



FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

December 17, 2015

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Georgetown University Law Center
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Re: Complaint against WKOW License, LLC, Licensee of Station WKOW(TV), Madison, WI

Dear Mr. Hartzell and Mr. Simshaw:

This email is in reference to the complaint filed by the Institute for Public Representation on behalf of Campaign Legal Center, Common Cause, and the Sunlight Foundation on December 10, 2015, against the above-referenced television station. The complaint, which was served on you on December 10, 2015, alleges violations of Section 317 of the Communications Act of 1934, as amended, 47 U.S.C. § 317, and Section 73.1212 of the Commission's Rules, 47 C.F.R. § 73.1212, relating to on-air sponsorship identification of certain advertising.

Having reviewed the complaint, the Media Bureau has concluded that additional information is necessary to resolve this matter. Accordingly, the licensee of the above-referenced television station is hereby directed to file an Answer responding to the allegations in the complaint by January 15, 2016. The licensee shall send its Answer via email to me, copying counsel for Complainants.

Complainants may file a reply to the licensee's Answer, by January 29, 2016, copying counsel for the licensee.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert L. Baker".

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

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

Complaint of)
)
Campaign Legal Center, Common Cause, and)
Sunlight Foundation)
)
Against)
)
WKOW License, LLC, licensee of)
WKOW(TV), Madison, Wisconsin)
)
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”) regulations by WKOW License, LLC, licensee of WKOW(TV). WKOW(TV) is an ABC broadcast television station in Madison, Wisconsin.

In November 2015, WKOW(TV) aired political advertisements identified as paid for by Independence USA PAC (“Independence”). Despite the fact that even a cursory search of the public record would have shown that Michael Bloomberg is the sole funder of Independence USA PAC, WKOW(TV) did not identify Michael Bloomberg as the sponsor of the advertisements or, evidently, make inquiry of Independence USA of its sources of funding, and instead identified the sponsor of the ads as “Independence USA PAC.”

On November 19, 2015, while the advertisements were still running on WKOW(TV), Complainants provided evidence directly to WKOW(TV) establishing that Independence USA

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

PAC was not the ad’s true sponsor.² Specifically, Complainants provided evidence that Michael Bloomberg has provided 100 per cent of Independence’s funding since its creation. Despite being furnished with such evidence, WKOW(TV) declined to change the sponsorship identification on Independence advertising.³

By failing to identify Michael Bloomberg as the sponsor of the ads, WKOW(TV) did not “fully and fairly disclose the true identity” of the ad’s sponsor on-air, and did not exercise reasonable diligence to obtain information about the source of Independence’s funds as required by Section 317 of the Communications Act and Section 73.1212 of the FCC’s regulations—even after being provided this information by Complainants.

I. On-air disclosure requirements.

Section 317 of the Communications Act requires that broadcast licensees determine the identity of the sponsor of any advertisement for which money is directly or indirectly paid and disclose this information at the time the ad is broadcast.⁴ 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.⁵ 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 supplied.”⁶ Under the FCC’s rules, broadcasters “shall exercise reasonable diligence” to “*fully*

² A copy of the letter sent to WKOW(TV) is attached in Exhibit B.

³ A copy of WKOW(TV)’s response letter is attached in Exhibit C.

⁴ 47 U.S.C. §317(a)(1) (2014).

⁵ 47 U.S.C. §317(c) (emphasis added).

⁶ 47 C.F.R. §73.1212(a)(2) (2014).

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.⁷

The FCC has been particularly concerned with identification of political ad sponsors⁸ 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.”⁹ 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.”¹⁰ 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.”¹¹ Further, it said the duty to investigate the true source of the funding requires the “highest degree of diligence” for political matter.¹² To comply with the FCC’s rules, broadcasters have an affirmative obligation to investigate the source of funds in order to disclose accurate and complete identification of the sponsor.

⁷ *Id.* §73.1212(b) & (e) (emphasis added).

⁸ 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).

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

¹⁰ *Id.*

¹¹ *Violation of Section 317 of the Commc’ns Act, KTSP, Inc.*, 40 FCC 12, 14 (1958) (emphasis added).

¹² *Id.* 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.”¹³ 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.¹⁴ 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.¹⁵

Disclosure also promotes transparency and accountability in political advertising.¹⁶ Indeed, the Supreme Court has repeatedly embraced disclosure as “justified based on a governmental interest in provid[ing] the electorate with information about the sources of election-related spending.”¹⁷ Moreover, the Court has said that in light of “modern technology,” disclosure is “a particularly effective means of arming the voting public with information.”¹⁸

¹³ *Applicability of Sponsorship Identification Rules*, 40 FCC 141, 141 (1963).

¹⁴ *Advertising Council*, 17 FCC Rcd 22616, 22620-21 (2002).

¹⁵ 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 Nov. 29, 2015).

