# Before the FEDERAL COMMUNICATIONS COMMISSION Washington, DC 20554

Complaint of	)
Campaign Legal Center, Common Cause, and	)
Sunlight Foundation	)
Against	)
Against	)
ACC Licensee, LLC, licensee of WJLA-TV,	)
Washington, D.C.	)
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 Foundation<sup>1</sup> file this complaint regarding violations of the Communications Act and the Federal Communications Commission's ("FCC's") regulations by WJLA-TV. WJLA is an ABC-affiliated broadcast television station in Washington, D.C., and is owned by Allbritton Communications Company, Inc. (which owns ACC Licensee, LLC). Allbritton is a media company that owns and operates many television stations and the political news website *Politico*.<sup>2</sup> The \$985 million sale of Allbritton's television stations to Sinclair Broadcast Group is currently pending FCC approval.<sup>3</sup>

In September and October 2013, WJLA aired two political advertisements paid for by the NextGen Climate Action Committee Super PAC. The station did not, however, "fully and fairly disclose the true identity" of the ad's sponsor on-air, nor did it exercise reasonable diligence to

<sup>&</sup>lt;sup>1</sup> Descriptions of these organizations can be found in Exhibit A.

<sup>&</sup>lt;sup>2</sup> Thomas Heath, *Allbritton Selling Eight TV Stations, Including WJLA, to Sinclair for \$985 million*, Washington Post (July 29, 2013), http://wapo.st/1rmuQh3.

<sup>&</sup>lt;sup>3</sup> *Id*.

obtain that information as required by Section 317 of the Communications Act and Section 73.1212 of the FCC's regulations.

#### I. On-air disclosure requirements.

Section 317 of the Communications Act requires broadcast licensees to determine the identity of the "person" sponsoring any advertisement for which money is directly or indirectly paid.<sup>4</sup> The identification must be disclosed at the time the ad is broadcast and should announce that the ad is paid for "by such person." 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. 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." Under the FCC rules, broadcasters "shall exercise reasonable diligence" to "fully 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.<sup>8</sup>

The FCC has been particularly concerned with identification of political ad sponsors<sup>9</sup> 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

<sup>&</sup>lt;sup>4</sup> 47 USC §317(a)(1) (2014).

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<sup>&</sup>lt;sup>6</sup> 47 USC §317(c) (emphasis added).

<sup>&</sup>lt;sup>7</sup> 47 CFR §73.1212(a) (2014).

<sup>&</sup>lt;sup>8</sup> *Id.* §73.1212(e) (emphasis added).

<sup>&</sup>lt;sup>9</sup> 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).

spot announcements [o]n behalf of various political candidates without disclosing the persons or organizations behind them." 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." 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." Further, the duty to investigate the true source of the funding requires the "highest degree of diligence" for political matter. To comply with the FCC's rules, broadcasters must investigate the source of funds to disclose accurate and complete identification of the sponsor.

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." 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. 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.

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<sup>&</sup>lt;sup>10</sup> Identification of Sponsors, 9 Fed. Reg. 12817 (Oct. 25, 1944)

<sup>11</sup> *Id*.

<sup>&</sup>lt;sup>12</sup> Violation of Section 317 of the Commc'ns Act, KTSP, Inc., 40 FCC 12, 14 (1958) (emphasis added).

<sup>&</sup>lt;sup>13</sup> *Id.* At the very least, 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).

<sup>&</sup>lt;sup>14</sup> Applicability of Sponsorship Identification Rules, 40 FCC 141, 141 (1963).

<sup>&</sup>lt;sup>15</sup> Advertising Council, 17 FCC Rcd 22616, 22620-21 (2002).

<sup>&</sup>lt;sup>16</sup> 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

Disclosure also promotes transparency and accountability in political advertising.

Indeed, the Supreme Court recently embraced disclosure as "justified based on a governmental interest in provid[ing] the electorate with information about the sources of election-related spending." Moreover, the Court has said that in light of "modern technology," disclosure is "a particularly effective means of arming the voting public with information." It is the purpose of the on-air disclosure to inform the public of the person paying for the advertisement. The statute and the rules place the burden of investigation on the licensee.

