, and gives researchers, journalists, and the public critical information about the electoral process. The importance of these requirements is underscored by the staff’s prompt action on the complaints, as well as by the Chairman’s May 12 public statement stressing 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. We hope this serves as a reminder to all stations of their obligation to maintain political files in accordance with statutory provisions and our Rules.<sup>1</sup>

The stations' responses demonstrated that there has been widespread non-compliance with the Commission's public file rules. Nine of the eleven stations conceded that they were not in compliance with the requirements. A tenth station argued that its disclosure was not required for a technical reason discussed below. One station argued that its disclosure was complete.<sup>2</sup> This consolidated reply addresses two issues common to several of the responses and also to a few additional points raised by individual stations.

**I. 47 USC §315(e)(2)(E) requires disclosure of any and all candidates, elections, and issues referred to by a political advertisement**

Several stations argued that Section 315(e)(2)(E) of the Communications Act requires that a station need only disclose *either* the name of the candidate and office sought, the election referred to, *or* the issue referred to in the ad.<sup>3</sup> Section 315(e)(2)(E) tells broadcasters to 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).” Stations paid particularly close attention to the word “or” in Section 315(e)(2)(E), which typically connotes a disjunctive list.

This interpretation is flawed. Notwithstanding the fact that Congress used the word “or” in the statute, the word was used in conjunction with the phrase “as applicable” at the end of 315(e)(2)(E).<sup>4</sup> The additional phrase means stations must disclose the candidate, election, or

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<sup>1</sup> Statement from FCC Chairman Tom Wheeler on Political File Letters (May 12, 2014).

<sup>2</sup> Based on WTVJ's representation with respect to Florida election law, Complainants will not pursue further action with respect to that station.

<sup>3</sup> WTVT Letter at 3-4; KMSP Letter at 3; WTVD Letter at 3; WFLA Letter at 3-4; WCNC Letter at 2; WWJ Letter at 2 n.1; WDIV Letter at 2.

<sup>4</sup> Most stations included the phrase when quoting the statute, but failed to address the phrase or acknowledge how it alters the analysis. Congress' use of the word “or” in the statute can be

issue in its political file *as each portion of the section applies* to the ad in question. If an ad references a candidate, an election, and an issue, then all three parts of Section 315(e)(2)(E) apply to the ad, and all information must be disclosed. Similarly, if an ad mentions an issue and a candidate, which they often do, then both the issue and the candidate sections of the statute are “applicable” to the ad, and the station must disclose the issue, candidate, and office sought. To interpret the section otherwise is to severely reduce the utility of disclosures in the first place, as filers could simply disclose one item, which would cripple investigations into campaign spending. At best, the statute is ambiguous. The FCC can remedy the ambiguity by providing guidance requiring stations to disclose all information as applicable.

Further, WTVD incorrectly argues that because Congress used the terms “issue” and “candidate,” which are singular, the station is required to “include a description of a *single* issue which it finds . . . to feature prominently in the advertisement.”<sup>5</sup> It is basic statutory interpretation, as set forth in the U.S. Code, that “words importing the singular include and apply to several . . . things.”<sup>6</sup> Further, in the context of Section 315 of the Communications Act, it makes sense to require stations to disclose multiple candidates, elections, or issues if the ad references them because ads will often do so—to choose only one would mislead and misinform the public. Therefore, it is unreasonable to allow a station to choose to disclose one out of potentially numerous issues, candidates, or elections referenced by the ad.

## **II. Disclosure of only the treasurer of the sponsoring group is insufficient**

In two cases, stations failed to identify a chief executive officer or list the board of directors of the purchasing group, but instead identified only the sponsor’s treasurer.<sup>7</sup> They

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explained by the understanding that not all advertisements will mention a candidate, an election, and an issue.

<sup>5</sup> WTVD Letter at 3-4 (emphasis added).

<sup>6</sup> 1 USC §1 (2014).