¹⁶ See, e.g., *McConnell v. FEC*, 540 U.S. 93, 201 (2003) (finding disclosure requirements that “do not prevent anyone from speaking” and “perform an important function in informing the public” to be constitutional) (internal citations and quotation marks omitted); *Citizens United v. FEC*, 558 U.S. 310, 371 (2010) (“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.”).

¹⁷ *McCutcheon v. FEC*, 134 S. Ct. 1434, 1459 (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).

¹⁸ *Id.*

II. Independence USA PAC and its Wisconsin Attorney General ads.

Independence is a Super PAC created in 2012 by Michael Bloomberg, the then-mayor of New York City.¹⁹ Its stated mission is to “support candidates and referenda in local, state and Federal races across the country, with a focus on issues including gun laws, the environment, education policy and marriage equality.”²⁰ Acting under the name Independence USA, Mr. Bloomberg has been active in, among other things, criticizing state attorneys general who recently joined a federal law suit to block the White House’s Clean Power Plan.

In November of this year, Independence purchased time to run a political advertisement on WKOW(TV) that criticized Wisconsin Attorney General Brad Schimel. The ad accuses Schimel of “siding with polluters” by supporting the law suit, and putting polluters ahead of Wisconsin families.²¹ The ad’s on-air disclosure says: “PAID FOR BY INDEPENDENCE USA PAC.” The disclosure did not reference Michael Bloomberg and gave no indication that any individual or entity other than Independence was responsible for the ad.

III. WKOW(TV) has not “fully and fairly disclosed the true identity” of the sponsor of the Independence ad.

A. Michael Bloomberg is the “true identity” of the sponsor of the ad.

The plain language of the Communications Act and the FCC’s rules, along with the purpose of the disclosure laws, requires broadcasters to go beyond simply accepting the unsupported assurances of an advertiser as to the source of their funds when the claimed sponsor is naming the Super PAC that paid for the ad.²² WKOW(TV) has failed to “fully and fairly disclose the true identity” of the sponsor of these ads because it disclosed only the name of the

¹⁹ Michael Bloomberg, Announcing a Major New Effort to Support Common Sense Gun Laws, Education Reform, and Nonpartisan Leadership in the November Elections, (Oct. 17, 2012), <http://www.mikebloomberg.com/index.cfm?objectid=700D96FE-C29C-7CA2-F41D7AAAB5FCBD58>.

²⁰ Independence USA PAC, <http://independenceusapac.org/> (last visited Nov. 4, 2014).

²¹ The Wisconsin ad is available at <http://independenceusapac.org/cleanpower/schimel.cfm>.

²² See footnote 12, *supra*.

Super PAC, “Independence USA PAC,” and failed to disclose Michael Bloomberg as the true identity of the sponsor of the ads.

Mr. Bloomberg announced the formation of Independence on October 17, 2012. When the ad aired in November on WKOW(TV), Mr. Bloomberg had to-date contributed over \$27 million of his own wealth to the group. According to the most recent FEC disclosure reports, Mr. Bloomberg’s contributions account for 100 per cent of Independence’s total receipts (See *Figure 1*).

