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April 25, 2016

The Honorable Tom Wheeler  
Chairman  
Federal Communications Commission  
445 – 12<sup>th</sup> St. SW  
Washington, DC 20554

Dear Chairman Wheeler:

American television viewers are currently ill-served and misinformed. Thousands of political advertisements fill the airwaves in this critical election year, yet viewers do not know who the true sponsors of those advertisements are, and therefore cannot fully assess for themselves the messages they are receiving. The fault for this state of affairs lies squarely with the Federal Communications Commission (FCC). First, the FCC has refused to move forward on updating the regulations implementing the sponsorship identification requirements in Section 317<sup>1</sup> of the Communications Act, which spells out the on-air disclosure requirements for sponsorship identification. Second, the Commission has allowed its Media Bureau's misinterpretation of existing sponsorship identification requirements to stand. As a result, television viewers across the country are not accurately informed of the true identities of those sponsoring political advertisements.

As new data reveals, this problem is increasingly acute. Federal candidates are being significantly outspent on political advertising by outside groups – both Super PACs, which disclose their donors, and 501(c) organizations, which do not.<sup>2</sup> Many of these outside groups use innocuous-sounding names as they seek to persuade voters. Numerous [academic studies](#) show that those wishing to influence the outcome of our elections are purposefully choosing to hide behind these unknown groups because the ads they run are more persuasive.<sup>3</sup>

The Campaign Legal Center (CLC) strongly urges you, as FCC Chairman, to immediately initiate a rulemaking to update the regulations implementing Section 317 of the Communications

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<sup>1</sup> <https://transition.fcc.gov/eb/broadcast/sponsid.html> and <https://www.gpo.gov/fdsys/pkg/CFR-2014-title47-vol4/pdf/CFR-2014-title47-vol4-sec73-1212.pdf>

<sup>2</sup> Super PACs (also known as Independent Expenditure-Only Committees) must disclose their donors to the Federal Election Commission. However, if the sponsor of advertising is a 501(c) organization or limited liability corporation, the individuals or corporations providing the funds for the ads can be hidden. The 501(c) organizations active in political advertising are primarily 501(c)(4) social welfare organizations and 501(c)(6) trade associations and are often referred to as “dark-money groups.”

Act and to ensure that the new regulations provide viewers with more accurate information as to the true sponsor of political advertisements.

### **The New Data**

Recent analysis of advertising data shows the dominant role outside groups play in our nation's political discourse during the 2016 election cycle. Most of these groups are not familiar to the vast majority of Americans, who have no way of knowing the real sponsors behind the unprecedented proliferation of broadcast advertisements seeking to sway their votes.

The Wesleyan Media Project (WMP)<sup>4</sup> found that, as of February 14th:

- 501(c) organizations (primarily 501(c)(4) social welfare groups and 501(c)(6) trade associations) had run more than 23,000 ads in presidential and Senate races;
- Nearly 17,000 of those ads were aimed at Senate races, surpassing the just over 10,000 ads aired in all races by a similar point in 2012;
- Ads funded by 501(c) organizations outpaced candidate-sponsored ads in Senate races by a nearly 2-to-1 margin, and even beat Super PAC ads by nearly 6-to-1.

In the current Pennsylvania Senate race alone, the [Center for Responsive Politics](#), using data from WMP and FEC, as well as press releases from groups that bought advertisements, estimates that spending by dark-money groups has already topped \$7.5 million.<sup>5</sup> As for the candidates in that race, one candidate has not run *any* ads and the other (the incumbent) has run only 373 ads, spending less than \$1 million.

One Nation is one of the most active political advertisers, according to the Center for Responsive Politics. One Nation is a dark-money group run by operatives linked to Crossroads GPS, a similar dark money group started by Republican operative Karl Rove. One Nation's own press releases say the group has spent about \$6 million in seven states.<sup>6</sup>

"On the liberal side, dark-money groups have run 5,583 ads in Senate races so far," the Center reported. Many of these ads were in Wisconsin, where incumbent Senator Ron Johnson is being challenged by former Senator Russ Feingold. "Of the 4,846 spots run so far in the race," the Center stated, "nearly 3,000 were sponsored by Democratic-leaning organizations like the League of Conservation Voters and the Environmental Defense Action Fund."<sup>7</sup>

Another nonprofit, Conservative Solutions Project, bought 4,882 ads supporting Senator Marco Rubio's presidential bid (R-FL) before he dropped out of the race.

