

RECEIVED
FEDERAL ELECTION
COMMISSION

NOV -3 PM 1:05

November 1, 2016

Dan Joerres
WBAL-TV
3800 Hooper Avenue
Baltimore, MD 21211

OFFICE OF GENERAL
COUNSEL

William Fanshawe
WBFF-TV
2000 W 41st Avenue
Baltimore, MD 21211

MUR # 7186

Jay Newman
WJZ-TV
3725 Malden Avenue
Baltimore, MD 21211

Bill Hooper
WMAR-TV
6400 York Road
Baltimore, MD 21212

William Fanshawe
WUTB-TV
9 Broadcast Plaza
Secaucus, NJ 07094

Jeff Gray
Comcast Baltimore
7501 Wisconsin Avenue, Suite 650E
Bethesda, MD 20814

Lisa J. Stevenson, Esq.
Acting General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

Re: Kathy Szeliga for US Senate Advertisement

Dear Sir or Madam:

I write to alert you to the fact that Kathy Szeliga and her authorized campaign committee, Kathy Szeliga for U.S. Senate, is running an advertisement that violates the Communications Act of

1704442101010

1934 and the Federal Election Campaign Act of 1971, as amended ("FECA").¹ As a result, Szeliga and her campaign have forfeited their entitlement to the lowest unit charge for the duration of the general election campaign and should be charged the same rate for broadcast time that non-political advertisers are charged for comparable use until Election Day, November 8. Additionally, Szeliga and her campaign should be investigated and sanctioned for their FECA violations.

Through this letter, I ask television stations to cease airing Szeliga's advertisement for failure to comply with FCC sponsorship identifications requirements and to deny Szeliga and her campaign access to the lowest unit charge. Separately, I request the Federal Election Commission to initiate an immediate investigation of Szeliga's violations of the Commission's disclaimer requirements.

DISCUSSION

A. Communications Act of 1934

The Communications Act, which falls within the jurisdiction of the Federal Communications Commission ("FCC"), requires a station to announce who paid for a campaign advertisement.² The sponsor must "be identified with letters equal to or greater than four percent of the vertical picture height ..."³ "Giving the sponsorship identification in such small type on television that the average viewer cannot read it ... does not comply because ... the public [is not] informed that the program or spot is paid for and by whom."⁴ A station "is not required to accept nonconforming commercials from political candidates ... such refusal would not constitute censorship but would be for the limited purpose of complying with the law."⁵

The Communications Act also permits a federal candidate receiving the lowest unit charge to air a television advertisement that makes direct reference to another candidate for the same office only if, "at the end of such broadcast there appears simultaneously, for a period no less than 4 seconds - (i) a clearly identifiable photographic or similar image of the candidate; and (ii) a clearly readable printed statement, identifying the candidate and stating that the candidate has approved the broadcast and that the candidate's authorized committee paid for the broadcast."⁶ If a candidate does not comply with this requirement, that candidate may not receive the lowest unit charge "for such broadcast or any other broadcast . . . that occur on or after the date of such broadcast . . ." during the forty-five days preceding the primary election.⁷ When her campaign purchased advertising time, Szeliga was required to provide the station with written certification that she would comply with the Communications Act.⁸

B. Federal Election Campaign Act of 1971, as amended

¹ The advertisement may be viewed here: <https://www.youtube.com/watch?v=jpXNz9xZr5Y&feature=youtu.be>.

² 47 U.S.C. § 317.

³ 47 C.F.R. 73.1212.

⁴ FCC, *The Law of Political Broadcasting and Cablecasting: A Political Primer* ¶ 95 (1984 ed.).

⁵ *Id.* ¶ 63.

⁶ 47 U.S.C. § 315(b)(2)(C).

⁷ *Id.* § 315(b)(2)(B).

⁸ *Id.* § 315(b)(2)(E).

Under FECA, which falls under the jurisdiction of the Federal Election Commission (FEC), whenever a political committee makes a disbursement for the purpose of financing any television advertisement or public communication, the correct disclaimers must be used.⁹ If the communication is paid for and authorized by a candidate, an authorized committee of a candidate, or agent of either, the communication must contain a disclaimer that clearly states that the communication has been paid for by the authorized political committee.¹⁰ Such a disclaimer must be presented in a clear and conspicuous manner to give the reader or observer adequate notice of the identity of the person or political committee that paid for the advertisement.¹¹