Contributor Name	Receipt Date	Amount	Contributor Name	Receipt Date	Amount	Contributor Name	Receipt Date	Amount
BLOOMBERG, MICHAEL R.	10/01/2015	\$13,452	BLOOMBERG, MICHAEL R.	10/22/2014	\$445,000	BLOOMBERG, MICHAEL R.	10/30/2013	\$990,000
BLOOMBERG, MICHAEL R.	06/11/2015	\$42,221	BLOOMBERG, MICHAEL R.	10/15/2014	\$2,098,920	BLOOMBERG, MICHAEL R.	10/25/2013	\$1,812,582
BLOOMBERG, MICHAEL R.	04/09/2015	\$996	BLOOMBERG, MICHAEL R.	10/09/2014	\$635,250	BLOOMBERG, MICHAEL R.	10/16/2013	\$13,275
BLOOMBERG, MICHAEL R.	02/06/2015	\$150,000	BLOOMBERG, MICHAEL R.	10/02/2014	\$200,000	BLOOMBERG, MICHAEL R.	10/10/2013	\$732,535
BLOOMBERG, MICHAEL R.	02/05/2015	\$1,284	BLOOMBERG, MICHAEL R.	10/01/2014	\$2,258,795	BLOOMBERG, MICHAEL R.	05/14/2013	\$267
BLOOMBERG, MICHAEL R.	02/05/2015	\$9,981	BLOOMBERG, MICHAEL R.	09/16/2014	\$365,750	BLOOMBERG, MICHAEL R.	02/14/2013	\$700,000
BLOOMBERG, MICHAEL R.	12/19/2014	\$105,000	BLOOMBERG, MICHAEL R.	09/16/2014	\$539,000	BLOOMBERG, MICHAEL R.	02/08/2013	\$400,000
BLOOMBERG, MICHAEL R.	11/17/2014	\$43,000	BLOOMBERG, MICHAEL R.	08/18/2014	\$417,500	BLOOMBERG, MICHAEL R.	02/06/2013	\$400,000
BLOOMBERG, MICHAEL R.	11/17/2014	\$205,500	BLOOMBERG, MICHAEL R.	08/13/2014	\$75,000	BLOOMBERG, MICHAEL R.	02/05/2013	\$400,000
BLOOMBERG, MICHAEL R.	11/17/2014	\$367,500	BLOOMBERG, MICHAEL R.	08/06/2014	\$200,000	BLOOMBERG, MICHAEL R.	01/29/2013	\$100,000
BLOOMBERG, MICHAEL R.	11/13/2014	\$153,500	BLOOMBERG, MICHAEL R.	02/04/2014	\$200,000	BLOOMBERG, MICHAEL R.	11/29/2012	\$14,766
BLOOMBERG, MICHAEL R.	11/04/2014	\$17,003	BLOOMBERG, MICHAEL R.	01/31/2014	\$3,000	BLOOMBERG, MICHAEL R.	11/13/2012	\$39,469
BLOOMBERG, MICHAEL R.	10/31/2014	\$400,000	BLOOMBERG, MICHAEL R.	12/20/2013	\$300,000	BLOOMBERG, MICHAEL R.	11/01/2012	\$500,000
BLOOMBERG, MICHAEL R.	10/29/2014	\$500,000	BLOOMBERG, MICHAEL R.	11/14/2013	\$15,663	BLOOMBERG, MICHAEL R.	10/31/2012	\$500,000
BLOOMBERG, MICHAEL R.	10/27/2014	\$516,833	BLOOMBERG, MICHAEL R.	11/01/2013	\$13,275	BLOOMBERG, MICHAEL R.	10/29/2012	\$3,000,000
BLOOMBERG, MICHAEL R.	10/24/2014	\$16,700	BLOOMBERG, MICHAEL R.	11/01/2013	\$21,000	BLOOMBERG, MICHAEL R.	10/26/2012	\$950,000
BLOOMBERG, MICHAEL R.	10/23/2014	\$1,700,000	BLOOMBERG, MICHAEL R.	11/01/2013	\$28,500	BLOOMBERG, MICHAEL R.	10/25/2012	\$4,500,000
			BLOOMBERG, MICHAEL R.	10/31/2013	\$41,581	BLOOMBERG, MICHAEL R.	10/19/2012	\$500,000

Figure 1: Independence’s FEC disclosures


The Independence website describes the group’s political efforts as “a continuation of Michael R. Bloomberg’s long history of supporting candidates and referenda that reflect his independent and non-partisan approach to government” (See *Figure 2*).

Independence USA PAC


Michael R. Bloomberg has created a major effort to support candidates and referenda in local, state and Federal races across the country, with a focus on issues including gun laws, the environment, education policy and marriage equality. The effort will support moderates on both sides of the aisle – as well as independents – who have shown a willingness to work in a bi-partisan fashion. It will also target candidates who support– and oppose– efforts to crack down on illegal guns and reform education policy.


"It's critically important that we have elected officials in Washington, Albany, and around the nation who are willing to work across party lines to achieve real results," Michael R. Bloomberg said. "I've always believed in the need for more independent leadership, and this new effort will support candidates and causes that will help protect Americans from the scourge of gun violence, improve our schools, and advance our freedoms."

This effort is a continuation of Michael R. Bloomberg's long history of supporting candidates and referenda that reflect his independent and non-partisan approach to government.

 [Clean Power Campaign](#)

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 [Memo from Alex Johnston on Education Reform and the 2014 Elections](#)

Paid for by Independence USA PAC, Diane Gubelli, Treasurer, P.O. Box 7465 New York, NY 10150, with regulated funds.
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www.IndependenceUSAPac.org

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Figure 2: Independence USA PAC homepage

Thus, Independence owes its existence to Michael Bloomberg's contributions. Independence would not be running any ads without Mr. Bloomberg's money. Independence, in effect, acts as Mr. Bloomberg's political advertising arm and states as much on its webpage. Therefore, the true identity of the sponsor of Independence ads is Michael Bloomberg.

Further, the name "Independence USA PAC" does not fully and fairly inform the public about who paid for the ad. Disclosing only "Independence USA PAC" leaves the public unaware that the group is furthering Michael Bloomberg's political agenda and that he controls the message. It is misleading to claim Independence is the only relevant name that must be disclosed on-air.²³

B. Before being contacted by Complainants, WKOW(TV) failed to use reasonable diligence to determine and disclose sponsorship information.

