

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

Complaint of)
)
Campaign Legal Center and Sunlight)
Foundation)
)
Against)
)
Fox Television Stations, Inc., licensee of)
KMSB-TV, Minneapolis, MN)
)
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 Fox Television Stations, Inc., licensee of KMSB-TV. In March 2014, KMSB-TV ran a political ad sponsored by American Encore. The station failed to disclose information about American Encore 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.¹

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.²

KMSP-TV is a FOX-owned and operated broadcast station in Minneapolis, Minnesota. Minneapolis is the 15th largest Designated Market Area in the country, serving more than 1.7 million households.³ Fox Television Stations, Inc., is the licensee of KMSP-TV. Fox Television Stations is wholly owned by 21st Century Fox, a multinational mass media and broadcast corporation headquartered in New York City.⁴

B. The Advertisement

In March 2014, KMSP-TV broadcast a political ad sponsored by American Encore.⁵ According to its website, American Encore's mission is to "defend freedom, promote free

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

² 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).

³ *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.

⁴ 21st Century Fox, Businesses, http://www.21cf.com/Business_Segments/Business_Units/ (last visited Apr. 8, 2014).

⁵ Exhibit A, attached, provides a screenshot of the ad and a *Minnesota Post* article confirming

markets, work to expand economic opportunity and make the case for the American ideals of liberty and democracy, both at home and abroad.”⁶ The website further discloses that “American Encore is an IRS-recognized nonprofit social welfare organization organized under Section 501(c)(4) of the Internal Revenue Code.”⁷ As a result, it is not required to, and does not, disclose the source of its funding.

The *Wall Street Journal* reports that American Encore was “founded by Sean Noble, who presided over a vast network of issue-advocacy groups financed in part by billionaire industrialists Charles and David Koch.”⁸ Minnesota’s *StarTribune* reports that American Encore is associated with the better-known Americans for Job Security.⁹ Americans for Job Security, a 501(c)(6) business league,¹⁰ does not disclose its donors and has deep ties with Republican organizations.¹¹ In 2011 and 2012, it gave \$26.3 million in grants to American Encore’s predecessor, the Center to Protect Patient Rights.¹² The Center for Responsive Politics called this group “an ATM for politically active nonprofits on the right” and “the linchpin in one of the most complex networks of dark money in the country.”¹³

that the ad was run at stations across Minnesota. The ad is also available on Encore’s YouTube page, at <https://www.youtube.com/watch?v=NUF5EVxT004>.

⁶ American Encore, Mission, <http://americanencore.org/mission> (last visited Apr. 21, 2014).

⁷ American Encore, <https://transaxt.com/Donate/EN4LPQ/AmericanEncore/> (last visited Apr. 21, 2014).

⁸ Patrick O’Connor, *Sen. Franken Draws Attack Ad from American Encore*, *Wall Street Journal* (Mar. 25, 2014), <http://blogs.wsj.com/washwire/2014/03/25/sen-franken-draws-attack-ad-from-american-encore/>.

⁹ Rachel E. Stassen-Berger, *An Anti-Franken Television Ad Emerges*, *Star Tribune* (Mar. 26, 2014), <http://www.startribune.com/politics/statelocal/252264191.html>.

¹⁰ About AJS, <http://www.savejobs.org/aboutajs.php> (last visited Apr. 22, 2014).

¹¹ See Americans for Job Security, Factcheck.org (Mar. 24, 2014), <http://www.factcheck.org/2014/03/americans-for-job-security-3/>.

¹² *Id.*

¹³ Devin Henry, *Conservative group hits the airwaves against Franken*, *Minn. Post* (Mar. 26, 2014), <http://www.minnpost.com/dc-dispatches/2014/03/conservative-group-hits-airwaves-against-franken>.

The American Encore ad refers to Senator Al Franken. Since 2009, Sen. Franken has served as a U.S. Senator for Minnesota. He is running for reelection in 2014. The ad, transcribed below, associates Franken with a rule “proposed by the IRS last fall to define how much ‘social welfare’ groups (also known as 501(c)(4)s, for their tax-exempt status) can spend on political activities.”¹⁴

[Narrator:] Where would America be without free speech? We haven't always agreed with what's said, but until now we've always agreed on each other's right to say it. The Obama Administration recently proposed new rules at the IRS to control the speech of certain non-profits. In 2012, Senator Franken pressured the IRS to target these groups. He thinks that free speech should depend upon who is speaking, and wants the IRS to make that call.

[Commentator 1:] “The Obama administration is proposing new tax rules...”

