

August 9, 2018

Sarah Smith
KMBC-TV
6455 Winchester Ave
Kansas City MO, 64133

Re: Congressional Leadership Fund Ad Against Paul Davis

Dear Station Manager:

I write as counsel to Paul Davis. The Congressional Leadership Fund (“CLF”) is running a false advertisement titled “This Time” on your station.¹ The advertisement falsely claims that “[a] vote for Paul Davis is a vote for Nancy Pelosi.” Paul Davis has repeatedly stated that he will not vote for Rep. Pelosi if he is elected. Suggesting anything otherwise is false.

Since August 15, 2017, the day Mr. Davis entered the race for the 2nd district congressional seat in Kansas, he stated he would not “vote for Rep. Nancy Pelosi.”² He “pledged to oppose her the day he launched his campaign in Kansas.”³ With this pledge, Mr. Davis called for “new leadership in both political parties.”⁴ Numerous headlines on the day he announced his bid highlighted the fact that Mr. Davis said he would not vote for Rep. Pelosi:

- *Kansas City Star*: “Kansas Democrat Paul Davis Announces Congressional Bid, **Says He Won’t Vote for Pelosi**”⁵
- *USA Today*: “Kansas Democratic Candidate **Vows to Vote Against Nancy Pelosi for Leader**”⁶

Moreover, news stations, including potentially your station, reported this very fact.⁷ And, over the course of the past year, numerous media outlets have continued to report on the fact that Mr.

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

² Hunter Woodall, *Kansas Democrat Paul Davis Announces Congressional Bid, Says He Won’t Vote for Pelosi*, *Kansas City Star* (Aug. 15, 2017), <https://www.kansascity.com/news/politics-government/article167276292.html>.

³ Alex-Seitz-Wald and Jonathan Allen, *Facing GOP Attacks, More Democratic Candidates Ditch Pelosi*, *NBC News*, <https://www.nbcnews.com/politics/elections/facing-gop-attacks-more-democratic-candidates-ditch-pelosi-n860451> (Mar. 28, 2018).

⁴ Hunter Woodall, *Kansas Democrat Paul Davis Announces Congressional Bid, Says He Won’t Vote for Pelosi*, *Kansas City Star* (Aug. 15, 2017), <https://www.kansascity.com/news/politics-government/article167276292.html>; see also Hunter Woodall, *Kansas Democrat Paul Davis Announces Congressional Bid*, *The Wichita Eagle*, <https://www.kansas.com/news/politics-government/election/article167279862.html> (Aug. 15, 2017).

⁵ Hunter Woodall, *Kansas Democrat Paul Davis Announces Congressional Bid, Says He Won’t Vote for Pelosi*, *Kansas City Star* (Aug. 15, 2017), <https://www.kansascity.com/news/politics-government/article167276292.html> (emphasis added).

⁶ Erin Kelly, *Kansas Democratic Candidate Vows to Vote Against Nancy Pelosi for Leader*, *USA Today* (Aug. 15, 2017), <https://www.usatoday.com/story/news/politics/onpolitics/2017/08/15/kansas-democrat-vows-vote-against-nancy-pelosi-leader/569748001/> (emphasis added).

⁷ See e.g., <https://www.youtube.com/watch?v=KOdlMp6e4lg&feature=youtu.be>.

Davis has said he will not vote for Rep. Pelosi.⁸ As noted in March 2018, “Paul Davis...has long said he won’t support Pelosi.”⁹ More recently, an article discussing the primary election held tuesday noted that “Davis was also among the first Democratic candidates to say he would not support Nancy Pelosi for leader.”¹⁰ Tuesday, several new stations (e.g., KMBC, KSNT, WIBW, and KTKA), covered Mr. Davis’s nomination in the primary election and showed an interview with him where he once again stated that he will not vote for Rep. Pelosi as Speaker of the House if he is elected.¹¹ As Mr. Davis put it: “I stated under the day I announced my candidacy that I’m not going to vote for Nancy Pelosi, and I’m not going to vote for her under any circumstance.”¹²