Information was readily available for WKOW(TV) to determine and disclose that Mr. Bloomberg is the true sponsor of Independence ads. As outlined below, WKOW(TV) failed to fulfill its affirmative obligation to use reasonable diligence to obtain this information on its own. Moreover, it failed to do the same even after Complainants provided the station with credible, unrefuted evidence that Independence acts at the direction of Michael Bloomberg in a letter emailed to WKOW(TV) General Manager Tom Allen on November 19, 2015. In addition to providing the station with information showing that Mr. Bloomberg is the sole source of funding of Independence and that he controls the group's efforts, the letter reminded WKOW(TV) of its on-air sponsor identification requirement obligations and requested that the station identify Mr. Bloomberg during future ad runs. So far as Complainants can determine, WKOW(TV) continued to run the improperly identified ad through November 22, 2015. In its response on

²³ See, e.g., Station KOOL-TV, 26 FCC 2d 42 (1970) (concluding that the sponsor identification of "A Lot of People Who Would Like To See Sam Grossman Elected to the U.S. Senate" "was so general that it did not convey to listeners and viewers the fact that the announcements were sponsored by a specific entity").

November 24, 2015, WKOW(TV) declined to change the sponsorship identification on Independence advertising.

WKOW(TV) employees should have consulted with “other persons with whom it deals directly in connection with” the ad by asking the time buyers, ad agencies, and other representatives of Independence for information necessary to make the correct disclosure. There is no indication that WKOW(TV) made any such inquiries. Further, WKOW(TV) should have been able to determine that Mr. Bloomberg is the sole funder of Independence by exercising even minimal diligence. Station employees should have looked at the Independence website, which makes no effort to hide that the group serves to advance Mr. Bloomberg’s political agenda. WKOW(TV) employees should have also looked at Independence’s FEC filings, which are freely available online, to see that Michael Bloomberg is the sole funder. Moreover, a simple Google search for information regarding Independence would have produced numerous articles stating that Independence is funded and controlled by Mr. Bloomberg. For instance, recent headlines in the New York Times have read “Bloomberg Targets Attorneys General With Ads on Carbon Emissions”²⁴ and “Bloomberg Tries to Help Centrists With TV Ads.”²⁵ One of the articles reports that “Mr. Bloomberg will pay for television ads through his Independence USA PAC,”²⁶ and others have described the ads as being purchased by “Independence USA--Michael Bloomberg’s PAC.”²⁷ A USA Today story titled “Michael Bloomberg Puts Money in Key Races

²⁴ Maggie Haberman, *Bloomberg Targets Attorneys General With Ads on Carbon Emissions*, New York Times (Nov. 6, 2015), http://www.nytimes.com/2015/11/07/us/politics/michael-bloomberg-state-attorneys-general-carbon-emissions.html?smid=fb-nytimes&smtyp=cur&_r=1 (“Former Mayor Michael R. Bloomberg of New York City said this week that he would run millions of dollars in political television ads against four state attorneys general . . .”).

²⁵ Jonathan Martin, *Bloomberg Tries to Help Centrists With TV Ads*, The New York Times (Oct. 7, 2014), http://www.nytimes.com/2014/10/08/us/politics/bloomberg-to-spend-25-million-on-ads-for-centrists-of-both-parties.html?_r=0.

²⁶ *Id.*

²⁷ See, e.g., Jennifer M. Granholm, *AG Schuette Joins Fight Against Renewable Energy, Michigan Jobs*, Huffington Post (Nov. 11, 2015), <http://www.huffingtonpost.com/jennifer-m->

for Governor, Congress” reported that Bloomberg “created the political action committee in the final weeks of the 2012 campaign, aiming to support candidates . . . who supported his goals.”²⁸ Similar stories date back to 2012.²⁹ “Reasonable diligence” must require a broadcaster, at a minimum, to make a simple, routine inquiry about the source of funds from every advertiser with an ambiguous name. In this case, it appears that WKOW(TV) undertook no investigation whatsoever and furthermore ignored this sponsorship information when it was directly provided to the station.

In sum, WKOW(TV) has failed to exercise reasonable diligence to determine and disclose the true identity of the sponsor of the ad in violation of Section 317 of the Communications Act and Section 73.1212 of the FCC’s rules. WKOW(TV) further failed to properly identify Bloomberg even after Complainants’ November 19, 2015 letter put the station on notice that Bloomberg is the true sponsor. The evidence provided in this case was clear, credible, and unrefuted, and WKOW(TV)’s failure to change its identification constitutes a violation of Section 317 of the Communications Act and Section 73.1212 of the FCC’s rules.

IV. WKOW(TV)’s response does not justify its refusal to properly disclose Mr. Bloomberg as the true sponsor of the ad.

In its response by letter dated November 24, 2015, WKOW(TV) expressly declined to change its sponsorship identification on Independence advertising. In doing so, WKOW(TV)

granholm/ag-schuetten-joins-fight-a_b_8538714.html.