[Commentator 2:] “Unfairly scrutinizing non-profits...”

[Commentator 3:] “Another line of attack against these groups...”

[Narrator:] The ACLU says “the proposed rule threatens to discourage or sterilize an enormous amount of political discourse in America.” Tell Senator Franken, stop attacking free speech.

American Encore spent \$250,000 to air this ad at stations across Minnesota.¹⁵

II. Argument

The American Encore ad triggers KMSP-TV’s political file disclosure requirements in the Communications Act and the FCC’s regulations. KMSP-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.

¹⁴ *Id.*

¹⁵ *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.”¹⁶

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).”¹⁷

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.”¹⁸

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

The American Encore 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 references Senator Franken. Franken is a “legally qualified candidate” for the U.S. Senate because he is the incumbent Senator in 2014, maintains a public campaign website where he accepts donations, and regularly updates his campaign blog and media section with relevant

¹⁶ 47 USC § 315(e)(1)(B)(i)–(iii) (2014).

¹⁷ *Id.* § 315(e)(2)(E).

¹⁸ 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).

campaign information.¹⁹ Senator Franken raised over \$2.1 million for his campaign in the fourth quarter of 2013.²⁰

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. The ad targets Franken for undermining First Amendment free speech and political speech because of his support of a proposed IRS rule and his role in encouraging the IRS to target certain political groups in 2012. IRS rulemakings and First Amendment speech issues are subject to nationwide debate and media coverage, and impact citizens across the country.²¹ Campaign finance has been a national legislative and controversial issue for many decades and has been the subject of multiple recent Supreme Court cases. These issues are clearly national and controversial.

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

KMSP-TV uploaded the following to its online political file for the sale of airtime for this ad: the client information request form; 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, “Agreement Form for Non-Candidate/Issue Advertisements.” Copies are included in Exhibit B.

KMSP-TV failed to disclose the issue and candidate referred to by the ad. The NAB form provides the space for stations to meet the disclosure requirements of § 315 of the

¹⁹ Al Franken, Blog, <http://www.alfranken.com/category/blog/> (last visited Apr. 14, 2014).

²⁰ See Al Franken, <http://www.alfranken.com/landing/e130719cu/> (last visited Apr. 4, 2014); see also Sarah Jones, *Al Franken Is Running a People-powered Grassroots 2014 Campaign*, Politicus USA (Jan. 13, 2014), <http://www.politicususa.com/2014/01/13/al-franken-running-people-powered-grassroots-campaign.html>.

²¹ See, e.g., Matea Gold, *IRS plan to curb politically active groups is threatened by opposition from both sides*, Washington Post (Feb. 12, 2014), http://www.washingtonpost.com/politics/irs-plan-to-curb-politically-active-groups-threatened-by-opposition-from-both-sides/2014/02/12/99dcfd2a-932a-11e3-b46a-5a3d0d2130da_story.html.

Communications Act. It asks on page 2 whether the ad communicates a “message relating to any political matter of national importance.” The form gives several examples of issues of national importance, including “revising the IRS tax code.” If yes, then the station must, in the next section, disclose the name of the candidate, the office being sought, the date of the election and/or the issue to which the ad refers. Nonetheless, KMSP-TV did not check the box yes. It simply failed to answer the question. The station also attached the Schedule on page 5, which is only necessary for ads that communicate a message of national importance, but again left it blank. Thus, KMSP-TV failed to disclose the candidate and issue referred to by the ad in violation of the disclosure laws.

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. KMSP-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 KMSP-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:

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Dated: May 1, 2014

*Counsel for Campaign Legal Center
and Sunlight Foundation*

Exhibit A

The Encore ad is available at: <https://www.youtube.com/watch?v=NUF5EVxT004>.



TELL SENATOR FRANKEN
(651) 221-1016

STOP ATTACKING FREE SPEECH

AMERICAN ENCORE
AMERICANENCORE.ORG

PAID FOR BY AMERICAN ENCORE

0:57 / 1:00

Senator Franken Supports Obama's Attacks on Free Speech

American Encore · 5 videos

82,418

Subscribe 49

Like

About Share Add to

Published on Mar 26, 2014

Americans haven't always agreed with what's said, but until now we've always agreed on each other's right to say it.

Sign the petition and tell Senator Franken he doesn't get to use his power to limit our rights: www.stopattackingfreespeech.com

Conservative group hits the airwaves against Franken

Devin Henry, Minnesota Post

March 26, 2014

<http://www.minnpost.com/dc-dispatches/2014/03/conservative-group-hits-airwaves-against-franken>

WASHINGTON — A conservative group known as one of the biggest players in last cycle's dark money game has launched the first outside attack ad against Sen. Al Franken.

