

# SANDLER REIFF

SANDLER REIFF LAMB  
ROSENSTEIN & BIRKENSTOCK, P.C.

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Washington, DC 20005  
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T: 202-479-1111  
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To: Station Managers  
Fr: James C. Lamb  
Re: NRCC False Ad "MI-01 "It's All an Act"  
Dt: September 28, 2016

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I am writing on behalf of Lon Johnson for Congress to notify you that the National Republican Congressional Committee's advertisement "MI-01: It's All an Act" (the "NRCC Ad") contains false, misleading, and deceptive statements and request that you stop running it immediately.

## 1. False Statements in NRCC Ad

The NRCC Ad includes a false on-screen statement "Lon Johnson's Penthouse" followed with a false statement by the announcer that Lon is "based in Downtown Detroit."

Lon Johnson, in fact, lives in Blue Lake Township, Michigan. This fact is confirmed by the deed on the home he purchased in 2011<sup>1</sup> and the Kalkaska County property assessment database.<sup>2</sup> In addition, Johnson is registered to vote at his home address in Blue Lake Township.<sup>3</sup> And he lists the Kalkaska County property as his residential address on his Statement of Candidacy filed with the Federal Election Commission on July 9, 2015.<sup>4</sup>

Lon Johnson does not live in a "Penthouse" and he is not "based in Downtown Detroit."

The NRCC first made this false claim in a previous ad that was determined to be untrue on September 27, 2016. According to *Bridge Magazine*:

Johnson, the former state chairman for the Democratic party, is indeed a property owner in Kalkaska County, east of Traverse City. Records show that he owns a house on East Bass Lake Road, in Blue Lake Township, with a state equalized value of \$32,500. He is also registered to vote at this address, and has been since October 2011, according to the state Qualified Voter File. His campaign says this is his home, which he shares with his wife of five years, Julianna Smoot...And it's Smoot's apartment in Detroit's David Whitney Building that the NRCC ad suggests is Johnson's true address. Jen Eyer, a Johnson campaign spokeswoman, says it isn't, noting that it is leased in Smoot's name and used by her "for occasional work travel purposes,"

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<sup>1</sup> See Kalkaska County Deed, 8/23/11, for 6261 E. Bass Lake Road NE, in Blue Lake Township, Kalk

<sup>2</sup> Kalkaska County Property Database, Accessed 9/27/16

<sup>3</sup> Michigan Voter Information Center Database, Accessed 9/27/16

<sup>4</sup> FEC Statement of Candidacy, 7/09/15

because Kalkaska County is so remote...[the NRCC ad] is accusing Johnson of lying about where he lives. But the evidence doesn't match the insinuation, even if it's true that Johnson and his politically active wife sometimes spend time at her Detroit pad. Foul."<sup>5</sup>

Julianna Smoot rents an apartment in Detroit for convenience because her job requires her to travel. Lon Johnson does not live in a "Penthouse" or in "Downtown Detroit. The NRCC Ad is false, misleading, and deceptive.

**2. The FCC imposes a duty on your station to protect the public from false, misleading or deceptive advertising.**

Your station has a duty "to protect the public from false, misleading or deceptive advertising." *Licensee Responsibility With Respect to the Broadcast of False, Misleading or Deceptive Advertising*, 74 F.C.C.2d 623 (1961). Failure to prevent the airing of "false and misleading advertising" may be "probative of an underlying abdication of licensee responsibility" that can be cause for the loss of a station's license. *Cosmopolitan Broad. Corp. v. FCC*, 581 F.2d 917, 927 (D.C. Cir. 1978).

**3. Your station is *not* obligated to run advertisements by political party committees.**

Unlike federal candidates, party committees do not have a "right to command the use of broadcast facilities." See *CBS v. DNC*, 412 U.S. 94, 113 (1973). Because you need not air this advertisement, your station bears responsibility for its content when you do grant access. See *Felix v. Westinghouse Radio Stations*, 186 F.2d 1, 6 (3rd Cir.), *cert. denied*, 314 U.S. 909 (1950).

