

October 15, 2021

Virginia State Board of Elections
1100 Bank Street
Washington Building - First Floor
Richmond, VA 23219-3947

Re: Violation of Disclaimer Requirements by Glenn Youngkin

Under Virginia law, candidate-sponsored television advertisements must satisfy certain disclaimer requirements. Specifically, candidate-sponsored advertisements that “make[] reference to another clearly identified candidate” must include an oral disclaimer statement spoken by the sponsoring candidate.¹ Throughout the aforementioned spoken disclaimer, the advertisement must include “**an unobscured**, full-screen picture containing the candidate, either in photographic form or through the actual appearance of the candidate on camera.”²

Gubernatorial candidate Glenn Youngkin violated Virginia law by repeatedly failing to comply with this statutory requirement. In some instances, Mr. Youngkin failed to include any disclaimer statement in his advertisements at all. **We have identified thirteen (13) advertisements that violate the law. These noncompliant advertisements have run thousands of times and have been seen by potentially millions of voters. The State Board of Elections should immediately convene a hearing and fine Mr. Youngkin \$130,000 for failing to comply with the law.**

I. Legal Standard

As noted above, Virginia law requires that a candidate-sponsored advertisement that refers to an opponent include a disclosure statement spoken by the sponsoring candidate accompanied by “an unobscured, full-screen picture containing the candidate, either in photographic form or through the actual appearance of the candidate on camera.”³ The Virginia Code defines “unobscured” to mean that “the ***only*** printed material that may appear on the television screen is a visual disclosure statement required by law.”⁴ Accordingly, during the candidate’s spoken disclaimer, the only print that may appear on screen is the written disclaimer language. The inclusion of other text, such as the campaign’s logo, is a plain violation of the law.

In 2018, Republican gubernatorial candidate Ed Gillespie flouted this requirement when he ran advertisements that included words promoting his campaign on screen during the candidate’s spoken disclaimer. In response, the State Board of Elections found that Mr. Gillespie’s advertisements violated the law and levied a fine, noting that the law “state[s] that no text could

¹ Va. Code Ann. § 24.2-957.1(2).

² *Id.* § 24.2-957.1(3) (emphasis added)

³ *Id.*

⁴ *Id.* § 24.2-955.1 (emphasis added).

be on the screen other than the written disclaimer.”⁵ In its decision, the Board stated that its interpretation would establish precedent for future television advertisements.⁶

II. Mr. Youngkin’s Non-Compliant Advertisements

A. Youngkin’s Advertisements Do Not Include an Unobscured Image of the Candidate

Notwithstanding the statutory requirement and the Board’s clear statement in 2018, Mr. Youngkin has run numerous advertisements that violate the law. An example of one of these advertisements (“McAuliffe is Embracing ‘Defund the Police’ Extremists”) is as follows:⁷



As shown in the screenshot above, the candidate’s logo is prominently displayed on screen during Mr. Youngkin’s spoken disclaimer, directly next to and overshadowing the barely legible written disclaimer. Furthermore, the logo completely obscures Mr. Youngkin’s face. Because the candidate’s picture is *not* unobscured, and the visual disclosure statement is *not* the “only printed material that ... appear[s] on the television screen,” the advertisement violates the law requiring “an unobscured, full-screen picture containing the candidate.” And this violation is significantly more egregious than the one for which the Gillespie campaign was fined in 2018, because the candidate’s face is completely obscured here.

⁵ Meeting Minutes, Virginia State Board of Elections, Board Meeting at 23 (May 21, 2018), available at https://townhall.virginia.gov/L/GetFile.cfm?File=meeting\151\27625\Minutes_SBE_27625_v4.pdf.

⁶ *Id.*

⁷ Youngkin for Governor Inc., “McAuliffe is Embracing ‘Defund the Police’ Extremists” Advertisement at :33, available at <https://www.facebook.com/ads/library/?id=2959290691004586>.

Exhibit A lists the eleven (11) advertisements that fail to include an “unobscured” image of Mr. Youngkin during the spoken disclaimer.

B. Two of Youngkin’s Advertisements Do Not Include a Disclosure Statement at All

Furthermore, in two of the noncompliant advertisements (“A New Day,” “McAuliffe is Radical on Abortion”), Mr. Youngkin included no spoken disclaimer at all, not even making a cursory attempt to comply with the law. As described above, candidate-sponsored advertisements that “make[] reference to another clearly identified candidate...must include a disclosure statement spoken by the sponsoring candidate.”⁸ Mr. Youngkin’s advertisements plainly fail to comply with this requirement.

Exhibit B lists the two (2) advertisements that fail to include any spoken disclaimer at all.