Clearly, it has been widely reported that Mr. Davis will not vote for Rep. Pelosi for speaker if he is elected to Congress. Thus, CLF’s claim that “[a] vote for Paul Davis is a vote for Nancy Pelosi” which suggests otherwise is false. CLF is spreading lies to hurt Mr. Davis’s campaign and they should not be able to use your station to spread misinformation lacking any basis in truth. Mr. Davis supports new leaders in Washington and will not be casting “a vote for Nancy Pelosi.” CLF’s advertisement is false and deceptive, and your station should not continue to air it.

Unlike federal candidates, independent political organizations like CLF do not have a “right to command the use of broadcast facilities.”¹³ Your station has full power to reject it for any reason. Because you do not need to air this advertisement, your station bears responsibility for its content when you do grant access.¹⁴ Moreover, you have a duty “to protect the public from false, misleading or deceptive advertising.”¹⁵ Failing to prevent the airing of “false and misleading advertising” may be “probative of an underlying abdication of licensee responsibility” that can be cause for the loss of a station’s license.¹⁶ To air this advertisement, while knowing that its claims are specious and unsupported, is inconsistent with your station’s duty “to protect the public from false, misleading or deceptive advertising.”¹⁷

I respectfully request that your station refuse to air this false advertisement that completely ignores well-documented factual statements. The media has widely reported on Mr. Davis’s

⁸ See e.g., Alex-Seitz-Wald and Jonathan Allen, *Facing GOP Attacks, More Democratic Candidates Ditch Pelosi*, NBC News, <https://www.nbcnews.com/politics/elections/facing-gop-attacks-more-democratic-candidates-ditch-pelosi-n860451> (Mar. 28, 2018).

⁹ Sarah D. Wire, *Democratic Candidates Try Something New To Cope With Anti-Pelosi Campaign Attacks: Disavowing Her*, Los Angeles Times (Mar. 22, 2018), <http://www.latimes.com/politics/la-na-pol-pelosi-republican-campaigns-20180322-story.html>.

¹⁰ Bridget Bowman, *4 Things to Watch in Tuesday’s Primaries*, Roll Call, <https://www.rollcall.com/news/politics/4-things-watch-tuesdays-primaries> (Aug. 7, 2018).

¹¹ <https://www.youtube.com/watch?v=V1akFpbIMpM&feature=youtu.be>; <https://www.kmbc.com/article/election-night-live-key-primary-races-on-both-sides-of-state-line/22668397>;

<https://www.youtube.com/watch?v=Zj7tSFioe0&feature=youtu.be>;

<https://www.youtube.com/watch?v=KBXLYXLcUA4&feature=youtu.be>.

¹² <https://www.youtube.com/watch?v=Zj7tSFioe0&feature=youtu.be>.

¹³ See *CBS v. DNC*, 412 U.S. 94, 113 (1973).

¹⁴ See *Felix v. Westinghouse Radio Stations*, 186 F.2d 1, 6 (3rd Cir. 1950), cert. denied, 314 U.S. 909 (1950).

¹⁵ *Licensee Responsibility With Respect to the Broadcast of False, Misleading or Deceptive Advertising*, 74 F.C.C.2d 623 (1961).

¹⁶ See *Cosmopolitan Broad. Corp. v. FCC*, 581 F.2d 917, 927 (D.C. Cir. 1978).

¹⁷ *Licensee Responsibility With Respect to the Broadcast of False, Misleading or Deceptive Advertising*, 74 F.C.D.2d 623 (1961).

decision last August to not vote for Rep. Pelosi if he is elected and CLF's claim that "[a] vote for Paul Davis is a vote for Nancy Pelosi" is blatantly false.

Very truly yours,

Vic Miller
Counsel to Paul Davis