#### II. NextGen Climate Action Committee and its Virginia ads.

NextGen Climate Action Committee ("NextGen") is a Super PAC founded in 2013 by Tom Steyer, an environmentalist and former hedge fund manager. The organization's mission is to "act politically to avert climate disaster and preserve American prosperity." NextGen was active in, among other races, the 2013 Virginia governor's race. <sup>20</sup>

Between September 1 and October 17, 2013, NextGen paid for multiple airings of two political advertisements on WJLA that attacked Virginia Attorney General and then-candidate for Governor Ken Cuccinelli.

The ad titled "Now" makes Cuccinelli appear corrupt by pointing to two instances of unethical and illegal behavior. First, the ad mentioned the "Star Scientific" scandal where

http://www.opensecrets.org/pacs/lookup2.php?cycle=2014&strID=C00545590 (last visited July 15, 2014).

<sup>&</sup>lt;sup>17</sup> *McCutcheon v. FEC*, 134 S. Ct. 1434, 1460 (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).

<sup>&</sup>lt;sup>18</sup> *Id*.

<sup>&</sup>lt;sup>19</sup> About, NextGen Climate Action Committee, https://nextgenclimate.org/about (last visited July 15, 2014).

<sup>&</sup>lt;sup>20</sup> Alexander Burns, *Inside a Green Billionaire's Virginia Crusade*, Politico (Nov. 11, 2013), http://politi.co/1f4wp3e.

<sup>&</sup>lt;sup>21</sup> "Now," http://bit.ly/1jOt9Go (first aired Sept. 5, 2013); see also Laura Vozella, Rival ads knock Virginia gubernatorial candidates McAuliffe and Cuccinelli on ethics, Washington Post

Cuccinelli accepted lavish meals, gifts, and trips from Star Scientific CEO Johnnie Williams, Sr. The ad also stated that Cuccinelli helped an out-of-state energy company (that gave Cuccinelli \$100,000 in campaign donations) avoid paying royalties for drilling on Virginia homeowners' land. The ad's on-air disclosure says "Paid for by NextGen Climate Action Committee," and includes the now-defunct website "va.nextgenclimate.org" (see *Figure 1*).



Figure 1: On-air disclosure of NextGen ad, "Now"

The ad titled "Question" similarly makes Cuccinelli appear corrupt.<sup>22</sup> It also points to the Star Scientific scandal and the out-of-state energy company that was "ripp[ing] off" Virginia landowners. The ad's on-air disclosure says "Paid for by NextGen Climate Action Committee," and includes the site "www.vaclimatevoters.org," which now redirects to NextGen's primary site, www.nextgenclimate.org (see *Figure 2*).

<sup>(</sup>Sept. 15, 2013), http://wapo.st/QFbJDE.

<sup>&</sup>lt;sup>22</sup> "Questioned," http://bit.ly/1mEJnqO (first aired Sept. 14, 2013).



Figure 2: On-air disclosure of NextGen ad, "Questioned"

# III. WJLA has not "fully and fairly disclosed the true identity" of the sponsor of the NextGen ads.

#### A. Tom Steyer is the "true identity" of the sponsor of the ads.

A plain language reading of the Communications Act and the FCC's rules, along with the purpose of the disclosure laws, requires broadcasters to go beyond simply naming the Super PAC that paid for the ad. WJLA has failed to "fully and fairly disclose the true identity" of the sponsor of these ads: it disclosed only the name of the Super PAC, "NextGen Climate Action Committee," and failed to disclose Tom Steyer as the true identity of the sponsor of the ads.

Tom Steyer was the sole donor to NextGen through November 2013, as shown by the group's Federal Election Commission ("FEC") disclosures (*Figure 3*).<sup>23</sup> During 2013, Steyer invested \$9.3 million of his own wealth in NextGen.<sup>24</sup> Further, the NextGen website, under

<sup>&</sup>lt;sup>23</sup> Based on FEC disclosures, only \$110 was contributed by someone other than Tom Steyer.

<sup>&</sup>lt;sup>24</sup> See Burns, supra note 20; NextGen Climate Action, FactCheck.org (Feb. 20, 2014), http://www.factcheck.org/2014/02/nextgen-climate-action.