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<sup>4</sup> WMP uses data from Kantar Media/CMAG.

<sup>5</sup> These groups reported spending only \$500,000 to the FEC.

<sup>6</sup> None of its spending has been reported to the Federal Election Commission because the group casts its ads as "issue advocacy" even though they mention specific candidates and are running in states that "pollsters suggest will be challenging for Republicans to keep or win in 2016."

<sup>7</sup> None of that spending has been reported to the FEC.

## **Inaction and Dangerous Interpretations**

The data demonstrate that outside groups – Super PACs and dark-money groups – are significant political advertisers in the 2016 elections. Yet, current regulations implementing the Section 317 sponsorship identification requirements are out-of-date and no longer achieve the statute’s purpose of providing viewers with accurate information as to the true sponsor of the advertising.

Last year, there was an opportunity for the FCC’s Media Bureau to interpret the requirements of Section 317 appropriately. Unfortunately, its failure to act sent an unmistakable – and unfortunate – message to broadcast license holders that they can ignore their responsibilities to provide viewers with accurate identification of advertising sponsors. The Media Bureau took no action and instead stated that the stations had “exercised [its] discretion not to pursue enforcement in this instance, given the need to balance the ‘reasonable diligence’ obligations of broadcasters in identifying the sponsor of an advertisement with the sensitive First Amendment interest present here.” The Media Bureau further explained its “approach might have been different if the complainants had approached the stations directly to furnish them with evidence calling into question that the identified sponsors were the true sponsors.”

This reply by the Media Bureau was beyond disappointing. The “reasonable diligence” necessary here to discover the true sponsors of the advertisements was minimal. A simple Google search would have easily revealed the true sponsor of the ads, yet the stations did not even ask the advertisers for additional information.

Moreover, there is no “sensitive First Amendment interest” being threatened by sponsorship identification requirements. Section 317 is only a **disclosure** requirement, and the Supreme Court has repeatedly upheld such requirements in the context of elections and campaigns.<sup>8</sup> There is **no suggestion whatsoever** in our complaints that these groups would not or should not be permitted to buy time to run these ads. Rather, we simply requested that the FCC take reasonable action to enforce this law.

After receiving this response, CLC et al. filed additional complaints after notifying the stations running the ads of the true source of the funds for the ads. The stations refused to take any action requiring the advertiser to modify the disclosure disclaimer on the ad. We have heard nothing further from the FCC about these complaints.

## **FCC Action Needed**

The Campaign Legal Center strongly urges you to initiate a rulemaking to update the regulations implementing Section 317 of the Communications Act. Only clear, reasonable guidelines will give broadcasters and advertisers the tools they need to follow the law, and give viewers the information they need to understand who is spending to influence their votes.

The impact of this continued failure to update the sponsorship identification regulations means that millions of dollars will be spent in the 2016 cycle with the clear intent to influence the outcome of elections, yet viewers will not know who is paying to persuade them. "The First Amendment protects political speech; and disclosure permits citizens and shareholders to react to the speech of corporate entities in a proper way," Justice Anthony Kennedy wrote in his majority

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<sup>8</sup> See for example *Citizens United v. FEC* and *Doe v. Reed*.

ruling in *Citizens United*. "This transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages."

Your responsibility as Chair of the FCC is to ensure that the electorate has the information it needs in order to make informed decisions, and the Supreme Court has recognized that knowing who is paying for political speech is an essential element of that information. Currently, the FCC is failing to do this job, and thus failing in its obligations to the American people.

Sincerely,

A handwritten signature in black ink, appearing to read "M McGehee", enclosed within a thin black rectangular border.

Meredith McGehee  
Policy Director