FECA requires additional disclaimers for television advertisements. Specifically, a television advertisement that is authorized or paid for by a candidate or the authorized committee of a candidate "must include a statement that identifies the candidate and states that he or she has approved the communication."¹² The candidate must convey this audio statement either (1) through an unobscured, fullscreen view of the candidate making the statement or (2) through a voice-over by the candidate accompanied by a clearly identifiable photograph or similar image of the candidate.¹³ The communication "must also include a similar statement that must appear in clearly readable writing at the end of" it.¹⁴ The regulations explain that a statement is clearly readable if it (1) appears in letters equal to or greater than four percent of the vertical picture height; (2) is visible for a period of at least four seconds; and (3) appears with a reasonable degree of color contrast between the background and the text of the statement.¹⁵ A statement satisfies the color contrast requirement "if it is printed in black text on a white background or if the degree of color contrast between the background and the text of the statement is no less than the color contrast between the background and the largest type size used in the communication."¹⁶

C. Szeliga's Violations of Communications and Campaign Finance Law

Szeliga's ad violates federal law in no fewer than three ways:

First, Szeliga's ad fails to comply with the sponsorship identification requirements of the Communications Act, and with FECA's separate requirement of a clear and conspicuous disclaimer. Beginning at 0:25, the ad displays a tiny, easily overlooked chyron reading simply, "Paid for by Kathy for Maryland." The average viewer would not know where to look for it, and thus would have no clear notice of who sponsored the ad.

Second, Szeliga's ad fails to meet the FCC requirements because it does not include at the end, for a period of at least four seconds, "a clearly readable printed statement, identifying the candidate and stating that the candidate has approved the broadcast and that the candidate's

⁹ 52 U.S.C. § 30120(a); 11 C.F.R. § 110.11(a); *see id.* § 100.26 (defining public communication).

¹⁰ 52 U.S.C. § 30120(a)(1); 11 C.F.R. § 110.11(b)(1).

¹¹ 11 C.F.R. § 110.11(c)(1), (3).

¹² *Id.* § 110.11(c)(3)(ii).

¹³ *Id.* § 110.11(c)(3)(ii)(A), (B).

¹⁴ *Id.* § 110.11(c)(3)(iii).

¹⁵ *Id.* § 110.11(c)(30)(iii).

¹⁶ *Id.* § 110.11(c)(30)(iii)(C).

authorized committee paid for the broadcast.”¹⁷ Failure to satisfy this requirement renders Szeliga ineligible for a lowest unit charge for television advertisements for the duration of the election under 47 U.S.C. § 315(b)(2)(B). Having violated the Communications Act, Szeliga may no longer lawfully benefit from the lowest unit charge. As a result, no station should run additional advertisements from Szeliga or her campaign committee unless paid at the rate the station charges for comparable use by other non-political advertisers.

Third, Szeliga’s ad fails to meet the FEC’s separate “stand-by-your-ad” requirements, because it does not include a statement that identifies Szeliga and that she has approved the communication in “clearly readable writing at the end of” the advertisement.¹⁸

¹⁷ 47 U.S.C. § 315(b)(2)(C); see *Kathy for Maryland, Kathy* at 0:26–0:30 (Oct. 31, 2016), <https://www.youtube.com/watch?v=jpXNz9xZr5Y&feature=youtu.be>.

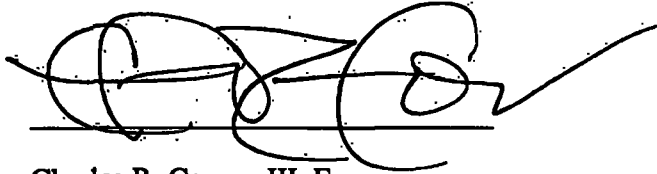
¹⁸ 11 C.F.R. § 110.11(c)(3)(iii).

17044422

CONCLUSION

Accordingly, I request that stations discontinue running Szeliga's ad until it can be brought into compliance with the sponsorship identification requirements, and deny her access to the lowest unit charge for the duration of the election. I further ask the FEC to investigate her violations of FECA's disclaimer requirements, enjoin her and her campaign from future violations, and fine them the maximum amount permitted by law.

Sincerely,



Charles R. Conner III, Esq.

Executive Director

Maryland Democratic Party

33 West Street, Suite 200

Annapolis, MD 21401

SUBSCRIBED AND SWORN to before me this 1 day of November, 2016.



Notary Public

My Commission Expires:

Oct 30, 2022

MARIA JULIANA LOPEZ
Notary Public
Baltimore County
Maryland
My Commission Expires Oct. 30, 2022

110444210101M