²⁸ Catalina Camina, *Michael Bloomberg Puts Money in Key Races for Governor, Congress*, USA Today (Oct. 7, 2014), <http://onpolitics.usatoday.com/2014/10/07/bloomberg-baker-massachusetts-governor/>.

²⁹ See, e.g., Chris Cillizza, *How Michael Bloomberg elected (another) Congressman*, Washington Post (Feb. 27, 2013), <http://www.washingtonpost.com/blogs/the-fix/wp/2013/02/27/how-michael-bloomberg-elected-another-congressman>; Raymond Hernandez, *Bloomberg Starts Super PAC, Seeking National Influence*, New York Times (Oct. 17, 2012), <http://www.nytimes.com/2012/10/18/nyregion/bloomberg-forming-super-pac-to-influence-2012-races.html>.

asserts that it reasonably believed that Independence was the appropriate sponsor to identify because it is a “valid, legally existing committee,” and that Complainants’ letter did not present any evidence to the contrary. While the duty to determine the identity of sponsors belongs to WKOW(TV) and not to Complainants or Independence, Complainants urge the Commission to make plain that compliance with state or federal election law has nothing whatsoever to do with a broadcast licensee’s determination as to who is the sponsor of an advertisement.

In claiming that it reasonably determined to identify the Independence ads without mentioning Michael Bloomberg, WKOW(TV) also made the amazing claim that, in providing WKOW(TV) with ads that identify the sponsor as Independence, the PAC “is merely exercising its First Amendment rights....” Leaving aside the question of whether the PAC, as opposed to Michael Bloomberg, is the proper party, this assertion is completely beside the point and the Commission should squarely reject the notion that there is a First Amendment right not to disclose the true sponsor of an advertisement.

First, WKOW(TV) cannot seek to evade its legal obligations as a licensee by asserting that its advertisers have First Amendment rights. The Communications Act and the FCC’s rules impose obligations on broadcast licensees, not ad buyers. As such, Independence would have no standing to object to the disclosure requirements of Section 317.

Second, for what it is worth, the argument is also completely wrong. In *CBS v. Democratic Nat’l Committee*, 412 U.S. 94, 121-129 (1973), the Supreme Court squarely ruled that there is no First Amendment right to purchase air time. Moreover, there is no First Amendment right to refuse to disclose sources of income when required by federal statute. The Supreme Court has repeatedly said that contributors cannot hide behind the First Amendment

when it comes to disclosure. Most recently in *McCutcheon v. FEC*, 134 S. Ct. 1434 (2014) and *Citizens United v. FEC*, 558 U.S. 310 (2010), the Supreme Court made clear that disclosure is “justified based on a governmental interest in provid[ing] the electorate with information about the sources of election-related spending.”³⁰ As such, broadcasters cannot refuse to identify the true sponsor of an ad by asserting an advertiser’s putative right.

WKOW(TV) also asserts that, “because Independence USA PAC actually paid for the advertising, the Station’s judgment that Independence USA PAC is the sponsor is reasonable, and the Stations do not have irrefutable evidence to the contrary.” This is a wholly unsupportable reading of the law. Section 73.1212(e) clearly directs licensees to go behind artifice to “fully and fairly disclose the true identity” of the sponsor and Section 317 expressly requires licensees to use “reasonable diligence” in making its inquiry. Under WKOW(TV)’s argument, whatever name is on the check determines who the sponsor is and no further inquiry need be made. This would allow wholesale evasion of Section 317 by permitting straw purchasers and middlemen to hide the source of funds used to purchase commercials. As to WKOW(TV)’s assertion that it does not have “irrefutable evidence,” this is palpably false. Complainants presented incontestable evidence as to the source of 100 per cent of Independence’s funds and, pointedly, WKOW(TV) did not even attempt to dispute this.

Finally, WKOW(TV) asserts that it is not required to identify Mr. Bloomberg because it does not consider him to be an outside “third party” to Independence. In doing so, the station relies on *Trumper Communications of Portland, LTD*, 11 FCC Rcd 20415 (1996), which states

³⁰ *McCutcheon v. FEC*, 134 S. Ct. 1434, 1459 (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).

that “unless furnished with credible, unrefuted evidence that a sponsor is acting at the direction of a third party, the broadcaster may rely on the *plausible assurances* of the person(s) paying for the time that they are the true sponsors” (citing *Loveday v. FCC* 707 F.2d 1443 (D.C. Cir. 1983) (emphasis added)). Here, WKOW(TV) has not claimed, much less demonstrated, that it sought any assurances whatsoever from Independence as to the source of its funds, much less plausible assurance.

Further, a “third party” in this context need not necessarily be an outsider to the organization, but rather simply “someone other than the named sponsor.”³¹ Under *Loveday v. FCC*, to which *Trumper Communications* cites, there “may be cases where a challenger makes so strong a circumstantial case *that someone other than the named sponsor* is the real sponsor that the licensees, in the exercise of reasonable diligence, would have to inform the named sponsor that they could not broadcast the message without naming another party.”³² In this case, publically available information and evidence provided by Complainants could not be more compelling that WKOW(TV) must name Mr. Bloomberg.