"About," discloses only Steyer (as founder) and no other employees or directors of the organization (see *Figure 4*).<sup>25</sup>

Contributor Name	Receipt Date	Amount
STEYER, THOMAS F.	07/24/2013	\$2,000,000
STEYER, THOMAS F.	08/30/2013	\$1,800,000
STEYER, THOMAS F.	10/08/2013	\$2,500,000
STEYER, THOMAS F.	10/18/2013	\$3,000,000

Figure 3: Excerpts from NextGen's FEC Disclosure Filings

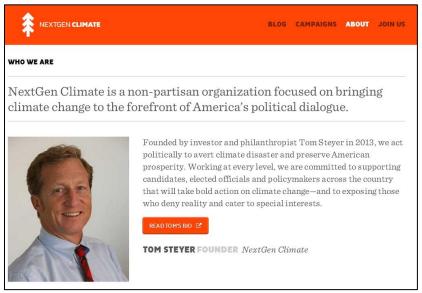


Figure 4: "About" NextGen Climate Action Committee

When an organization has a single donor, that organization represents the will and opinion of only that single donor because that person controls the purse strings. In this case, NextGen owes its existence to Tom Steyer's contributions—in other words, NextGen would not be running any ads without Steyer's money, and he remains free to stop supporting NextGen if it ran ads contrary to his interests. NextGen, in effect, acts as Steyer's political advertising arm. Therefore, the true identity of the sponsor of the ads is Tom Steyer.

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<sup>&</sup>lt;sup>25</sup> Supra note 19.

Further, the name "NextGen Climate Action Committee" does not fully and fairly inform the public about who paid for the ad. Disclosing only "NextGen" leaves the public clueless that the group is furthering Tom Steyer's political agenda and that he controls the message.<sup>26</sup> It is misleading to claim that NextGen is the only relevant name that must be disclosed.

#### B. WJLA failed to use reasonable diligence to obtain sponsorship information.

WJLA employees and reporters actually *knew* that Steyer was planning a large political ad buy in the area on climate issues, yet failed to disclose Steyer's name in the ad. WJLA's own report, which ran on August 5, 2013, showed Steyer was about to inject a substantial amount of money into the Virginia governor's election. The report went as follows:

The good news for Terry McAuliffe is that his campaign is about to get a major boost from California financier, *Tom Steyer – a billionaire environmentalist and vocal opponent of the Keystone Pipeline*.

"We are talking *serious money* here," says POLITICO reporter Katie Glick. POLITICO broke the story on Sunday about Steyer's decision to support the Virginia gubernatorial candidate.

"By doing so, he can turn the conversation to focus more on *climate issues*, which is of course his big issue," adds Glick.<sup>27</sup>

Even if WJLA did not have specific knowledge of Steyer's planned investment, WJLA employees should have consulted the reporters working for its corporate sibling's website, *Politico*, to learn that Tom Steyer was the sole donor and the true identity of the sponsor of these ads. During the last three months of the election (August-November 2013), *Politico* "had extensive behind-the-scenes access to Steyer's shadow campaign." As part of its behind-the-

<sup>&</sup>lt;sup>26</sup> Even if the public goes to the online political file to research the group, WJLA discloses "Tom Adams," executive director, and not anyone else. The NAB form can be found here: https://stations.fcc.gov/collect/files/1051/Political%20File/2013/Non-Candidate%20Issue%20Ads/NextGen%20Climate%20Action/NAB%20Next%20Gen%20Climate%2009-01-13%20to%2009-22-13%20(13770263426874).pdf.

<sup>&</sup>lt;sup>27</sup> Jeff Goldberg, *McAuliffe to receive campaign boost along with SEC investigation*, WJLA – ABC 7 (Aug. 5, 2013), http://www.wjla.com/articles/2013/08/mcauliffe-to-receive-campaign-boost-along-with-sec-investigation-92338.html (emphasis added).

scenes access, *Politico* reported that NextGen was funded solely by Steyer.<sup>29</sup> *Politico* also reported on NextGen periodically throughout the campaign season.<sup>30</sup>

If confusion somehow persisted regarding the true identity of the sponsor of NextGen's ads after such an inquiry, WJLA employees should have consulted with "other persons with whom it deals directly in connection with" the ad, as required by law. <sup>31</sup> It should have asked the group or the buyer's representative to obtain the information to make the correct disclosure.