The NRCC Ad is false, misleading, and deceptive. You have a duty to protect the public from the false advertising and you are not obligated to run ads by political party committees. For these reasons, I respectfully request that your station stop running the NRCC Ad.

I greatly appreciate your immediate attention to this important matter. If you need any additional information, please work with the campaign's media buyer or have your counsel contact me.

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<sup>5</sup> Bridge Magazine, [9/27/16](#)

# JONES DAY

51 LOUISIANA AVENUE, N.W. • WASHINGTON, D.C. 20001.2113  
TELEPHONE: +1.202.879.3939 • FACSIMILE: +1.202.626.1700

DIRECT NUMBER: (202) 879-3986  
MSOWARDSNEWTON@JONESDAY.COM

September 28, 2016

## Via Electronic Mail

Todd Harrison  
General Manager  
WPBN | WTOM-TV 7 & 4  
WGTU | WGTQ-TV 29 & 8  
Traverse City, Michigan

### **RE: NRCC's Advertisement "It's All an Act"**

Dear Mr. Harrison:

We serve as counsel to NRCC. For the reasons set forth below, NRCC's advertisement "It's All an Act" that is currently airing on your station is accurate and, as such, your station must honor its contract and continue to air the advertisement. Your station has an obligation to operate in the public interest. Providing your viewers with the information contained in NRCC's advertisement furthers this interest.

The NRCC's ad asserts that Lon Johnson's act is "based in downtown Detroit." This is an accurate statement, as confirmed by two independent spokespersons for Mr. Johnson. Indeed, a news article in *Bridge Magazine*, which ran yesterday, confirmed that Mr. Johnson is often based in downtown Detroit. After interviewing a Johnson campaign spokesperson regarding this issue, the reporter for *Bridge Magazine* notes that "it's true that Johnson and his politically active wife sometimes spend time at her Detroit pad." (*Bridge Magazine*, Sept. 27, 2016).

Furthermore, as recently as last year, another Johnson spokesperson told the press that Johnson lives in Detroit. Specifically, a spokeswoman for the Michigan Democratic Party, which was chaired at the time by Lon Johnson, confirmed on the record that Johnson lives in Detroit. The article states:

"The Michigan Democratic Party does not have an office in Detroit at the moment, but said it will soon. 'Our chairman and several staffers live in Detroit, we have a full-time organizer dedicated to Detroit, and we have daily events and meetings in the city,' Joshua Pugh, the state party's communication director, said in an e-mail."

(Arit John, "We Visited the GOP's Outreach Office in Solidly Liberal Detroit," Bloomberg, May 8, 2015.)

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In light of these confirmations by two separate spokespersons for Mr. Johnson, it is an accurate statement that Lon Johnson's act is "based in downtown Detroit." Therefore, there are no grounds to pull down this advertisement.

Furthermore, "based" is not a legal term. It simply asserts that Detroit is a location from which Mr. Johnson often operates. Indeed, the NRCC ad does not address whether Mr. Johnson is in compliance with the residency standards under Michigan's election law. Nevertheless, Johnson's lawyers, in an effort to distract from the literal message contained in the advertisement, cite to his voter registration in Blue Lake Township as evidence that his act cannot be "based" in Detroit. That is not the claim in the advertisement. All that the voter registration record proves is that Mr. Johnson is registered to vote in Blue Lake Township. It does not disprove the fact that Mr. Johnson is routinely based in an apartment building located in downtown Detroit.

In addition, since Mr. Johnson registered to vote in northern Michigan in 2011, there have been multiple news stories in the ensuing years that indicate that Mr. Johnson lives elsewhere. In 2013, a news story indicated that Mr. Johnson lives in suburban Royal Oak. That story stated:

Why Kalkaska? 'Well, my grandfather had a home there,' said Johnson, who now lives mainly in suburban Royal Oak. Johnson gave the race his all last year; raised \$347,000, fell short." Jack Lessenberry, "Republicans rule state government," *Traverse City Record-Eagle*, Sept. 8, 2013.

Meanwhile, another 2013 column indicated that as late as 2012, Mr. Johnson was living in Chicago.