Conclusion

WKOW(TV)’s determination not to identify Michael Bloomberg as the true sponsor of the Independence ads was clearly unreasonable and violated Section 317 of the Communications Act and Section 73.1212 of the Commission’s rules.

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. WKOW(TV) failed to

³¹ *Loveday*, 707 F.2d at 1458.

³² *Id.* at 1459 (emphasis added).

fulfill its affirmative obligation to determine and disclose the true sponsor of the Independence ad. Even after Complainants provided this information to WKOW(TV) directly, the station failed to commit to making the necessary disclosure. Thus, the Campaign Legal Center, Common Cause, and the Sunlight Foundation respectfully request that the FCC declare that WKOW(TV) was not in compliance with the Communications Act and the FCC's rules and require WKOW(TV) to comply in the future. 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 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.

Respectfully submitted,

/s/

Of counsel:

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Georgetown Law Student

Drew Simshaw
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(202) 662-9535

Dated: December 10, 2015

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

Cc: Stephen Hartzell

Exhibit A

Description of Complainants

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

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

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

Exhibit B



GEORGETOWN LAW
INSTITUTE FOR PUBLIC REPRESENTATION

Directors
Hope M. Babcock
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November 19, 2015

VIA EMAIL

Tom Allen
Vice President & General Manager
WKOW
5727 Tokay Blvd
Madison, WI 53719
tallen@wkow.com

Re: WKOW's failure to identify Michael Bloomberg as the sponsor of advertisements currently being carried on WKOW

Dear Mr. Allen:

We are writing on behalf of the Sunlight Foundation ("Sunlight"), Campaign Legal Center ("CLC"), and Common Cause ("CC").

Your station has been running broadcast advertisements criticizing Wisconsin Attorney General Brad Schimel for filing suit against an EPA Clean Air Act decision. The ads are identified on air as having been paid for by "Independence USA PAC" ("Independence") (Attachment A). Even a cursory investigation of Independence would have disclosed that Independence is the alter ego of Michael Bloomberg, that Michael Bloomberg has provided all the funding for Independence, that he is the true sponsor of the ads, and that he should be identified on the air as the sponsor. Accordingly, Sunlight, CLC and CC therefore call upon WKOW to identify Michael Bloomberg as the sponsor on all future broadcasts of Independence USA ads, effective immediately.

* 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.

The Communications Act and the FCC's regulations require broadcast stations to "fully and fairly disclose the true identity" of the sponsor of advertisements at the time the ad is aired.¹

Independence is not hiding the fact that Michael Bloomberg is the creator and funder of Independence. In fact, in announcing the campaign of which WKOW's ads are a part, Independence issued a press release which explicitly states that "Independence USA PAC was created and is funded by Michael R. Bloomberg."² The release explains that the ad campaign is "[b]uilding on Michael R. Bloomberg's longstanding commitment to environmental and health issues." It also notes that the ads "build on Bloomberg Philanthropies' commitment of over \$100 million to support national, regional, and state-based groups helping state governments implement the [White House's] Clean Power Plan," and that "Bloomberg Philanthropies has directly supported the goals of the Clean Power Plan through its Clean Energy Initiative, a program that builds on the former Mayor's record of environmental activism."

The fact that these are Bloomberg's ads has also been reported prominently in the national media. Headlines in the New York Times have read "Bloomberg Targets Attorneys General With Ads on Carbon Emissions"³ and "Bloomberg Tries to Help Centrists With TV Ads."⁴ One of the articles reports that "Mr. Bloomberg will pay for television ads through his Independence USA PAC,"⁵ and others have described the ads as being purchased by "Independence USA--Michael Bloomberg's PAC."⁶

These reports should have triggered further review by WKOW. Section 317 of the Communications Act requires a broadcast licensee to exercise "reasonable diligence" to "obtain from its employees, and from other persons with whom it deals directly in connection with [the advertisement], information to enable" the broadcaster to accurately identify the advertisement's sponsor.⁷ Had WKOW simply looked at Independence's website, it would have seen that the site calls Bloomberg the group's creator and calls the PAC a "continuation of Mayor Bloomberg's

¹ 47 USC §317; 47 CFR §73.1212(e).

² *Independence USA PAC Defends Clean Power Plan Ads Aimed at State Attorneys General*, Independence USA PAC, November 6, 2015, <http://independenceusapac.org/cleanpower/independence-usa-pac-defends-clean-power-plan-with-ads-aimed-at-state-attorneys-general.cfm>.