<sup>7</sup> WCNC Letter at 3; WFLA Letter at 4.

argued that disclosing the treasurer alone is sufficient to comply with the Communications Act and the FCC's rules.<sup>8</sup> WFLA, in particular, argues that because the Federal Election Commission "generally only require[s] one named officer" to be identified in filings with that agency, and because "the Station had no way of knowing whether there were any additional officers/directors," the station complied with the FCC's rules by disclosing only the treasurer.<sup>9</sup>

These stations misread the plain language of a straightforward law. The Communications Act and the FCC's rules specifically state that the station should disclose "a list of the *chief executive officers* or *members of the executive committee* or of the *board of directors*" of the sponsoring group.<sup>10</sup> The treasurer is not the chief executive officer, nor does identifying the treasurer constitute a *list* of members of the executive committee or of the board of directors. Section 315 imposes the disclosure burden on licensees, not the advertisers. In WFLA's case, if the information provided to it by the advertiser was insufficient, then it is the station's responsibility to retrieve that information.<sup>11</sup>

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<sup>8</sup> WCNC argues that disclosing "the name and title of Patriot Majority USA's treasurer" is sufficient to comply with 47 CFR §73.1212(e). WCNC Letter at 3. The original complaint against WCNC did not allege a violation of 47 CFR §73.1212(e), however, because Craig Varoga, Patriot Majority's treasurer, is also Patriot Majority's president. WCNC could, if it truly values clarity in disclosure, ensure that its online disclosure forms identify Mr. Varoga as the group's president.

<sup>9</sup> WFLA Letter at 4.

<sup>10</sup> 47 USC §315(e)(2)(G) (emphasis added); 47 CFR §73.1212(e).

<sup>11</sup> WFLA's citation to *Trumper*, 11 FCC Rcd 20415 (1996), is inapposite. That case was about how much reasonable diligence was required to satisfy 47 USC §317(c) and the FCC's on-air disclosure requirements in 47 CFR §73.1212(e); it was not about complying with 47 USC §315 or the FCC's political file requirement in 47 CFR §73.1212(e). Even if it were, requiring a station to ask about the CEO, board of directors, or executive committee does not rise to the level of a "private investigat[ion,]" as WFLA appears to believe. WFLA Letter at 4.

### III. Triggering Section 315

#### A. “Political matter of national importance” is a broad category

KMGH and WTVT argued that the advertisements run by their stations did not implicate 47 USC §315(e)(1)(B) because the issues mentioned by their ads did not qualify as “national legislative issue[s] of public importance” under Section 315(e)(1)(B)(iii). KMGH, which ran an ad referring to Representative Cory Gardner and his alleged attempts to cut Medicare, argued that the ad did not trigger Section 315 because “the ad . . . did not address any current legislative issue.”<sup>12</sup> WTVT, which ran an ad attacking David Jolly about his lobbying past in the face of record high debt in the U.S., argued that “[t]here is no national legislative issue presented in the ad.”<sup>13</sup>

This is an incorrect interpretation of the statute. The statute is necessarily broader than a requirement to disclose only references to *currently pending* bills and legislation. The lead-in language to the section states “A licensee shall maintain . . . a complete record of a request to purchase broadcast time that . . . communicates a message relating to *any political matter of national importance*, including . . . a national legislative issue of public importance.”<sup>14</sup> The list is inclusive: a “political matter of national importance” is a broad category that includes, among other things, any “national legislative issue.” Thus, significant political issues subject to frequent legislative consideration, like Medicare or the national debt, regardless of whether legislation is currently pending at the time the ad ran, should be disclosed by the station because they both are, without a doubt, “political matter[s] of national importance.”

Moreover and in any event, both Medicare and the U.S. national debt are in fact the subjects of recent or currently-pending legislation. KMGH admits as much in its letter, stating “the sole bill that the Complaint relies upon to show a current Medicare issue is a Republican bill

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<sup>12</sup> KMGH Letter at 1-2.

<sup>13</sup> WTVT Letter at 3-4.