American Encore's reported \$250,000 ad buy looks to tie Franken to a rule proposed by the IRS last fall to define how much “social welfare” groups (also known as 501(c)(4)s, for their tax-exempt status) can spend on political activities. Under current regulations, these groups are supposed to make social welfare their “primary” goal, as opposed to political endeavors like issue-based advertising (The Washington Post explains the proposed rule here).

The ad says the rule is “designed to control the speech of certain non-profits.”

“Sen. Franken pressured the IRS to target these groups. He thinks that free speech should depend on who is speaking,” the ad says over video of a Tea Party rally, “and wants the IRS to make that call.”

The ad is based on a letter Franken and six other senators wrote to the IRS in 2012 asking it to define what counts as social welfare and political activity for these groups. The letter suggested the IRS, among other things, define what “primary purpose” means for the sake of how much a group should be spending on social welfare versus political activities and require the groups to document, as a percentage, how much they're spending on each.

The IRS announced its rule change — which has not yet been approved — last November. It would affect groups like American Encore, which, according to the Wall Street Journal, was formerly called the “Center to Protect Patient Rights.” While CPPR didn't directly spend money on political activities, between 2009 and 2012, the 501(c)(4) group distributed more than \$167 million to non-profits that would report political spending, according to the Center for Responsive Politics. (ProPublica detailed the flows of money to and from CPPR during the 2012 election cycle.) CRP has called the group “an ATM for politically active nonprofits on the right” and “the linchpin in one of the most complex networks of dark money in the country.”

Democrats have tried to make outside political groups and their financial backers an issue ahead of the 2014 elections. Franken himself is a big critic of the Supreme Court's Citizens United decision, which opened the door to more campaign spending from corporations and labor groups. In a statement, his campaign spokeswoman Alexandra Fetissoff called the ad's claims “ridiculous.”

“Sen. Franken is one of the most vigorous defenders of free speech in the Senate,” she said.

“These attacks have been repeatedly proven false. We’ve always known that Sen. Franken was going to be a target of special interest groups. It’s no surprise that they’re here, but it’s not going to stop him from doing his job.”

Exhibit B

NAB Form PB-18 Issues

AGREEMENT FORM FOR NON-CANDIDATE/ISSUE ADVERTISEMENTS

Station and Location:	Date:
------------------------------	--------------

I, Tammie Wingrove

do hereby request station time concerning the following issue:

American Encore

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


This broadcast time will be used by: American Encore

Copyright © 2013 by the National Association of Broadcasters. May not be copied, reproduced or further distributed


**THIS PAGE MUST BE COMPLETED FOR PROGRAMMING THAT
"COMMUNICATES A POLITICAL MATTER OF NATIONAL IMPORTANCE."
FOR ALL OTHER ISSUE ADS, PLEASE GO TO PAGE 3.**

Programming that "communicates a political matter of national importance" includes (1) references to legally qualified candidates (presidential, vice presidential or congressional); (2) any election to Federal office (e.g., any references to "our next senator", "our person in Washington" or "the President"); and (3) a national legislative issue of public importance (e.g., Affordable Care Act, revising the IRS tax code, federal gun control or any federal legislation).

Does the programming (in whole or in part) communicate "a message relating to any political matter of national importance?"

 Yes No

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 offices being sought, the date(s) of the election(s) and/or the issue to which the communication refers (if applicable):



I represent that the payment for the above described broadcast time has been furnished by (name and address):

American Encore
PO Box 72465
Phoenix, AZ 85050

and you are authorized to announce the time as paid for by such person or entity (hereinafter referred to as the "sponsor").

List the chief executive officers or members of the executive committee or the board of directors below (or attach separately):

Executive Director/President - Sean Noble
Treasurer - Sean Noble

For programming that "communicates a message relating to any political matter of national importance," attach Agreed Upon Schedule (Page 5)

**THIS PAGE MUST BE COMPLETED FOR PROGRAMMING THAT
DOES NOT "COMMUNICATE A POLITICAL MATTER OF NATIONAL
IMPORTANCE"**

I represent that the payment for the above described broadcast time has been furnished by (name and address):

American Encore
PO Box 72465
Phoenix, AZ 85050

and you are authorized to announce the time as paid for by such person or entity (hereinafter referred to as the "sponsor").