Failing all that, WJLA employees should have looked online by following the websites the station itself included in the ads. While one site is now defunct, presumably both would have taken the person to the NextGen website where Steyer makes no attempt to hide that he is behind the group. Also, a simple Google search for information regarding NextGen's funding would have turned up NextGen's website and other sites discussing how NextGen is Steyer's group.<sup>32</sup> "Reasonable diligence" must require, at a minimum, a broadcaster to make a simple routine

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<sup>&</sup>lt;sup>29</sup> Burns, *supra* note 20 ("What unfolded in the ensuing months was an overwhelming flood of spending from the coffers of a *single donor* determined to inject climate into a race in which state education and transportation issues, and a federal government shutdown, almost certainly played a more decisive role.") (emphasis added).

<sup>&</sup>lt;sup>30</sup> Burns, *supra* note 32; *see also* Alex Guillen, *NextGen Steps Up Gomez Attacks*, Politico (June 14, 2013), http://www.politico.com/morningenergy/0613/morningenergy10928.html; Alex Guillen, *Steyer Group Brags about Coverage*, Politico (Aug. 13, 2013), http://www.politico.com/morningenergy/0813/morningenergy11410.html.

<sup>&</sup>lt;sup>31</sup> 47 USC §317(c).

Alexander Burns, *Billionaire Environmentalist Goes Big in Virginia Governor's Race*, Politico (Aug. 4, 2013), http://www.politico.com/story/2013/08/tom-steyer-terry-mcauliffe-virginia-governor-race-95174.html; *see*, *e.g.*, Andy Kroll, "*Green Billionaire*" *Launches Big-Money Blitz Against Virginia GOPer*, MotherJones (Aug. 5, 2013), http://www.motherjones.com/mojo/2013/08/tom-steyer-virginia-governor-ken-cuccinelli ("Steyer's super-PAC, NextGen Climate Action . . . ."); *NextGen Climate Action to Air New Keystone XL Ad During President Obama's Tonight Show Appearance* (Aug. 6, 2013), http://www.prnewswire.com/news-releases/nextgen-climate-action-to-air-new-keystone-xl-ad-during-president-obamas-tonight-show-appearance-218521841.html; Claudia Catteneo, *Why Billionaire Tom Steyer Has Re-Invented Himself as an Anti-Keystone Campaigner* (Aug. 14, 2013), http://business.financialpost.com/2013/08/14/why-billionaire-tom-steyer-has-re-invented-himself-as-an-anti-keystone-campaigner/?\_\_lsa=2ea5-9d88.

inquiry about the true source of funds from every customer. In this case, WJLA had access to contact information for both the purchasing agent and the group itself on the NAB form.<sup>33</sup> In fact, it seems that WJLA undertook no investigation whatsoever.

In sum, WJLA failed to exercise reasonable diligence to determine that NextGen had a single donor. As a result, WJLA failed to fully and fairly disclose the true identity of the sponsor of the ad. WJLA has, therefore, violated Section 317 of the Communications Act and Section 73.1212 of the FCC's rules.

#### Conclusion

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. WJLA has failed to disclose this important information. Thus, the Campaign Legal Center, Common Cause, and the Sunlight Foundation respectfully request that the FCC declare that WJLA was not in compliance with the Communications Act and the FCC's rules and to require WJLA to comply in the future. 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 fully and fairly identify on-air the source of funding for political advertisements, and make all the legally required disclosures in the future.

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<sup>&</sup>lt;sup>33</sup> American Principles Fund (2014), *NAB Form*, https://stations.fcc.gov/collect/files/34874/Political%20File/2014/Non-Candidate%20Issue%20Ads/American%20Principles%20Fund/American%20Principles%20Fund%20NAB%20Form%205-7-14%20(13995088248492)\_.pdf.

## Respectfully submitted,

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Dated: July 17, 2014 Counsel for Campaign Legal Center, Common

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#### **Exhibit A**

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.

## **CERTIFICATE OF SERVICE**

I, Eric Null, hereby certify that copies of the Complaint of Campaign Legal Center, Common Cause, and Sunlight Foundation, through its attorneys, the Institute for Public Representation, have been served by e-mail, this 17th of July, 2014, on the following persons at the addresses shown below.

Jerald N. Fritz jfritz@allbrittontv.com Counsel for Allbritton Communications Co.

Eric Null
Institute for Public Representation