III. Penalties

State law provides for a penalty of \$1,000 per occurrence for violations of the disclaimer requirement in Section 24.2-957.1, except that the penalty for multiple broadcasts of one particular advertisement is capped at \$10,000.⁹ Based on the number of noncompliant advertisements aired by Mr. Youngkin’s campaign, state law therefore requires that a total penalty of \$130,000 be assessed.

Pursuant to your authority under Section 24.2-955.3 of the Virginia Code, we request that the Board schedule an immediate hearing, and impose upon Mr. Youngkin and his campaign committee the maximum penalties permitted under Virginia law.

Sincerely,



Andrew Whitley
Executive Director, Democratic Party of Virginia

⁸ Va. Code Ann. § 24.2-957.1.

⁹ *Id.* § 24.2-955.3(B).

Exhibit A – Noncompliant Disclaimers

Advertisement	Link	Station	Date/Time Aired	Occurrences
“Keep Virginia Safe”	https://host2.adimpact.com/admo/viewer/08dc9118-7559-4ab3-abb4-b9267eaeff2a/	ECAV, EJHL, WAVY, WCAV, WCYB, WDBJ, WDCW, WFXR, WHSV, WJHL, WJLA, WRC, WRIC, WRLH, WSET, WSLS, WSVF, WTKR, WTTG, WTVR, WUSA, WVAW, WVBT, WVEC, WVIR, WWBT	9/8/2021 – 9/21/2021	2511
“Facts”	https://host2.adimpact.com/admo/viewer/85b25e60-2445-476b-a898-b24b9b5cfc2/	ECAV, WAVY, WCAV, WDBJ, WDCW, WFXR, WJLA, WRC, WRIC, WRLH, WSET, WSLS, WTKR, WTTG, WUSA, WVAW, WVBT, WVEC, WVIR, WWBT	9/18/2021 – 10/1/2021	577
“Against Parents”	https://host2.adimpact.com/admo/viewer/4fd6ae2e-e73f-4eb8-8458-a76f51be77a3/	CNN-DC, CNNPHL, ECAV, EJHL, FNC-DC, WAVY, WCAV, WCYB, WDBJ, WDCW, WEMT, WFXR, WHSV, WJHL, WJLA, WRC, WRIC, WRLH, WSET, WSLS, WSVF, WTKR, WTTG, WTVR, WUSA, WVAW, WVBT, WVEC, WVIR, WWBT	10/1/2021 – 10/15/2021	3699
“Stand Up”	https://host2.adimpact.com/admo/viewer/d8357afb-5427-4bd7-b403-7e78f3895683/	ECAV, WAVY, WCAV, WCYB, WDBJ, WDCW, WFXR, WHSV, WJHL, WJLA, WRC, WRIC, WRLH, WSET, WSLS, WSVF, WTKR, WTTG, WTVR, WUSA, WVAW, WVBT, WVEC, WVIR, WWBT	10/13/2021 – 10/15/2021	892
“Stop Terry McAuliffe”	https://www.facebook.com/ads/library/?id=1804467376408221	Facebook	9/30/2021 – 10/1/2021	25,000 – 35,000
“Keep Virginia Safe”	https://www.facebook.com/ads/library/?id=4149296761860412	Facebook	9/24/2021 – 9/30/2021	150,000 – 175,000
“McAuliffe is Radical on Abortion” (30s)	https://www.facebook.com/ads/library/?id=919175692361189	Facebook	9/18/2021 – 9/21/2021	90,000 – 100,000
“Dishonest Terry”	https://www.facebook.com/ads/library/?id=425471615505133	Facebook	8/17/2021 – 8/18/2021	50,000 – 60,000
“McAuliffe is Embracing ‘Defund the Police’ Extremists”	https://www.facebook.com/ads/library/?id=2959290691004586	Facebook	8/17/2021 – 8/19/2021	10,000 – 15,000
“It’s Time to Move On”	https://www.facebook.com/ads/library/?id=383557476620123	Facebook	8/2/2021 – 8/7/2021	125,000 – 150,000
“Time for Change”	https://www.facebook.com/ads/library/?id=802345063746770	Facebook	6/11/2021 – 6/16/2021	200,000 – 250,000

Exhibit B – Missing Disclaimers

Advertisement	Link	Station	Date/Time Aired	Occurrences
“McAuliffe is Radical on Abortion” (15s)	https://www.facebook.com/ads/library/?id=662375561862994	Facebook	9/18/2021 – 9/21/2021	125,000 – 150,000
“A New Day”	https://www.facebook.com/ads/library/?id=868620963794944	Facebook	9/20/2021 – 9/25/2021	450,000 – 500,000