<sup>14</sup> 47 USC §315(e)(1) (emphasis added).

designed to protect Medicare recipients’ access to their doctors.”<sup>15</sup> Neither sponsorship nor viewpoint of a bill is applicable to whether the statute is triggered. KMGH attempts to discount the relevance of the bill cited by the Complaint by saying such Medicare “doc fix” bills are a “routine congressional rite.”<sup>16</sup> Routine or not, the legislation exists—and the controversial nature of the issue is further bolstered by the fact that this “routine congressional rite” was been mired in gridlock.<sup>17</sup> In addition, as in prior years, H Con Res. 96, adopting a budget for FY 2015 in the House proposes significant reductions in expenditures. In short, Medicare is a continuing legislative matter of public importance.

The national debt is without question an issue of significant public concern. There are many legislative efforts to restrict spending and to pay down the national debt. Many proposed Congressional budgets propose to do so.<sup>18</sup> Medicare itself is a hot topic in budget discussions because it is an area in which the government could potentially save money and pay down the national debt.<sup>19</sup> Thus, even under the stations’ incorrect, narrow interpretation of the statute, they were still required to disclose the issues referred to by the ads they ran.

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<sup>15</sup> KMGH Letter at 2.

<sup>16</sup> *Id.*

<sup>17</sup> Tom Howell Jr., *House Votes to Thwart Cuts to Medicare Payments; Quick Vote Stirs Controversy*, Washington Times (Mar. 27, 2014), <http://www.washingtontimes.com/news/2014/mar/27/house-gop-struggles-pass-medicare-doc-fix>.

<sup>18</sup> Zachary A. Goldfarb, *Obama Sends \$3.9 Trillion Budget Plan for Fiscal 2015 to Congress*, Washington Post (Mar. 4, 2014), [http://www.washingtonpost.com/business/economy/obama-sends-39-trillion-budget-proposal-to-congress/2014/03/04/20066806-a3e2-11e3-84d4-e59b1709222c\\_story.html](http://www.washingtonpost.com/business/economy/obama-sends-39-trillion-budget-proposal-to-congress/2014/03/04/20066806-a3e2-11e3-84d4-e59b1709222c_story.html); Jeff Horseman, *Congress: Democrats Use Ryan Budget in Inland Campaigns*, Press Enterprise (Apr. 9, 2014), <http://blog.pe.com/political-empire/2014/04/09/congress-democrats-use-ryan-budget-in-inland-campaigns>.

<sup>19</sup> Gretchen Jacobson, *Issue Brief: Medicare and the Federal Budget: Comparison of Medicare Provisions in Recent Federal Debt and Deficit Reduction Proposals*, Henry J. Kaiser Family Foundation (Jan. 2014), <http://kaiserfamilyfoundation.files.wordpress.com/2014/01/8124-04-medicare-and-the-federal-budget.pdf>.

KMGH apparently would like the FCC to complicate the simple disclosure requirements by allowing stations to determine whether an ad “discuss[es]” an issue (must be disclosed) or merely “asserts” something about an issue (does not need to be disclosed).<sup>20</sup> This is a false dichotomy because there is substantial overlap between the two terms. Moreover, the FCC should not complicate disclosure requirements by allowing stations to withhold disclosures by making “discussion vs. assertion” determinations. According to the statute, an ad is covered if it “communicates a message relating to any political matter of national importance.” An ad can do so whether it “discusses” or “asserts.”

**B. Whenever a legally qualified candidate is referenced in a political advertisement, it triggers Section 315 disclosure, and the disclosure should reflect that reference**

Fox’s station KMSP, which ran an ad that targeted Senator Al Franken’s support for new IRS non-profit rules and his alleged attacks on free speech, argued that Section 315 was not triggered by “Senator Franken [being] named and identified in the advertisement.”<sup>21</sup> Further, “[t]he American Encore advertisement does not mention Senator Franken in reference to any election[,]” and therefore, the station argues, this information did not need to be disclosed.<sup>22</sup>

The statute is clear on this point: whenever an advertisement “communicates a message” relating to a “legally qualified candidate,” the station must disclose the name of that candidate *and* the office to which he or she is seeking election.<sup>23</sup> In KMSP’s case, the ad communicated a very clear message regarding Senator Al Franken: that he was wrong when he supported changes to the IRS non-profit rules and that he is opposed to free speech. The ad even, in the words of

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<sup>20</sup> KMGH Letter at 2 (differentiating between an ad that purports to “discuss” a controversial issue and an ad that “asserts” something about a candidate’s view on an issue).

