

May 25, 2018

Ezra W. Reese
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F +1.202.654.9109**Re: Josh Hawley Advertisement**

Dear Station Manager:

We are counsel to SMP. We write in response to a letter from attorneys for Josh Hawley for Senate that seeks to censor truthful speech about issues of public importance – the official conduct of a government official and the qualifications of a candidate for office. As all of the claims in the advertisement in question are truthful, your station should continue to air it.

SMP's advertisement accurately depicts Josh Hawley's handling of allegations that Governor Eric Greitens used the assets of a charity he founded to engage in political activity. The Hawley campaign's assertion to the contrary is simply false. The *Associated Press* first published an investigative report regarding the improper connection between the charity and Governor Greitens in October 2016, finding that the connections were being used to "help finance his Republican campaign."¹ In fact, the report showed that a donor list for the charity had been obtained by an employee of Greitens' gubernatorial exploratory committee.² Months later, the Missouri Ethics Commission fined Governor Greitens for receiving support from the charity.³ Despite this public reporting, Hawley did not announce an investigation into this conduct until March 2018, more than one year after being sworn in as the state's attorney general (and substantially more than one year after the *Associated Press* investigation brought this issue to light).⁴ Thus, the advertisement is truthful and accurate in stating that Hawley "refused to investigate for 12 months."

There is also no basis to the Hawley campaign's assertion that the advertisement should be removed from the air because Hawley did not have jurisdiction over the conduct at issue here. It is simply untrue that the Attorney General's office could not have launched an investigation until February 2018, and the letter you received from the campaign's attorneys cites to no law or authority to substantiate that position. In fact, the Attorney General is the state's "chief legal officer" and "enforces civil law."⁵ More specifically, Section 407.472 of the Missouri Code clearly and directly authorizes the Attorney General to investigate the activities of charities.

¹ Associated Press, *Greitens taps charity donors for Missouri gubernatorial bid*, Oct. 10, 2016, <https://www.apnews.com/e7e6479b83a545bdafa0cd20a1a63174>.

² *Id.*

³ Jason Hancock, *Gov. Eric Greitens fined for violating Missouri campaign ethics laws*, K.C. Star, Apr. 29, 2017, <http://www.kansascity.com/news/politics-government/article147579244.html>.

⁴ Bryan Lowry & Lindsay Wise, *Hawley launches investigation into Greitens' veterans charity*, K.C. Star, Mar. 1, 2018, <http://www.kansascity.com/news/politics-government/article202969529.html>.

⁵ Missouri Attorney General Josh Hawley, *About the Office*, <https://www.ago.mo.gov/about-us/about-the-office>.

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Simple logic reinforces the plain language of the law; if the Attorney General's office had jurisdiction to review the conduct at issue several months ago, how is it possible that the office lacked jurisdiction during the more than 12 month-period during which Hawley did not investigate the same conduct? The campaign's argument on this point strains the bounds of reason for another reason: by indicating that the Attorney General could not have initiated an investigation until February 2018 "when evidence emerged" of wrongdoing (by way of a *St. Louis Post-Dispatch* article), we are asked to accept the notion that the state government is without power to investigate legal violations unless and until a newspaper publishes a report. It cannot be that the jurisdiction of Missouri's chief legal officer expands and contracts depending on the headlines of the *St. Louis Post-Dispatch* each morning. The simple fact is that substantial questions about the relationship between Governor Greitens and the charity he founded have been part of the public record since October 2016 and Josh Hawley failed to investigate that conduct until February 2018, long after he had been sworn into office.

The First Amendment plays a vital role in protecting the debate over contested issues of public importance, such as the qualifications of candidates for office and the conduct of public officials. The Supreme Court recognizes that "debate on public issues should be uninhibited, robust, and wide-open."⁶ In fact, the "First Amendment affords the broadest protection to [] political expression in order to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people."⁷ In the context of licensing requirements, the FCC recognizes that "the public will ultimately be best informed on public issues through robust, wide-open debate."⁸ The advertisement on Josh Hawley's handling of his investigative responsibilities rests at the core of the First Amendment. The First Amendment requires that such a discussion be had in the marketplace of ideas. Mr. Hawley may choose to air an advertisement explaining why he dragged his feet on allegations of Governor Greitens' misconduct; but he should not be able to censor accurate depictions of his conduct in office.

This advertisement should continue to be permitted to inform the citizens of Missouri.

We can be reached at (202) 434-1616 if you have any questions regarding this letter.

Very truly yours,



Ezra W. Reese
David J. Lazarus

⁶ *New York Times v. Sullivan*, 376 U.S. 254, 270 (1964).

⁷ *Buckley v. Valeo*, 424 U.S. 1, 14 (1976).

⁸ *In re Complaint by Hon. Ronald Reagan, Governor of California Concerning Alleged Deceptive Advertising re California State Employees Association*, 38 F.C.C.2d 314 (Nov. 3, 1972).