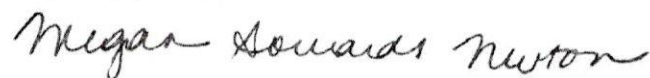
"Meanwhile, the pro-Brewer crowd is pulling out all the stops. In a move that some saw as dirty politics, they leaked documents that show Johnson was hit with nine building code violations over a short period of time on his Royal Oak house, which he was renting to tenants. The \$625 in fines assessed by the 44th District Court probably will not sway the chairmanship election, but the court documents also revealed that Johnson was living with his wife in Chicago in late 2011 and early 2012, just months before he ran for a state House seat in the Kalkaska area."

Chad Selweski, "Nasty fight for Dem chair nears final bell," *The Oakland Press*, Feb. 16, 2013.

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While there has been a great deal made in the press regarding Mr. Johnson's true legal residence, the assertion by the NRCC that Mr. Johnson's act is based in Detroit is clearly supported by the statements of two Johnson spokespeople and multiple news stories and therefore must remain on the air. We trust this additional information answers your questions concerning the veracity of the advertisement's contents.

Very truly yours,

A handwritten signature in cursive script that reads "Megan Sowards Newton".

Megan Sowards Newton

## Nancy Hess

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**From:** Barry Faber  
**Sent:** Thursday, September 29, 2016 8:32 AM  
**To:** Nancy Hess; Allison Staley  
**Cc:** Todd Harrison  
**Subject:** RE: Political complaint and response

Station may continue to run the ad. Let both parties know and place all materials, including a notation of this decision, in the station's public file. Thank you.

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**From:** Nancy Hess  
**Sent:** Thursday, September 29, 2016 8:25 AM  
**To:** Barry Faber <BFaber@sbgvtv.com>; Allison Staley <AStaley@sbgvtv.com>  
**Cc:** Todd Harrison <tharrison@upnorthlive.com>  
**Subject:** Political complaint and response  
**Importance:** High

Good morning,

Please find attached a legal complaint from counsel for Lon Johnson, a Michigan congressional candidate and the response from the NRCC. Please let me know if you need further information.

Thank you,

Nancy Hess  
HR  
WPBN/WTOM TV 7 & 4  
WGTU/WGTQ TV 29 & 8\*  
Traverse City, Michigan  
(231) 995-5802

\*stations are not owned by Sinclair, providing services pursuant to a services agreement



## Nancy Hess

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**From:** Nancy Hess  
**Sent:** Thursday, September 29, 2016 11:46 AM  
**To:** 'msowardsnewton@jonesday.com'  
**Subject:** Johnson NRCC Political complaint and response

Good day –

Below is the response from Sinclair legal for WPBN TV & WGTU TV.

Thank you.

Nancy Hess  
HR  
WPBN/WTOM TV 7 & 4  
WGTU/WGTQ TV 29 & 8\*  
Traverse City, Michigan  
(231) 995-5802

\*stations are not owned by Sinclair, providing services pursuant to a services agreement



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**From:** Barry Faber  
**Sent:** Thursday, September 29, 2016 8:32 AM  
**Subject:** RE: Political complaint and response

Station may continue to run the ad. Let both parties know and place all materials, including a notation of this decision, in the station's public file. Thank you.

## Nancy Hess

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**From:** Nancy Hess  
**Sent:** Thursday, September 29, 2016 12:00 PM  
**To:** 'lamb@sandlerreiff.com'  
**Subject:** Johnson NRCC Political complaint and response

Good day –

Below is the response from Sinclair legal for WPBN TV & WGTU TV. Stations will continue to air the ad as ordered.

Thank you.

Nancy Hess  
HR  
WPBN/WTOM TV 7 & 4  
WGTU/WGTQ TV 29 & 8\*  
Traverse City, Michigan  
(231) 995-5802

\*stations are not owned by Sinclair, providing services pursuant to a services agreement



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**From:** Barry Faber  
**Sent:** Thursday, September 29, 2016 8:32 AM  
**Subject:** RE: Political complaint and response

Station may continue to run the ad. Let both parties know and place all materials, including a notation of this decision, in the station's public file. Thank you.