<sup>21</sup> *Id.* at 3. KMSP did concede that Section 315 was triggered because it “related to an important national issue.” *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> KMSP appears to conflate triggering and disclosure requirements in the statute, which are separate.



KMSP itself, “encouraged viewers in the KMSP-TV viewing area to tell Senator Franken to stop attacking free speech.”<sup>24</sup> Not only did the ad communicate a message about Senator Franken, it asked viewers to call his office and express their displeasure based on the message of the ad. The ad clearly communicates a message about Senator Franken, and therefore triggered section 315 for this reason. Therefore, the disclosure must include Senator Al Franken’s name and office sought.

#### **IV. Other issues bearing brief mention**

##### **A. The obligation to disclose information about political advertisements is the station’s responsibility, and it cannot rely on consumer inference to make up for station noncompliance**

WFLA argues that its files were “substantially complete” because, despite the fact that it failed to disclose the candidate and issue addressed by the ad as well as the chief executive officer, its disclosure “met the Commission’s policy goal that the disclosures included in the political file [should] further the First Amendment’s goal of an informed electorate.”<sup>25</sup> WFLA believes the FCC should excuse its noncompliance with the candidate and issue disclosure requirements because “[it is] self-evident” that ads run by the NRCC (a Republican group)

on the station during the run up to the March 11, 2014 U.S. House special election in Tampa were ads that supported David Jolly and opposed Alex Sink. While the information regarding the candidates and the election was not specifically listed on the NAB form itself, anyone viewing the online public file during this time period would have understood the position of the NRCC . . . .<sup>26</sup>

As an initial matter, it is difficult to understand how failing to disclose information in a station’s political file would support the Commission’s policy goal, which is to inform the electorate. Failing to disclose information required by law does not inform the electorate. The

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<sup>24</sup> KMSP Letter at 2.

<sup>25</sup> WFLA Letter at 3 (internal quotation marks omitted).

<sup>26</sup> WFLA Letter at 2-3.

statute does not say that stations must disclose just enough information for viewers to infer the candidates, elections, and issues referred to by an ad based on political party leanings or names of groups. It would be very difficult for “the public, journalists, educators, and the research community, to identify and investigate those sponsoring political advertisements”<sup>27</sup> if stations were obscuring disclosures and assuming viewers will simply “underst[and]” who the PAC supports and what the ad says, regardless of how “self-evident” the connection may be.

WFLA unapologetically admits its own failure to comply with the law, but feels entitled to a free pass because it “substantially complied.”<sup>28</sup> It claims that the station’s “records of the NRCC purchases contain the information required under 47 U.S.C. § 315(e)(2)(A)-(D) and (G) as well as the Commission’s rule for political issue groups, 47 C.F.R. § 73.1212.”<sup>29</sup> Even if that were true (WFLA does not comply with Section 315(e)(2)(G) as discussed in the original complaint), WFLA is not entitled to a free pass because it complied with certain other portions of the law. The mere suggestion is irrational and should be outright rejected.

**B. Complainants are not required to show harm to allege violations of disclosure laws**

KMSP and WTVT both argue, in a footnote, that complainants cannot show harm and therefore the complaints cannot be the basis for an enforcement action against the stations.<sup>30</sup> The stations say the FCC enacted the online filing requirement so consumers could “easily find the public files of all stations *in their viewing areas*.”<sup>31</sup> Complainants are based in Washington, DC,

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<sup>27</sup> *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, Second Report and Order, 27 FCC Rcd 4535 at para. 16.

<sup>28</sup> WFLA Letter at 2.

<sup>29</sup> WFLA Letter at 3.