³ Maggie Haberman, *Bloomberg Targets Attorneys General With Ads on Carbon Emissions*, The New York Times, November 6, 2015, http://www.nytimes.com/2015/11/07/us/politics/michael-bloomberg-state-attorneys-general-carbon-emissions.html?smid=fb-nytimes&smtyp=cur&_r=1 ("Former Mayor Michael R. Bloomberg of New York City said this week that he would run millions of dollars in political television ads against four state attorneys general . . .").

⁴ Jonathan Martin, *Bloomberg Tries to Help Centrists With TV Ads*, The New York Times, October 7, 2014, http://www.nytimes.com/2014/10/08/us/politics/bloomberg-to-spend-25-million-on-ads-for-centrists-of-both-parties.html?_r=0.

⁵ *Id.*

⁶ *See, e.g.*, Jennifer M. Granholm, *AG Schuette Joins Fight Against Renewable Energy, Michigan Jobs*, Huffington Post, November 11, 2015, http://www.huffingtonpost.com/jennifer-m-granholm/ag-schuette-joins-fight-a_b_8538714.html.

⁷ 47 USC §317(c).

long history of supporting candidates and referenda that reflect his independent and non-partisan approach to government” (Attachment B). Moreover, Federal Election Commission disclosure reports clearly confirm that 100% of Independence’s contributions have come from Michael Bloomberg (Attachment C).

Based on the incontrovertible evidence that Michael Bloomberg is the true sponsor of the Independence ads, WKOW should have identified him as the sponsor of these commercials from the very start. In any event, now that you have the information provided herein, WKOW must immediately begin to comply with the Communications Act and the FCC’s regulations by identifying Michael Bloomberg’s sponsorship.

If you do not comply with this request by November 25, 2015, Sunlight, CLC and CC will file a complaint against WKOW with the Federal Communications Commission.

Yours Truly,

Kimberly Miller
Georgetown Law Student

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

cc. Stephen Hartzell

Attachment A



On-air disclosure of "Independence USA PAC" as sponsor

Attachment B

Independence USA PAC

Michael R. Bloomberg has created a major effort to support candidates and referenda in local, state and Federal races across the country, with a focus on issues including gun laws, the environment, education policy and marriage equality. The effort will support moderates on both sides of the aisle – as well as independents –who have shown a willingness to work in a bi-partisan fashion. It will also target candidates who support– and oppose– efforts to crack down on illegal guns and reform education policy.

"It's critically important that we have elected officials in Washington, Albany, and around the nation who are willing to work across party lines to achieve real results," Michael R. Bloomberg said. "I've always believed in the need for more independent leadership, and this new effort will support candidates and causes that will help protect Americans from the scourge of gun violence, improve our schools, and advance our freedoms."

This effort is a continuation of Michael R. Bloomberg's long history of supporting candidates and referenda that reflect his independent and non-partisan approach to government.



Clean Power Campaign

Latest Statements



Memo from Howard Wolfson on Results from the 2014 Elections



Memo from Alex Johnston on Education Reform and the 2014 Elections

Paid for by Independence USA PAC, Diane Gubelli, Treasurer, P.O. Box 7465 New York, NY 10150, with regulated funds.
Not authorized by any candidate or candidate's committee.
www.IndependenceUSAPac.org

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Independence USA's Homepage

Attachment C

Contributor Name	Receipt Date	Amount	Contributor Name	Receipt Date	Amount
BLOOMBERG, MICHAEL R.	06/11/2015	\$42,221	BLOOMBERG, MICHAEL R.	10/15/2014	\$2,098,920
BLOOMBERG, MICHAEL R.	04/09/2015	\$996	BLOOMBERG, MICHAEL R.	10/09/2014	\$635,250
BLOOMBERG, MICHAEL R.	02/06/2015	\$150,000	BLOOMBERG, MICHAEL R.	10/02/2014	\$200,000
BLOOMBERG, MICHAEL R.	02/05/2015	\$1,284	BLOOMBERG, MICHAEL R.	10/01/2014	\$2,258,795
BLOOMBERG, MICHAEL R.	02/05/2015	\$9,981	BLOOMBERG, MICHAEL R.	09/16/2014	\$365,750
BLOOMBERG, MICHAEL R.	12/19/2014	\$105,000	BLOOMBERG, MICHAEL R.	09/16/2014	\$539,000
BLOOMBERG, MICHAEL R.	11/17/2014	\$43,000	BLOOMBERG, MICHAEL R.	08/18/2014	\$417,500
BLOOMBERG, MICHAEL R.	11/17/2014	\$205,500	BLOOMBERG, MICHAEL R.	08/13/2014	\$75,000
BLOOMBERG, MICHAEL R.	11/17/2014	\$367,500	BLOOMBERG, MICHAEL R.	11/29/2012	\$14,766
BLOOMBERG, MICHAEL R.	11/13/2014	\$153,500	BLOOMBERG, MICHAEL R.	11/13/2012	\$39,469
BLOOMBERG, MICHAEL R.	11/04/2014	\$17,003	BLOOMBERG, MICHAEL R.	11/01/2012	\$500,000
BLOOMBERG, MICHAEL R.	10/31/2014	\$400,000	BLOOMBERG, MICHAEL R.	10/31/2012	\$500,000
BLOOMBERG, MICHAEL R.	10/29/2014	\$500,000	BLOOMBERG, MICHAEL R.	10/29/2012	\$3,000,000
BLOOMBERG, MICHAEL R.	10/27/2014	\$516,833	BLOOMBERG, MICHAEL R.	10/26/2012	\$950,000
BLOOMBERG, MICHAEL R.	10/24/2014	\$16,700	BLOOMBERG, MICHAEL R.	10/25/2012	\$4,500,000
BLOOMBERG, MICHAEL R.	10/23/2014	\$1,700,000	BLOOMBERG, MICHAEL R.	10/19/2012	\$500,000
BLOOMBERG, MICHAEL R.	10/22/2014	\$445,000			