List the chief executive officers or members of the executive committee or the board of directors below (or attach separately):

Executive Director/President - Sean Noble
Treasurer - Sean Noble

TO BE COMPLETED FOR ALL ISSUE ADVERTISEMENTS

THIS STATION DOES NOT DISCRIMINATE OR PERMIT DISCRIMINATION ON THE BASIS OF RACE OR ETHNICITY IN THE PLACEMENT OF ADVERTISING.

The Sponsor agrees 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), the sponsor also agrees 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 (SPONSOR)

3/3/14 *S. Nobile* (202) 629-3099
Date Signature Contact Phone Number

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

Attach proposed schedule with charges (if available):

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 time the rate for spots "communicating a political matter of national importance" 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 and rates for specific spots aired. The FCC's online political files include a folder for "Terms and Disclosures." NAB suggests that, for stations subject to the online public file rule, the names of contact person(s) be placed in that folder.



Client Information Request Form
Issue

Advertiser Group Name: American Encore

Address: P.O. Box 72465

City, State & Zip Code: Phoenix, AZ 85050

Phone: 202-629-3099

Fax: _____

Executive Director or
President Sean Noble

Group Treasurer Sean Noble

MENTZ

Contract Agreement Between:

Print Date 03/25/14 Page 1 of 3



KMSP
 11358 Viking Drive
 Eden Prairie, MN 55344
 (952) 944-9999

www.myfoxwincities.com

CONTRACT

<u>Contract / Revision</u> 4229294 /		<u>Alt Order #</u> Political Issue Buy
<u>Product</u> 59-70-423 / SNAEN :60'S		
<u>Contract Dates</u> 03/26/14 - 04/01/14		<u>Estimate #</u> 423
<u>Advertiser</u> American Encore		<u>Original Date / Revision</u> 03/25/14 / 03/25/14
<u>Billing Cycle</u> EOM/EOC	<u>Billing Calendar</u> Broadcast	<u>Cash/Trade</u> Cash
<u>Station</u> KMSP	<u>Account Executive</u> Chris Johnson	<u>Sales Office</u> FSS Philadelphia
<u>Special Handling</u>		
<u>Demographic</u> Adults 35+		
<u>IDB#</u> TV12736	<u>Advertiser Code</u> 59	<u>Product Code</u> 70
<u>Agency Ref</u>	<u>Advertiser Ref</u>	

And:

Mentzer Media Service
 600 Fairmount Avenue
 Suite 306
 Towson, MD 21286

*Line	Ch	Start Date	End Date	Description	Start/End Time	Days	Length	Spots/Week	Rate	Rtn	Type	Spots	Amount
N 1	9	03/26/14	03/26/14	Fox at 9	9p-10p		1:00				NM	1	\$3,200.00
Political Issue Rates/order													
		<u>Start Date</u>	<u>End Date</u>	<u>Weekdays</u>			<u>Spots/Week</u>	<u>Rate</u>	<u>Rating</u>				
Week:		03/24/14	03/30/14	--W----			1	\$3,200.00	0.00				
N 2	9	03/28/14	03/28/14	Fox at 9	9p-10p		1:00				NM	1	\$3,200.00
Political Issue Rates/order													
		<u>Start Date</u>	<u>End Date</u>	<u>Weekdays</u>			<u>Spots/Week</u>	<u>Rate</u>	<u>Rating</u>				
Week:		03/24/14	03/30/14	----F--			1	\$3,200.00	0.00				
N 3	9	03/31/14	03/31/14	Fox at 9	9p-10p		1:00				NM	1	\$3,200.00
Political Issue Rates/order													
		<u>Start Date</u>	<u>End Date</u>	<u>Weekdays</u>			<u>Spots/Week</u>	<u>Rate</u>	<u>Rating</u>				
Week:		03/31/14	04/06/14	M-----			1	\$3,200.00	0.00				
Totals										0.00		3	\$9,600.00

Time Period	# of Spots	Gross Amount	Net Amount
02/24/14 - 03/30/14	2	\$6,400.00	\$5,440.00
03/31/14 - 03/31/14	1	\$3,200.00	\$2,720.00
Totals	3	\$9,600.00	\$8,160.00

Signature: _____ Date: _____

(* Line Transactions: N = New, E = Edited, D = Deleted)

Notwithstanding to whom bills are rendered, advertiser, agency and service, jointly and severally, shall remain obligated to pay to station the amount of any bills rendered by station within the time specified and until payment in full is received by station. Payment by advertiser to agency or to service or payment by agency to service, shall not constitute payment to station. Station will not be bound by conditions, printed or otherwise contracts, insertion orders, copy instructions or any correspondence when such conflict with the above terms and conditions. Two week advance cancellation notice is required unless otherwise specified.