<sup>30</sup> KMSP Letter at 3, n.8; WTVT Letter at 3, n.8.

<sup>31</sup> KMSP Letter at 3, n.8; WTVT Letter at 3, n.8 (quoting *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, Second Report and Order, 27 FCC Rcd 4535 at para. 14).

not in the stations' viewing areas. The advertisements were not intended, the stations argue, to be viewed by Complainants.<sup>32</sup> Therefore, Complainants were not harmed.

Harm is not a necessary element to a complaint that a station has violated the disclosure laws. Even if it were, as stated above, one policy goal of the online political file is to inform the electorate about ads run by the stations. Indeed, in adopting the public file rules, the Commission fully considered and rejected the notion that disclosure of public files is only for the benefit of residents of a station's service area:

Some broadcasters argue that the Commission's focus in this proceeding has inappropriately changed from increasing broadcast dialogue with the public to enabling access to information about the stations for research and public advocacy groups with no ties to the broadcast stations' communities. We do not perceive the dichotomy these broadcasters suggest. *While the public file is first and foremost a tool for community members, it is also a tool for the larger media policy community. Public advocacy groups, journalists, and researchers act in part as surrogates for the viewing public in evaluating and reporting on broadcast stations' performance. And as we stated in the FNPRM, easy access to public file information will assist the Commission, Congress, and researchers as they fashion public policy and recommendations relating to broadcasting and other media issues.* For example, the Commission has said that "the quarterly issues/programs lists will provide the public and the Commission with the information needed to monitor licensees' performance under this new regulatory scheme and thus permit us to evaluate the impact of our decision. Existing procedures such as citizen complaints and petitions to deny will continue to function as important tools in this regard." *Academic analysis of such lists help the Commission monitor whether stations are meeting their responsibilities to their local community, and can provide information relevant to citizen complaints and petitions to deny. We recognize the efforts of public interest groups and academics to analyze publicly available information and educate the public about how their local stations are serving their communities, and believe that this work is an important aspect of educating viewers about their local television broadcast stations.*<sup>33</sup>

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<sup>32</sup> KMSP Letter at 3, n.8; WTVT Letter at 3, n.8.

<sup>33</sup> *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, Second Report and Order, 27 FCC Rcd 4535, 4545 (2012) at para. 18 (emphasis added).

Therefore, even if KMSP and WTVT are not in the Washington, DC, area, the stations' failure to disclose the required information, on its face, harms the entire viewing public by withholding crucial information about ads the stations run. The FCC understood the implications of requiring online disclosure of political files, and any attempts by broadcasters to read into the requirement a narrowly-defined "harm" element should be rejected.<sup>34</sup>

### **Conclusion**

The broadcasters' responses confirm that non-compliance with the Commission's public file rules has been commonplace. Complainants therefore renew their request that the FCC take prompt action to ensure that all required information is made available to the public in licensees' public files. They 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 all broadcast stations fully comply with the requirements for complete public disclosure as required by law.

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<sup>34</sup> KMSP and WTVT also argued that the complaints are examples of public interest groups finding "technical shortcomings in every television station's efforts to comply with the mechanics of a new online political file requirement." KMSP Letter at 4; WTVT Letter at 4. The stations attempted to downplay their own nonfeasance by claiming that failing to disclose the issue and candidate referred to in the ad was a "minor exception" to the stations "substantial[] compli[ance]" with the law. KMPS Letter at 2-3; WTVT Letter at 2-3. However, wholesale failure to disclose arguably the most important information about a political ad is not a "minor" exception. The FCC should not be afraid to take enforcement action against stations for blatant and continued violations of simple, straightforward disclosure laws.

Respectfully submitted

/s/

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Dated: June 3, 2014

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**CERTIFICATE OF SERVICE**

I, Eric Null, hereby certify that copies of the Consolidated Reply of Campaign Legal Center and Sunlight Foundation, through its attorneys, the Institute for Public Representation, have been served by e-mail, this 3rd of June, 2014, on the following persons at the addresses shown below.

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