Independence USA's FEC Disclosure Filings

Exhibit C

November 24, 2015

VIA EMAIL

Drew Simshaw
Institute for Public Representation
Georgetown Law
600 New Jersey Avenue, NW, Suite 312
Washington, DC 20001-2075
dts52@law.georgetown.edu

Re: Your Letter Dated November 19, 2015

Dear Mr. Simshaw:

This firm is legal counsel to WKOW Television, LLC, licensee of WKOW(TV), Madison, Wisconsin (“WKOW”). By email, WKOW received your letter dated November 19, 2015, in which you allege that WKOW has violated the Communications Act and the regulations of the Federal Communications Commission (“FCC”) by airing certain advertising containing a sponsorship identification disclosure stating “Paid for by Independence USA PAC.” In your view, WKOW has an obligation “to identify Michael Bloomberg as the sponsor on all future broadcasts of Independence USA ads, effective immediately,” and your letter threatens that you will file a complaint with the FCC if WKOW does not adhere to your instruction. We appreciate your interest in WKOW, and we respectfully disagree with your position.

WKOW reasonably believes that Independence USA PAC is the appropriate identification for the advertising purchased by this valid, legally existing committee, and your letter does not present any evidence to the contrary. By purchasing advertising such as that airing on WKOW, Independence USA PAC is merely exercising its First Amendment rights, *cf., e.g., Citizens United v. Fed. Election Comm’n*, 558 U.S. 310 (2010), and by identifying Independence USA PAC as the sponsor of the advertising, WKOW is exercising its good faith judgment to disclose the identity of the sponsor. Indeed, because Independence USA PAC actually paid for the advertising, WKOW’s judgment that Independence USA PAC is the sponsor is reasonable, and WKOW does not have irrefutable evidence to the contrary. As such, WKOW respectfully disagrees with your view and declines to change the sponsorship identification on Independence USA PAC advertising.

Under the circumstances here, as borne out by applicable precedent, neither Section 317 of the Communications Act nor Section 73.1212 of the FCC’s rules requires WKOW to change the name of the advertiser from “Independence USA PAC” to “Michael Bloomberg.” *See* Letter from Robert L. Baker, Assistant Chief, Policy Division, Media Bureau, to Andrew Jay Schwartzman, Institute for Public Representation, 29 FCC Rcd 10427 (2014) (“2014 Letter Decision”). Notwithstanding the materials that you provided to WKOW, the station does not have “credible,

Mr. Drew Simshaw

Page 2

unrefuted evidence that [the] sponsor is acting at the direction of a third party.” 2014 Letter Decision, p.1 (quoting *Trumper Communications of Portland, LTD*, 11 FCC Rcd 20415 (1996) (citing *Loveday v. FCC*, 707 F.2d 1443 (D.C. Cir. 1983)). Of course, no entity—whether a corporation, association, committee, PAC, or otherwise—can take action without the direction and intervention of the humans authorized to make decisions and to cause the organization to effectuate action. According to the records publicly available in WKOW’s online public inspection file, Michael Bloomberg is the “Chair” of Independence USA PAC.¹ But it does not necessarily follow from Mr. Bloomberg’s position (even combined with his contributions to the organization) that this sponsor’s actions, taken necessarily at the direction of its human officers, directors, agents, or members, are being taken “at the direction of a *third party*” such that the law would place on WKOW a responsibility to change the sponsorship identification of the advertising.²

Kindly direct all future correspondence for WKOW to this firm and not to WKOW’s General Manager.

Yours Truly,



Stephen Hartzell

Counsel to WKOW Television, LLC

cc: Tom Allen, WKOW

¹ The so-called “NAB Form PB-18” political record keeping form that bears this information is available in WKOW’s online public inspection file at <http://bit.ly/1YqNrLe>.

² Indeed, to suggest Mr. Bloomberg is a “third party” in this instance would make him an *outsider* to the organization rather than an individual *within* the organization authorized to act on its behalf.