

SANDLER REIFF

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October 19, 2020

Attention: Station Manager

Re: Advertisement Run by Citizens for Transparency and Inclusion

Dear Station Manager:

We are writing on behalf of our client Carney for Governor (“the Campaign”). It has come to the attention of the Campaign that your station has begun to broadcast an advertisement sponsored by a group that calls itself Citizens for Transparency and Inclusion (“CTI”), and that the advertisement contains information that is blatantly false and misleading.

For reference, the CTI ad in question that is running on your station can be found here:

<https://www.google.com/url?q=https://youtu.be/NOek55509jY&source=gmail-imap&ust=1603486995000000&usg=AOvVaw2ENflQiQN7OaIVwdM1ggTy>

The CTI ad is riddled with falsehoods and inaccuracies. Specifically, the advertisement falsely claims that Governor Carney and the Delaware Board of Pardons “let violent Barry Croft go free.” As you may know, Mr. Croft is one of several individuals who were recently arrested in an alleged plot to kidnap the Gretchen Whitmer, the current Governor of Michigan.

This claim creates a false narrative that the Governor and the Board of Pardons simply let Barry Croft out of prison through the use of a pardon in 2019. In fact, to our knowledge, Mr. Croft had been out of prison for over twenty-three years. Mr. Croft was not simply allowed to “go free” in 2019. This blatantly false statement was intended to create a false narrative that somehow, Governor Carney was directly responsible for setting certain events in motion that resulted in the kidnapping plot against Governor Whitmer. To be sure, Governor Carney merely affirmed the unanimous decision of the Board of Pardons to pardon Mr. Croft after years of apparently good behavior many years after release from incarceration.

In addition, to demonstrate the shoddy research and lack of care for truthfulness in the advertisement, the ad's photographs of Board of Pardons members displays two individuals as members of the Board of Pardons who were not even on the Board of Pardons at the time of consideration of Mr. Croft's case. The two omitted members, then-Treasurer Ken Simpler and Auditor Tom Wagner, were members of the Republican party, the opposition party in Delaware, while the advertisement incorrectly shows two members of the Democratic party who were not on the Board of Pardons at the time. Clearly, this is additional evidence that CTI was clearly intending to create a deliberately false narrative in this advertisement that connects Governor Carney to letting Mr. Croft "go free."

While the Campaign feels that Mr. Croft's and his co-conspirators actions are reprehensible, CTI's "Willie Horton" attack, perfected by right wing groups in the 1980's, attempts to falsely link Governor Carney with the Gretchen Whitmer kidnap plot and has no place in public discourse. The ad has only one purpose: It is intended solely to embarrass the Governor only days before the 2020 general election and not create a public dialogue about the incarceration of African American prisoners. Of course, the Governor and his Campaign welcomes an honest dialogue about such issues, but not through the use of false advertising.

Your station, of course, is not obligated to accept these advertisements nor is it required to account in any way for its decision to reject such advertisements. *Columbia Broadcasting System v. Democratic National Committee*, 412 U.S. 94 (1973); *You Can't Afford Dodd Committee*, 81 FCC2d 579 (1980). Repeated efforts by organizations that are not candidate committees to obtain a private right of access have been consistently rejected by the FCC. See e.g., *National Conservative Political Action Committee*, 89 FCC2d 626 (1982). As you know, there is no legal obligation on the part of your system to run any commercial, paid advertisement sponsored by a political organization, such as CTI, that is not a candidate committee.

Although the Campaign understands and respects a policy of running advertising providing contrasting views on issues of public importance, your station should not carry an inflammatory and false advertisement that contains overtly blatant lies. As noted, this advertisement is not a political spot that is being run by a legally qualified candidate and *you have no legal obligation* to carry it.

On the contrary, the Campaign believes that you have an obligation to exercise your independent judgment as to whether you should run an advertisement that contains naked falsehoods.

As you know, of course, the no-censorship provisions of the Communications Act apply only to candidate uses of a station—not to advertisements run by issue advocacy groups such as CTI—and thus licensees can be held liable for slanderous or libelous statements made in such advertisements. E.g., *Felix v. Westinghouse Radio Stations*, 186 F.2d 1 (3d Cir.), *cert. denied*, 314 U.S. 909 (1950).

The Campaign appeals to your best judgment, sense of decency and fairness, and respectfully requests that you cease airing this blatantly false commercial until and unless CTI can correct its ad to be factually accurate.

Sincerely yours,

A handwritten signature in blue ink, appearing to read 'N. Reiff'.

Neil Reiff
Counsel
Carney for Governor